H.R. 12474. A bill to prescribe uniform criteria for formulating judicial remedies for the elimination of dual school systems; to the Committee on Education and Labor.

H.R. 12475. A bill to amend the Civil Rights Act of 1964 to provide for freedom of choice in student assignments in public schools; to the Committee on the Judiciary.

H.R. 12476. A bill to clarify the jurisdiction of certain Federal courts with respect to public schools and to confer such jurisdiction upon certain other courts; to the Committee on the Judiciary.

H.R. 12477. A bill to limit the jurisdiction of Federal courts to issue busing orders based on race, and for other purposes; to the Committee on the Judiciary.

By Mr. WILLIAMS:

H.R. 12478. A bill to authorize and require the President of the United States to establish a mechanism in order to insure that articles, materials, and supplies which are exported from the United States are not sold abroad at higher prices than the prices at which comparable articles, materials, and supplies are sold in the United States; to the Committee on Banking and Currency.

By Mr. DOMINICK V. DANIELS:

H.J. Res. 889. Joint resolution proposing an amendment to the Constitution of the United States; to the Committee on the Judiciary.

By Mr. HANRAHAN (for himself, Mr. HAYS, Mr. FRELINGHUYSEN, Mr. THOMSON of Wisconsin, Mr. BUCHANAN, Mr. FRASER, Mr. RIEGLE, Mr. FINDLEY, Mr. BROWN of California, Mr. RARICK, Mr. COLLINS of Texas, Mr. MICHEL, Mr. COLLIER, Mr. METCALFE, Mr. O'BRIEN, Mr. YOUNG of Illinois, Mr. ROSTENKOWSKI, Mr. ANNUNZIO, Mr. RAILSBACK, Mr. MURPHY of Illinois, Mr. PRICE of Illinois, Mr. GRAY, Mr. ANDERSON of Illinois, Mr. MCCLORY, and Mr. KLUCZYNSKI):

H. Con. Res. 420. Concurrent resolution expressing the sense of the Congress with respect to the imprisonment in the Soviet Union of a Lithuanian seaman who unsuccessfully sought asylum aboard a U.S. Coast Guard ship; to the Committee on Foreign Affairs.

By Mr. HANRAHAN (for himself, Mr. MADIGAN, Mr. ICHORD, Mr. ZION, Mr. COHEN, Mr. CRANE, Mr. ABDNOR, Mr. MOAKLEY, Mr. FLOOD, Mr. RONCALLO of New York, and Mr. HELSTOSKI):

H. Con. Res. 421. Concurrent resolution expressing the sense of the Congress with respect to the imprisonment in the Soviet Union of a Lithuanian seaman who unsuccessfully sought asylum aboard a U.S. Coast Guard ship; to the Committee on Foreign Affairs.

By Mr. HANRAHAN (for himself, Mr. DU PONT, Ms. HOLTZMAN, Mr. MAYNE, Mr. DOMINICK V. DANIELS, Mr. HORTON, Mr. WHITEHURST, Mr. MOLLOHAN, Mr. SARASIN, Mr. STRATTON, Mr. HUBER, Mr. EILBERG, Mr. LONG of Maryland, Mr. SARBANES, Mr. FROEHLICH, Mr. ZWACH, Mr. CLEVELAND, Mr. MCKINNEY, Mr. BIAGGI, Mrs. GRASSO, Mr. MAZZOLI, and Mr. FRENZEL):

H. Con. Res. 422. Concurrent resolution expressing the sense of the Congress with respect to the imprisonment in the Soviet Union of a Lithuanian seaman who unsuccessfully sought asylum aboard a U.S. Coast Guard ship; to the Committee on Foreign Affairs.

By Mr. YATES:

H. Res. 802. Resolution providing for television and radio coverage of proceedings in the Chamber of the House of Representatives on any resolution to impeach the President of the United States; to the Committee on Rules.

PRIVATE BILLS AND RESOLUTIONS

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

By Mr. HELSTOSKI:

H.R. 12479. A bill for the relief of Jack George Makari; to the Committee on the Judiciary.

By Mr. SCHNEEBELI:

H.R. 12480. A bill for the relief of M. Sgt. Thomas J. Reid, Jr., U.S. Air Force (retired); to the Committee on the Judiciary.

MEMORIALS

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

341. By the SPEAKER: A memorial of the Senate of the Commonwealth of Massachusetts, relative to the energy crisis; to the Committee on Foreign Affairs.

342. Also, memorial of the Senate of the Commonwealth of Massachusetts, relative to research into sudden infant death syndrome; to the Committee on Interstate and Foreign Commerce.

SENATE—*Thursday, January 31, 1974*

The Senate met at 10 a.m. and was called to order by Hon. FLOYD K. HASKELL, a Senator from the State of Colorado.

PRAYER

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

Eternal Father, as the leaders of this Nation assemble for prayer, we ask Thee to teach us how to pray, when to pray, and for what to pray. Make us to know that the answer to every prayer is the awareness of Thy presence, and that we may pray at work as well as at worship. Give us grace to listen as well as to speak. Make us a praying nation mindful of Thy word:

The effectual fervent prayer of a righteous man availeth much.—James 5: 16. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., January 31, 1974.

To the Senate:

Being temporarily absent from the Senate on official duties, I appoint Hon. FLOYD K. HASKELL, a Senator from the State of Colorado, to perform the duties of the Chair during my absence.

JAMES O. EASTLAND,
President pro tempore.

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

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Wednesday, January 30, 1974, be dispensed with.

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

COMMITTEE MEETINGS DURING SENATE SESSION

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

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

EXECUTIVE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate go into executive session to consider nominations placed on the Secretary's desk.

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

The ACTING PRESIDENT pro tempore. The nominations placed on the Secretary's desk on the Executive Calendar will be stated.

NOMINATIONS PLACED ON THE SECRETARY'S DESK

The second assistant legislative clerk proceeded to read sundry nominations in the Public Health Service which had been placed on the Secretary's desk.

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

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

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

LEGISLATIVE SESSION

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

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

TRIBUTES TO THE LATE J. EDGAR HOOVER

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 647, Senate Concurrent Resolution

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64, and ask for its immediate consideration.

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

The assistant legislative clerk read as follows:

S. Con. Res. 64, authorizing the printing of congressional eulogies and other tributes to the late J. Edgar Hoover as a Senate document.

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

There being no objection, the resolution was considered and agreed to, as follows:

Resolved by the Senate (the House of Representatives concurring), That there be printed with an illustration as a Senate document a compilation of materials eulogizing the late J. Edgar Hoover, including: memorial tributes in the Congress; the eulogy by Warren E. Burger, Chief Justice of the United States, in the Rotunda of the United States Capitol on May 3, 1972; the funeral services for Mr. Hoover at the National Presbyterian Church, Washington, District of Columbia, including the eulogy by President Richard M. Nixon and the tribute by the Reverend Edward L. R. Elson, Chaplain of the United States Senate; and various articles and editorials relating to the life and work of J. Edgar Hoover and his contributions to the well-being of the American people.

SEC. 2. There shall be printed five thousand five hundred and fifty additional copies of the document authorized by section 1 of this concurrent resolution, of which four thousand four hundred and twenty shall be for the use of the House of Representatives, one thousand thirty shall be for the use of the United States Senate, and one hundred shall be for the use of the Senate Committee on the Judiciary.

SEC. 3. The copy of such document shall be prepared under the direction of the Joint Committee on Printing, and the document shall be printed and bound in the format currently used for memorial tributes to deceased Members of Congress.

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the distinguished Senator from Michigan (Mr. GRIFFIN) is now recognized for not to exceed 10 minutes.

Mr. GRIFFIN. Mr. President, I suggest the absence of a quorum and ask that the time be charged to that time.

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

The second assistant legislative clerk proceeded to call the roll.

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

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

ORDER OF BUSINESS

Mr. GRIFFIN. Mr. President, after a consultation with the distinguished majority whip, I ask unanimous consent that the time remaining under my special order, and also the time for the special order of the distinguished majority whip, be made available at this time for the transaction of routine morning business, with speeches therein limited to 3 minutes.

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

Is there any morning business?

ORDER FOR ADJOURNMENT UNTIL NOON TOMORROW

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

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

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

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

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

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

REPORT OF THE CHESAPEAKE & POTOMAC TELEPHONE CO.

A letter from the vice president and general manager, the Chesapeake & Potomac Telephone Co., submitting, pursuant to law, a report of receipts and expenditures of the company for 1973 (with an accompanying report). Referred to the Committee on the District of Columbia.

REPORT OF OZARKS REGIONAL COMMISSION

A letter from the Ozarks Regional Commission, transmitting, pursuant to law, a report of the Commission for 1973 (with an accompanying report). Referred to the Committee on Public Works.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. JACKSON, from the Committee on Interior and Insular Affairs, with an amendment:

S. 2777. A bill to establish within the Department of the Interior an additional Assistant Secretary of the Interior for Indian Affairs, and for other purposes (Rept. No. 93-673).

EXECUTIVE REPORTS OF A COMMITTEE

Mr. MAGNUSON. Mr. President, as in executive session, from the Committee on Commerce, I report favorably sundry nominations in the U.S. Coast Guard which have previously appeared in the CONGRESSIONAL RECORD and, to save the expense of printing on the Executive Calendar, I ask unanimous consent that they lie on the Secretarys' desk for the information of Senators.

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

The nominations, ordered to lie on the desk, are as follows:

Herbert A. Johnson, and sundry other officers of the Coast Guard Reserve, for promotion in the Coast Guard Reserve.

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. HATHAWAY:

S. 2922. A bill to amend the Outer Continental Shelf Lands Act in order to conduct a comprehensive study of the Outer Continental Shelf, to promote the development of Outer Continental Shelf oil and gas resources, to provide for protection of the environment, to promote competition in the production of oil and gas from the Outer Continental Shelf, and to authorize the payment of a portion of the revenue under the act to the coastal States, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

By Mr. INOUYE (for himself and Mr. BAYH, Mr. GRAVEL, Mr. KENNEDY, Mr. MONDALE, Mr. MONTOYA, Mr. RANDOLPH, Mr. SCHWEIKER, Mr. STAFFORD, Mr. STEVENS, Mr. TAFT, and Mr. JAVITS):

S. 2923. A bill to amend chapter 55 of title 10, United States Code, to require the Armed Forces to continue to provide certain special educational services to handicapped dependents of members serving on active duty. Referred to the Committee on Armed Services.

By Mr. INOUYE:

S. 2924. A bill relating to the use of revenues from lands on Sand Island, Hawaii. Referred to the Committee on Armed Services.

S. 2925. A bill to amend section 17 of the Airport and Airway Development Act of 1970 in order to change the U.S. share of development costs for certain airports. Referred to the Committee on Commerce.

By Mr. GRAVEL:

S. 2926. A bill to authorize and direct the Secretary of the Department under which the U.S. Coast Guard is operating to cause the vessel *Miss Keku*, owned by Clarence Jackson of Juneau, Alaska, to be documented as a vessel of the United States so as to be entitled to engage in coastwise trade and the American fisheries. Referred to the Committee on Commerce.

By Mr. MAGNUSON (for himself and Mr. COTTON) (by request):

S. 2927. A bill to amend the National Traffic and Motor Vehicle Safety Act of 1966 to authorize the Secretary to phase in motor vehicle safety standards by specified percentages over a period of time, and for other purposes. Referred to the Committee on Commerce.

By Mr. MAGNUSON (for himself, Mr. Moss, Mr. TUNNEY, and Mr. KENNEDY):

S. 2928. A bill to establish national goals for the effective, fair, inexpensive, and expeditious resolution of controversies involving consumers, and for other purposes. Referred to the Committee on Commerce.

By Mr. SPARKMAN:

S. 2929. A bill for the relief of Mr. Hugo Medrano. Referred to the Committee on the Judiciary.

By Mr. BUCKLEY:

S. 2930. A bill for the modernization and general revision of the Patent Laws, title 35 of the United States Code, and for other purposes. Referred to the Committee on the Judiciary.

By Mr. GRAVEL:

S. 2931. A bill to authorize Robert L. Rausch to accept an office or position in a university maintained by the Government of Canada. Referred to the Committee on Labor and Public Welfare.

By Mr. MONTOYA:

S. 2932. A bill to amend title 38 of the United States Code to provide that veterans pension and compensation will not be reduced as a result of certain increases in monthly social security benefits. Referred to the Committee on Veterans' Affairs.

By Mr. EASTLAND:

S. 2933. A bill to provide greater security for the U.S. passport. Referred to the Committee on the Judiciary.

By Mr. YOUNG (for himself and Mr. HUMPHREY, Mr. DOLE, Mr. BURDICK, and Mr. PEARSON):

S. 2934. A bill to amend the Agriculture and Consumer Protection Act of 1973 to provide for an adjustment in the established price for the 1974 through 1977 crops of wheat and feed grains to reflect any change in the preceding year in the index of prices paid by farmers for production items, interest, taxes, and wage rates. Referred to the Committee on Agriculture and Forestry.

By Mr. GURNEY:

S. 2935. A bill to authorize and direct the Administrator of the Federal Energy Office to conduct a study so as to determine whether or not there has been a disproportionate increase in the prices of propane and butane gases. Referred to the Committee on Banking, Housing and Urban Affairs.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. HATHAWAY:

S. 2922. A bill to amend the Outer Continental Shelf Lands Act in order to conduct a comprehensive study of the Outer Continental Shelf, to promote the development of Outer Continental Shelf oil and gas resources, to provide for protection of the environment, to promote competition in the production of oil and gas from the Outer Continental Shelf, and to authorize the payment of a portion of the revenue under the act to the coastal States, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

Mr. HATHAWAY. Mr. President, I am introducing today a bill to promote the development of the oil and gas resources of the Outer Continental Shelf, while requiring full and fair competition in this effort and strict protection of the environment. In addition, the bill authorizes payment of a portion of the Federal Government's revenues from OCS oil and gas operations to the adjacent States, to encourage them to participate in the development of these resources and to compensate them for the environmental risks and economic costs incurred thereby.

The energy crisis is one of the gravest problems facing our Nation, and indeed the whole world, at the present time. U.S. energy consumption has risen rapidly, at an annual rate of about 4 percent over the past 10 years, while the rate of energy production has lagged far behind. The serious shortages we are experiencing this year, and will continue to face in future years, are not simply the result of the unexpected Arab oil embargo. There are many causes which are now being investigated by committees in both the House and the Senate.

For those of us from New England, the energy crisis comes as no surprise. Unlike the rest of the country, we have grappled for years with supply problems and recurrent winter heating oil shortages. For years we argued in vain against the oil import quota system, that short-sighted and ill-advised policy maintained over several administrations which cushioned the U.S. oil industry from price competition and incentives to increase output and efficiency, while forcing the public to pay inflated prices.

Now, of course, the import quota system is gone, jettisoned at the first onset of the current energy debacle and unlamented by an administration which once clung to it against the advice of its own top advisers. In its place has come the massive problem of overall shortages, shortages stemming largely from the failure of a protected oil industry to use money gained from tax breaks to find new sources of oil and build new refineries.

Once again, New England is hardest hit. First, the region is located at the far end of the Nation's energy supply chain. In addition, New England is the region of the country most dependent on imported oil, and especially on the currently embargoed Arab oil. Over one-half of the residual fuel oil imported to the east coast is derived from Arab oil. This residual oil is used primarily to produce 70 percent of New England's electricity. The entire region, and my own State of Maine in particular, faces severe shortages this year and in years to come—shortages of No. 2 oil to heat homes, of residual oil to generate electricity, of gasoline to power cars, trucks, fishing boats, farm equipment, and many aspects of the tourist industry. Thus New England is suffering and will continue to suffer most from the effects of the Arab oil embargo—and more important in the long run—the phenomenal rise in the world price of oil.

Leaving aside the question of how much our current crisis has been engineered by the major oil companies, while not denying that possibility, I think we have to agree that a severe energy problem does exist. Given that premise, what can we do to alleviate that problem?

In the long run, I am convinced that we have to find alternative energy sources—ones which do not involve the consumption of limited natural resources and the spoiling of our air and our oceans and our cliffs and prairies. In the short term, however, we must face the fact that we will continue to be dependent on oil and gas and that we will have to develop our own available resources to meet our energy needs.

Energy experts are generally agreed that the Outer Continental Shelf represents our greatest remaining source of oil and gas. At this time, there is only a very limited amount of hard data available. Testimony given before the Senate Interior Committee in 1972 indicated that less than 3 percent of the U.S. OCS had been adequately mapped to permit assessment of its total energy potential. However, the U.S. Geological Survey has prepared resource estimates for the entire OCS. On the basis of these, some comparisons can be made of potential onshore and offshore production of oil and gas.

The USGS estimates total potential onshore production in the United States—lower 48 States plus Alaska—to be approximately 305 billion barrels of petroleum and 1,424 trillion cubic feet of natural gas. Potential offshore production excluding State offshore is estimated at 368 billion barrels and 1,598 trillion cubic feet. State offshore represents less than 10 percent of potential OCS production.

Cumulative figures for actual onshore production up to January 1, 1973, come to 107 billion barrels of petroleum and 417 trillion cubic feet of natural gas. Thus, potential onshore production in the future amounts to roughly 2½ to 3 times the amount already produced. Furthermore, it should be pointed out that it is likely that most of the prime onshore fields have already been found and exploited, so that the remaining onshore oil and gas should be harder to find and less economical to produce.

The reverse seems true for offshore oil and gas. Production from the OCS to date has represented only a small proportion of total U.S. production—about 12 percent in 1972. There is every indication that most of the prime fields have yet to be found and exploited. While extensive resources are projected to lie off the Atlantic and Pacific coasts, and off the coast of Alaska, as yet the only large-scale development of offshore oil and gas resources has taken place in the Gulf of Mexico.

It is evident, then, that our greatest hope for steming up energy production and meeting our needs of the next decade or two lies in the development of OCS oil and gas resources. This is important for the Nation as a whole. More particularly, it is important for areas of the country which heretofore have been remote from the centers of oil and gas production, especially the Northeast. New England and the Middle Atlantic States have had to bear the economic cost, and at times the uncertainty, of bringing oil and gas in from other parts of the country, or from abroad. These most populous and heavily industrialized areas of the country have been wholly lacking in capability to produce oil. Now USGS studies indicate the existence of immense untapped oil and gas resources off the North Atlantic coast, notably the Georges Bank area off New England and the Baltimore Canyon off Delaware.

I should like to point out, however, that with the hope of developing these resources comes the responsibility of doing it right. The OCS lands are public lands, the property of the American people; the resources lying therein are likewise part of the public treasure. It is incumbent upon the Congress, and upon the Federal Government, to avoid the mistakes of the past and establish wise policies for the development of the OCS. The OCS represents a vast, almost incalculable source of energy.

At the same time, it presents almost

unparalleled opportunities for abuse—for windfall profits to a select few companies, for economic blackmail of our citizens and industries, for despoiling of our coasts and seabeds.

The bill I am introducing today, Mr. President, is designed to establish a comprehensive policy for development of OCS oil and gas resources. It revises and adds to current practices, as well as setting new policy guidelines for the future. The following is a summary of the major provisions of the bill:

First, it directs the Secretary of the Interior to conduct a comprehensive study and collect all relevant data for areas of the OCS potential available for exploitation of oil and gas resources but which have not yet been leased for such purposes. In making this study, the Secretary is directed to consult with the Council on Environmental Quality, the Environmental Protection Agency, the National Oceanic and Atmospheric Administration and any other agencies which are currently collecting or may in future collect data on the OCS. The study is supposed to include a wide range of factors, including geological, biological and oceanographic data, and land use patterns for commercial, recreational and Federal Government purposes.

On the basis of that study, the Secretary is directed to designate priority development areas in the OCS, where consideration of the various factors involved suggests that development of oil and gas would be most favorable, and also to designate areas of critical environmental concern, where leasing shall be prohibited due to risk of environmental damage.

Before making any OCS area available for leasing, the Secretary is required to follow a procedure which involves making an evaluation of the oil and gas resources available in that area, based on Federal agency and private company data which he obtains; public disclosure of information involved in that evaluation; public hearings in the affected coastal area; and consent of the Governor of the State in which that area is located. In addition, the Secretary must make available to the public the terms of the lease, and the bids for such leases, and he is directed to require actual production of oil and gas under new and existing leases as a condition for issuing or renewing the lease.

In order to maintain full and fair competition in the development of OCS oil and gas resources, the Federal Trade Commission and the Antitrust Division of the Justice Department must determine that issuance of any particular lease will not involve a violation of the antitrust laws. Furthermore, the Secretary is directed to report within 180 days after enactment his recommendations for promoting competition and maximizing revenues from the leasing of Outer Continental Shelf lands. The report must include consideration of the royalty bidding system as compared with the bonus bidding system, evaluation of alternative bidding systems not covered in present law, and measures to ease entry of new competitors and to increase supply to independent refiners and distributors.

Another section of the bill authorizes the Administrator of the Environmental Protection Agency to draw up regulations for protection of the environment from operations conducted under OCS leases. It directs him specifically to require best available technology for purposes of pollution control and to provide for regular and spot inspections by EPA and also by relevant State officials.

To give further impetus for maintenance of strict environmental protection standards, there is a liability section in the bill which provides strict liability for damages resulting from oil spills from any onshore or offshore facility or vessel engaged in any aspect of the exploitation of oil and gas resources from the Outer Continental Shelf. Modeled on a section in the recently passed Alaska pipeline bill, it calls for strict liability for damages up to $100,000,000, and sets up an Outer Continental Shelf Lands Liability Fund from which to pay claims arising under the act.

Throughout the bill there is recognition of the fact that State government officials have an important role to play in the development of our offshore oil and gas resources. People in Maine State government with whom I have consulted have advised me that there is insufficient recognition by the Federal Government of this role, and of the States' concern to be active participants and policymakers in offshore development. As mentioned above, this bill involves State governments in the OCS leasing process. Another provision extends the requirements of the National Environmental Policy Act, which already covers Federal lands, to the offshore lands under State jurisdiction, while at the same time giving the States express authority to adopt or enforce any standard which is more stringent than any required under this act.

State and local government officials are involved in the Outer Continental Shelf Operations Advisory Board set up by this legislation, in addition to Federal Government employees and persons from private industry and environmental and other groups. The Advisory Board is charged with reviewing all aspects of the implementation and operation of the Outer Continental Shelf Lands Act, as amended by this legislation.

An important section of the bill provides that a portion of the revenues from Outer Continental Shelf oil and gas operations currently going to the Federal Government be distributed to the adjacent States. This is done to encourage the coastal States to participate in the development of OCS resources, and also to compensate them for the environmental risks and economic costs which they now bear or will have to bear as a result of oil and gas operations off their coasts. These States provide, or in future will have to provide, roads and other support services to enable the carrying on of extensive offshore operations. Plus, of course, they run the inevitable risk of damages from oil spills off their coasts.

A final provision directs the President to take appropriate action to define all extended interstate and international boundaries, a number of which are still in dispute, for purposes of administering this act and apportioning revenues under it.

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

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

S. 2922

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 "Outer Continental Shelf Lands Act Amendments of 1973".

The Congress finds—

That it is in the interest of the United States to develop its domestic petroleum resources in order to meet its increasing energy needs, but not at the expense of degrading the environment;

That substantial petroleum resources are located within the lands of the Outer Continental Shelf;

That it is essential for the Federal Government to establish procedures that will allow the development of those resources within a framework of strict environmental safeguards;

That the interest of all U.S. citizens in these vital matters must be recognized, by providing for public disclosure of information and public participation in the procedures involved in the development of Outer Contnental Shelf petroleum resources;

That full and fair competition shall be maintained in all operations on the Outer Continental Shelf lands;

And that a portion of the revenues from such operations shall go to the adjacent coastal States, in return for the efforts undertaken and the environmental risks incurred by these States in the development of Outer Continental Shelf petroleum reources;

SEC. 2. (a) Section 9 of the Outer Continental Shelf Lands Act (43 U.S.C. 1338) is amended to read as follows:

"SEC. 9. Disposition of Revenues.—(a) All rentals, royalties, or other sums paid to the Secretary or the Secretary of the Navy under or in connection with any lease on the outer Continental Shelf for the period beginning June 5, 1950, and ending with the day preceding the date of the enactment of the Outer Continental Shelf Lands Act Amendments of 1974 shall be deposited in the Treasury of the United States and credited to miscellaneous receipts.

"(b) All rentals, royalties, or other sums paid to the Secretary or the Secretary of the Navy under or in connection with any lease on the outer Continental Shelf for the period beginning with the date of the enactment of the Outer Continental Shelf Lands Act Amendments of 1974 shall be deposited in the Treasury of the United States; and of the amount of the revenues so deposited in each fiscal year which are attributable to that portion of the outer Continental Shelf adjacent to any State or that portion of the outer Continental Shelf to which a State by interstate compact has limited itself—

"(1) 60 per centum shall be paid by the Secretary of the Treasury to such adjacent State, to be added to its general funds and to be used for what it deems to be in its best interests, except that for the purposes of this clause (A) if the revenues attributable to a State in any fiscal year amount to $50,000,000 or more in royalties, then rentals, bonuses, or revenues other than royalties shall not be included, or (B) if the revenues attributable to a State in any fiscal year amount to less than $50,000,000 in royalties, such revenues other than royalties shall be included in such amount as does not exceed $50,000,000 in total revenues attributable to such State; and

"(2) if the revenues attributable to any one State in a single year exceed $25,000,000, the share of the excess payable to that State under clause (1) shall be reduced in accordance with the following table:

"Amounts	Percentages
From $25,000,000 to $35,000,000	45
From $35,000,000 to $45,000,000	30
From $45,000,000 to $50,000,000	20
On excess over $50,000,000	10

"(c) Any moneys paid to the Secretary or the Secretary of the Navy under or in connection with a lease but held in escrow pending the determination of a controversy as to whether the lands on account of which such moneys are paid constitute part of the outer Continental Shelf shall, to the extent that such lands are ultimately determined to constitute said part of the outer Continental Shelf, be distributed—

"(1) in accordance with subsection (a) if paid before the date of the enactment of the Outer Continental Shelf Lands Act Amendments of 1973, and

"(2) in accordance with subsection (b) if paid on or after the date of the enactment of such amendments."

(b) Nothing contained in this Act or in the amendments made by this Act shall be construed to alter, limit, or modify in any manner any right, claim, or interest of any State in any funds received before the date of the enactment of this Act and held in escrow pending the determination of any controversy as to whether the submerged lands on account of which such funds are received constitute a part of the outer Continental Shelf.

(c) Nothing contained in this Act or in the amendments made by this Act shall be construed to alter, limit, or modify any claim of any State to any right, title, or interest in, or jurisdiction over, any submerged lands.

SEC. 3. The Outer Continental Shelf Lands Act is further amended by redesignating sections 15, 16, and 17 as sections 25, 26, and 27, respectively, and by inserting after section 14 the following new sections:

"SEC. 15. Study of Outer Continental Shelf.—(a) Within one year following the date of enactment, the Secretary shall, in consultation with the Council on Environmental Quality, the Environmental Protection Agency, the National Oceanic and Atmospheric Administration, and other relevant Federal agencies, conduct a comprehensive study and collect all relevant data on areas of the Outer Continental Shelf potentially available for exploitation of oil and gas resources, but not yet leased pursuant to this Act. Such study shall include consideration of the following:

"(1) basic geological and geophysical data relating to the presence of oil or gas;

"(2) biological data on marine plant and animal life, sensitivity of all species to changes in the marine environment, and existing pollution conditions;

"(3) oceanographic and meteoroligcal data, including waves, winds, currents, tides, water depth, topographical conditions, and probable behavior of oil spills from given points.

"(4) transportation data, including shipping, pipelines, and any other facilities; and

"(5) other resource use data, including commercial fishing, sports fishing, and boating.

"(b) In conjunction with this study, the Secretary shall consult with other agencies of the Federal Government, including the Department of Commerce and the Department of Defense, to determine other present or projected uses for OCS areas, and shall cooperate with these agencies in developing use patterns which are not in conflict and which do not impede the production of oil and gas from these areas.

"(c) No leasing shall be conducted on any area of the Outer Continental Shelf until the study of that area required under this section has been completed.

"SEC. 16. Designation of Leasing Areas.—(a) On the basis of the study pursuant to section 15, the Secretary shall—

"(1) designate priority development areas in the submerged lands of the Outer Continental Shelf, for purposes of leasing pursuant to this Act. These shall be areas in which there is determined to be the greatest potential for development of oil and gas resources and the least risk of environmental damage resulting therefrom.

"(2) designate areas of critical environmental concern, in which leasing shall be prohibited due to risk of environmental damage, including damage to commercial and recreational activities.

"(b) Before designating any area as available for leasing pursuant to this Act, the Secretary shall—

"(1) make an evaluation of the oil and gas resources available in that area, and shall include in making such evaluation the following:

"(i) information which he directs to be gathered in surveys conducted by the Department of the Interior, using best available techniques, including seismic exploration and subsoil surveys;

"(ii) all data pertaining to that area held by State and local governments and other Federal Government agencies;

"(iii) all data pertaining to that area obtained by private companies under exploratory permits issued by the Department of the Interior;

Provided, That the Secretary shall require submission, in complete and comprehensible form, of such information held by private companies at the time that an area is placed under consideration for leasing, and shall notify the companies to that effect;

Provided further, That the Secretary shall have authority, for purposes of this subsection, to sign and issue subpoenas for the production of relevant books, papers, charts, and other documents or materials, and, in case of refusal to obey a subpoena served upon any person under the provisions of this subsection, the Secretary may request the Attorney General to seek the aid of the district court of the United States for any district in which such person is found to compel such person, after notice, to appear and produce documents before the Secretary;

Provided further, That no private company shall be permitted to conduct further exploration or to bid for or hold a lease in the designated area unless it submits the requisite information to the Secretary.

"(2) make available to the public all information obtained under subsection (1),

Provided, That, except as otherwise provided by law or by this Act, individual company data obtained under that subsection shall be kept confidential for a period of one year, except that such information may be disclosed to other persons empowered to carry out this Act solely for the purpose of carrying out this Act or when relevant in any proceeding under this Act.

"(3) hold public hearings in any coastal area where such leasing may have an environmental or commercial effect and provide an opportunity at such hearings for comments from State and local government officials environmental groups, commercial interests and other interested persons, on both the area to be designated and the terms of leases to be issued thereon, and make transcripts of such hearings available to the public; and

"(4) obtain the consent of the Governor or Governors of the State or States in which such coastal area or areas are located.

"SEC. 17. ADDITIONAL LEASING REQUIREMENTS.—(a) The Secretary shall make public at least 60 days prior to entering into any lease pursuant to this Act—

"(1) the terms of such lease; and

"(2) information which he has obtained under section 16(b)(1) with respect to oil and gas resources available in the area covered by such lease, in usable and summary form.

"(b) Bids for leases and supporting materials shall be made available to the public upon request.

"(c) The Secretary is authorized to include in any lease issued pursuant to this Act such special conditions as he determines necessary as a result of information obtained pursuant to section 16.

"(d) After consultation with State and local officials and other interested persons in the affected area, the Secretary may stipulate as a condition of entering into any lease that priority shall be given to meeting the needs of that area for oil and gas produced under such lease.

"(e) In order to obtain maximum feasible production of oil and gas from leases issued pursuant to this Act, the Secretary shall—

"(1) prior to entering into any new lease, set standards for drilling and production under that lease, including agreements on timetables and commitment of resources;

"(2) prior to renewing any existing lease, determine that oil and gas is being produced in paying quantities under that lease, or set standards for production within a stipulated period of time not to exceed two years;

Provided, that failure to comply with these standards shall result in forfeiture of the lease at the end of that period of time.

"(3) conduct a survey and evaluation of the capacity of all wells currently classified as 'producing shut-in' by the United States Geological Survey, and order production within one year if he determines that production from such a well is technically and geologically feasible and would not violate any environmental requirement imposed by law or regulation,

Provided, that failure to comply with such order shall result in forfeiture by the lessee of acreage containing such well classified "producing, shut-in."

"SEC. 18. PROMOTION OF COMPETITION.—(a) No lease shall be issued pursuant to this Act unless it has been determined by the Federal Trade Commission and the Department of Justice that issuance of such lease will not involve a violation of the antitrust laws. Such determination shall be made within thirty days after receipt of the request for a ruling. The Federal Trade Commission and the Department of Justice shall prepare a detailed memorandum giving the basis of the determination and shall make such memorandum available to interested parties upon request.

"(b) Within one hundred and eighty days after the date of enactment, the Secretary shall prepare and publish a report with recommendations for promoting competition and maximizing revenues from the leasing of Outer Continental Shelf lands, and shall include a plan for implementing recommended changes. Such report shall include consideration of the following—

"(1) royalty bidding system as compared to the bonus bidding system;

"(2) evaluation of alternative bidding systems not covered under present law;

"(3) measures to ease entry of new competitors; and

"(4) measures to increase supply to independent refiners and distributors.

"SEC. 19. AUTHORITY OF ADMINISTRATOR OF ENVIRONMENTAL PROTECTION AGENCY.—(a) The Administrator of the Environmental Protection Agency, in consultation with the Secretary of the Interior, is authorized to prescribe such regulations as he determines necessary for protection of the environment from operations conducted (including equipment used therein) under leases pursuant to this Act. Such regulations shall include—

"(1) requirements for the use of best available technology, including replacement of existing equipment where necessary;

"(2) provisions for inspections by the Administrator at any time to determine proper compliance with such regulations;

"(3) requirements that a thorough inspection be conducted by the Administrator semi-annually;

"(4) provisions for inspections by officials of the State or States affected by operations under a particular lease; and

"(5) requirements for submission of a contingency plan to be implemented in the event of a discharge of oil.

"(b)(1) Any holder of a lease pursuant to this Act and any other person subject to any regulation issued under subsection (a) who fails or refuses to comply with the provisions of any such regulations shall be liable to a fine of not more than $5000 for each such violation. Each day on which such violation occurs shall be a separate offense. The Administrator may assess and compromise such penalty. No penalty shall be assessed until the holder or other person charged shall have been given notice and an opportunity for a hearing on such charge. In determining the amount of the penalty, or the amount agreed upon in compromise, the gravity of the violation and the demonstrated good faith of the holder, or other person charged in attempting to achieve rapid compliance, after notification of a violation, shall be considered by the Administrator.

"(2) Willful non-compliance with the provisions of any regulations issued under subsection (a) by a holder of a lease pursuant to this Act or by any other person subject to any such regulation shall be considered a crime punishable by a term of no more than one year in prison.

"(c) In addition to the penalty provided in subsection (b), the Secretary may (1) suspend all or part of operations on any lease for violations of regulations prescribed pursuant to subsection (a), and (2) terminate any lease for repeated serious violations.

"Sec. 20. Requirements For State Development of Certain Lands.—(a) In the interests of protecting the navigable waters of the United States no State shall authorize or provide in any way for any construction or development of any kind on or in any land beneath navigable waters, as defined in Sec. 2(a)(2) the Submerged Lands Act, until it has prepared a report including the following:

"(1) the environmental impact of the proposed action,

"(2) any adverse environmental effects which cannot be avoided should the proposal be implemented,

"(3) alternatives to the proposed action,

"(4) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

"(5) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any such report, the responsible State official shall consult with and obtain the comments of the Secretary of the Interior, the Secretary of Commerce, the Administrator of the Environmental Protection Agency and the Chairman of the Council on Environmental Quality with respect to any environmental impact involved. Copies of such report and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of title 5, United States Code, and shall accompany the proposal through the State agency review processes.

"(b) Nothing in this section shall preclude or deny the right of any State or political subdivision thereof or interstate agency to adopt or enforce any standard, limitation, or standard of performance which is more stringent than any required under this Act.

"Sec. 21. Liability. (a) Notwithstanding the provisions of any other law, and except when the discharge was caused solely by an act of war, the owner or operator of any onshore or offshore facility (including, but not limited to, pipelines, terminals, platforms and drilling rigs) or vessel engaged in the extraction, production, transportation, or storage of oil from the Outer Continental Shelf Lands, in conjunction with the Outer Continental Shelf Lands Liability Fund established under this subsection, shall be strictly liable without regard to fault for all damages, including clean-up costs, sustained by any person or entity, public or private, as the result of discharges of oil from such facility or vessel. Damages shall include, but not be limited to, injury to persons; spoiling of beaches and coastal communities; destruction and injury of sea birds; fouling of boats, fishing gear, piers and quays; damage to fish, shellfish, and larvae, including loss of income from harvesting of same; risk of fire in harbors and other enclosed waters; and loss of income from tourism.

"(b) Strict liability shall not be imposed under this subsection with respect to the claim of a damaged party if the damage was caused by the negligence of such party.

"(c) In any case where liability without fault is imposed pursuant to this subsection and the damages involved were caused by the negligence of a third party, the rules of subrogation shall apply in accordance with the law of the jurisdiction where the damage occurred.

"(d) Strict liability for all claims arising out of any one incident shall not exceed $100,000,000. If the total claims allowed exceed $100,000,000, they shall be reduced proportionately. The unpaid portion of any claim may be asserted and adjudicated under other applicable Federal or State law.

"(1) The owner or operator of a vessel shall be jointly and severally liable for the first $14,000,000 of such claims that are allowed, and financial responsibility for the $14,000,000 shall be demonstrated in accordance with the provisions of section 311(p) of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1321(p)). The Fund shall be liable for the balance of the claims that are allowed up to $100,000,000.

"(e) The Outer Continental Shelf Lands Liability Fund is hereby established as a nonprofit corporate entity that may sue and be sued in its own name. The Fund shall be administered under regulations prescribed by the Secretary. The Fund shall be subject to an annual audit by the Comptroller General, and a copy of the audit shall be submitted to the Congress.

"(f) There shall be collected from the owner of the oil as produced at the wellhead a fee of five cents per barrel. The collection shall cease when $100,000,000 has been accumulated in the Fund, and it shall be resumed when the accumulation in the Fund falls below $100,000,000. The owner of the oil shall be required to maintain a device suitable for measuring the amount of oil conveyed, for purposes of collecting this fee.

"(g) The collections under paragraph (f) shall be delivered to the Fund. Costs of administration shall be paid from the money paid to the Fund, and all sums not needed for administration and the satisfaction of claims shall be invested prudently in income-producing securities approved by the Secretary. Income from such securities shall be added to the principal of the Fund.

"(h) This subsection shall not be interpreted to preempt the field of strict liability or to preclude any State from imposing additional requirements.

"Sec. 22. National Petroleum Reserve.—(a) The Secretary shall, on all lands leased pursuant to this Act, require the establishment and maintenance on a pro rata basis of reserve operating capacity which is able if necessary to produce within 90 days an amount of oil equal to one fourth of the amount of crude oil imported into the United States during the calendar year 1972.

"(b) For the purpose of this section the Secretary shall—

"(1) require regular reports from each holder of a lease pursuant to this Act with respect to the quantities and location of oil reserves located on such lease and such reports shall be available for public inspection;

"(2) make necessary inspections of leased areas and facilities thereon to determine the accuracy of such reports and other necessary information; and

"(3) perform such drilling and other exploratory work in areas offered for lease as is necessary to determine oil resources available.

"Sec. 23. Outer Continental Shelf Operations Advisory Board.—(a) There is established in the Department of the Interior an Outer Continental Shelf Operations Advisory Board. The Board shall be composed of the Secretary or his designee, who shall be chairman, and 10 members appointed by the President, one from the Environmental Protection Agency and the others to represent appropriate State, interstate, and local government agencies in coastal areas, experts in the field of operations in the Outer Continental Shelf, private industry involved in such operations and organizations or groups demonstrating an active interest in such operations and the environmental effects thereof.

"(b) The Board shall meet at the call of the chairman or a majority of the members thereof. A majority of the members shall constitute a quorum for the purpose of establishing official positions of the Board.

"(c) The Board shall—

"(1) review the provisions of this Act and the regulations pursuant thereto;

"(2) monitor the enforcement of such provisions and regulations;

"(3) make recommendations to the Secretary for any necessary changes in such provisions or regulations; and

"(4) hold public hearings whenever and wherever appropriate in carrying out its functions.

The Secretary shall forward all such recommendations to the Congress, along with his recommendations with respect thereto, at least annually.

"(d) Members of the Board from Federal departments and agencies and from State and local governments shall receive no additional compensation for their services as members of the Board. Members of the Board selected from the private sector, while serving on business of the Board, shall receive compensation at rates fixed by the Secretary but not exceeding $100 per day, if service on the Board would result in loss of income which would otherwise be earned. All members of the Board, while serving away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently. The Secretary shall make available to the Board such office space and facilities, and such secretarial, clerical technical, and other assistance and such information and data in his possession or under his control, as the Board may require to carry out its functions.

"Sec. 24. Extension of Boundaries. Within one year following the date of enactment, the President shall take appropriate action

to delineate, adjudicate, and extend all boundaries for the purposes of this Act. This shall include procedures for settling any outstanding boundary disputes, including international boundaries between the United States and Canada and between the United States and Mexico, and establishing boundaries between adjacent states, as directed in section 4 of this Act.

AMENDMENT OF FREEDOM OF INFORMATION PROVISIONS OF TITLE 5, UNITED STATES CODE

SEC. 4. Section 552(b) of title 5 of the United States Code, is amended by inserting "or" after the semi-colon at the end of clause (7), by striking out the semi-colon and "or" at the end of clause (8) and inserting in lieu thereof a period, and by striking out clause (9).

Mr. INOUYE (for himself and Mr. BAYH, Mr. GRAVEL, Mr. KENNEDY, Mr. MONDALE, Mr. MONTOYA, Mr. RANDOLPH, Mr. SCHWEIKER, Mr. STAFFORD, Mr. STEVENS, Mr. TAFT, and Mr. JAVITS):

S. 2923. A bill to amend chapter 55 of title 10, United States Code, to require the Armed Forces to continue to provide certain special educational services to handicapped dependents of members serving on active duty. Referred to the Committee on Armed Services.

Mr. INOUYE. Mr. President, last August, the Office for the Civilian Health and Medical program of the Uniformed Services announced that it would discontinue the funding of special educational services to military dependents. Effective immediately, no further applications for special educational services were to be accepted, and those applications which had been approved would be provided funds only until December 31, 1973.

Upon inquiry, I learned that this change in service was not due to the cost of these services, but because there was no legal basis requiring that Champus provide such services. In fact, Champus has been unable to provide me with any figures on the cost or on the number of children who are affected by this decision. Apparently, these cases have been categorized as problems other than special educational problems, and as of December 18, 1973, they had not sorted through their files to learn who would be cut off from further benefits a mere 13 days later. I need not tell you of the financial hardship that is thrust upon the affected families with so little warning.

In addition to the burden placed upon the families due to the immediacy of this problem is the burden placed upon the States to absorb these students in the middle of the school year, and in the middle of the fiscal year. Many States, including Rhode Island and Connecticut, are not required to provide special educational services to nonresidents unless the home State will pay for the services.

This problem is acute in my own home State of Hawaii. To cite one specific example, there is a private school located on Pearl Harbor which has been providing special education for military dependents with learning disabilities. This school, the Armed Services Special Education and Training School, known as ASSETS, has announced that it will be forced to close on January 31, 1974, unless it can find some source of funds to replace those which Champus has discontinued.

Presently, in Los Angeles, Calif., a suit has been brought against the Department of Defense by 10 families whose children are affected by this decision by Champus. The plaintiffs claim that the Department of Defense had contracted with the fathers of these 10 children to provide certain services to them and their families in exchange for their service in the Armed Forces, and that the Department of Defense is now reneging on that contract by discontinuing this service to their children.

If these children are forced to discontinue their education prematurely, since they cannot be placed into an average public school classroom which does not provide them with the special services which their disabilities require, it will result in a rapid regression of their condition.

The office of CHAMPUS has offered to provide the families of these students with information concerning schools and agencies in their area which provide services which would be beneficial to the child; however, they can not assure the parents that sufficient programs exist even if the child can be admitted in the middle of the school year, or that the parents can afford to pay for those services which do exist.

CHAMPUS claims that such services are strictly educational, and not medical. I personally believe, and it can be documented by professionals in the field, that no such clear distinction is possible.

In December I introduced an amendment to the Defense Appropriations bill during the committee deliberations which was accepted by the committee and approved by the Senate, which was designed to continue these special educational services until the end of the fiscal year. Unfortunately, during the conference, the amendment was deleted.

My colleagues who are cosponsoring this bill and I see a great need to continue this service for the dependent children of active duty military personnel, and we urge a rapid passage of this bill.

By Mr. INOUYE:

S. 2924. A bill relating to the use of revenues from lands on Sand Island, Hawaii. Referred to the Committee on Armed Services.

Mr. INOUYE. Mr. President, on August 25, 1958, Congress enacted Public Law 85–756 which provided for the transfer of title to certain land at Sand Island which, as an industrial area near the heart of Honolulu and adjacent to Honolulu International Airport, is used primarily for a variety of public and private, uses, such as, fuel storage, harbor facilities, and industrial storage.

The 1958 act specifically assigned for the support and general purposes of the University of Hawaii all proceeds and revenues arising from any such disposition of this 202-acre parcel.

Since the passage of that measure, the State of Hawaii has reevaluated its current and projected needs for governmental use of this property, and has concluded that better utilization can be made by reassigning use of the area among various State agencies.

Accordingly, today I introduce legislation relating to the use of revenues from lands on Sand Island, Hawaii, which effects such redistribution in the following manner:

First, use by the Foreign Trade Zone as requested by the State Department of Planning and Economic Development.

Second, waterfront industrial use by the State of Hawaii Department of Transportation.

Third, storage of aviation fuel by the airports division of the State of Hawaii Department of Transportation.

Fourth, sewage treatment site for the city and county of Honolulu.

It is to be emphasized that such a proposed change reallocates use of the land on a nonrevenue basis; that is, that the intended governmental uses authorized by the amendment have particular encumbrances attached.

More specifically, the lands set aside to the Department of Transportation for the use of the Harbors Division become security for the Harbors Division indebtedness, and revenues from them must be covered into the division's bond account.

The Federal Aviation Authority requires that airport lands must contain adequate facilities or fuel storage. Such lands are also encumbered by airport bonding agreements, and the revenues produced by them must be used for retirement of bonds or to reimburse the general fund for moneys advanced.

Lands made available as a plantsite for sewage treatment will not produce any revenue.

As for the university benefit problem, the Hawaii State legislature has anticipated this contingency by including in its appropriation bills the requirement that all revenues from the subject property be covered into the general fund of the State of Hawaii in order to reimburse the general fund for moneys appropriated directly to the University.

Given the express needs of the State of Hawaii for such lands, I strongly urge early and favorable consideration of this necessary amendment so as to facilitate the long-range usage plans of the State of Hawaii in this region.

By Mr. INOUYE:

S. 2925. A bill to amend section 17 of the Airport and Airway Development Act of 1970 in order to change the U.S. share of development costs for certain airports. Referred to the Committee on Commerce.

Mr. INOUYE. Mr. President, today I am introducing legislation to modify the Airport and Airway Development Act of 1970 so as to make its implementation more consistent with the actual intent of Congress.

During the past session, the Congress passed the Airport Development Acceleration Act of 1973 because we felt that it was the Federal Government's responsibility to assist the States and local communities in developing viable air transportation networks. Further, because large airports tend to be financially self-sufficient, wording was developed

such that the Federal Government's share of allowable project costs "may not exceed 50 percent for sponsors whose airports enplane not less than 1 percent of the total annual passengers enplaned by air carriers certified by the Civil Aeronautics Board." This is in contrast to a 75-percent maximum of those sponsors who enplane less than 1 percent.

Hawaii being a small island State has recognized for many years the great advantage in having an integrated transportation facilities system and has organized its Department of Transportation to foster this goal. At the present time, there are 14 existing airports and 1 heliport located throughout the State with plans for developing 3 additional airports in the making. Honolulu International Airport is the only one which enplanes more than the 1 percent noted in the law.

Yet, since we have an integrated system with the State being the primary sponsor, all of Hawaii's airport construction is limited by the 50 percent ceiling. I am confident that this state of affairs was not the intent of the Congress.

I would like to further emphasize that my State faces an unusual and disproportionate share of our Nation's airport expenses in having to provide Federal border clearance agency facilities for the third largest number of foreign arrival passengers in the Nation, a $75 million reef runway for the military as well as commercial aircraft, and agriculture inspections for the Southwestern States.

At this time, I would like to enter into the RECORD a report prepared by the State which delineates Hawaii's airport system in more detail.

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

THE HAWAII STATE AIRPORTS SYSTEM

The Hawaii Revised Statutes provide that the Department of Transportation of the State of Hawaii shall establish, maintain and operate transportation facilities of the State including highways, airports, harbors and such other transportation facilities and activities as may be authorized by law. The Department is headed by a single executive known as the Director of Transportation.

The activities of the Department of Transportation are carried out through three divisions: Airports, Highways and Harbors. Through the Airports Division, the Department exercises jurisdiction over and control of all State airways and all State airports and air navigation facilities, except those under military jurisdiction and control, and has general supervision over aeronautics within the State of Hawaii.

The Department is authorized by statute to receive federal aid for airports within its jurisdiction and is the sponsor for all public airports in the State of Hawaii.

The Airports Division operates and maintains fourteen existing airports and one heliport located throughout the State and has plans for three other airports in the State.

The two principal existing airports which provide commercial facilities for long-distance overseas flights (i.e., other than interisland within Hawaii) are Honolulu International Airport on the Island of Oahu and General Lyman Field at Hilo on the Island of Hawaii.

The other existing airports in the airports system are Lihue and Port Allen Airports on the Island of Kauai; Ala Wai Heliport, Dillingham Field, and Ford Island (the latter two are U.S. Air Force and U.S. Navy properties, but the State has an arrangement whereby civilian light planes may use the runways) on the Island of Oahu; Kahului and Hana Airports on the Island of Maui; Ke-ahole, Waimea-Kohala and Upolu Airports on the Island of Hawaii; Lanai Airport on the Island of Lanai, and Molokai and Kalaupapa Airports on the Island of Molokai. All these facilities are utilized by certificated scheduled and non-scheduled operators, general aviation operators, and military, with the exception of the Ala Wai Heliport, Dillingham Field, Ford Island, Kalaupapa, Port Allen, and Upolu Airports which are used principally by general aviation and occasionally by military aircraft.

Honolulu International Airport is located approximately five miles by highway from the center of the metropolitan area of Honolulu. Its principal runway (12,380 feet) is one of the nation's longest and occupies land at both Honolulu International Airport and Hickam Air Force Base which is adjacent to the airport. Serving both the inter-island and the overseas air traffic, Honolulu International Airport is the most important in the statewide system. It serves all foreign commercial flights to and from Hawaii and provides border inspection facilities at no cost to the Federal government.

The following twenty airlines are authorized to serve Hawaii with scheduled overseas flights: Air Micronesia, Air New Zealand, Air Siam, American Airlines, Braniff International Airlines, British Overseas Airways Corporation, Canadian Pacific, China Airlines, Continental Airlines, Japan Air Lines, Korean Air Lines, Northwest Airlines, Pan American World Airways, Philippine Airlines, Qantas Airways, Trans World Airlines, Union de Transports Aeriens, United Air Lines, Varig Airlines, and Western Airlines. Interisland service is provided by Aloha Airlines, Hawaiian Airlines and several air-taxi and commuter airlines.

During calendar year 1972, the following numbers of passengers were enplaned at the air carrier airports:

Honolulu International Airport	3,994,255
General Lyman Field	587,082
Kahului Airport	827,158
Lihue Airport	758,655
Ke-ahole Airport	307,058
Waimea-Kohala Airport	43,768
Molokai Airport	74,076
Lanai Airport	19,094

Honolulu International Airport is the only airport in the State of Hawaii which enplanes more than one per centum of the total annual passengers enplaned by air carriers certificated by the Civil Aeronautics Board and is classified as a large hub airport by the Federal Aviation Administration in the 1972 National Airport System Plan.

For the short-range period of 0 to 5 years, the FAA 1972 National Airport System Plan for Hawaii, Volume APC Pacific Region, recommends the following sums for improvements which are eligible for Federal-aid under the Airport Development Aid Program:

Honolulu International Airport	$71,544,000
General Lyman Field	10,128,000
Kahului Airport	4,471,000
Lihue Airport	6,562,000
Ke-ahole Airport	1,006,000
Waimea-Kohala Airport	4,833,000
Molokai Airport	6,303,000
Lanai Airport	2,490,000
General Aviation and Reliever Airports	6,496,000
Total	113,829,000

Under the provisions of the Airports Acceleration Development Act of 1973, Hawaii is eligible for not more than 50 percent Federal participation and the State's share in the projects would be $56,914,500.

If the airports in Hawaii were sponsored by the local community served by the airport, the sponsor's share in project costs would be $46,343,250.

During the fiscal year ending June 30, 1973, the total revenues of the Airports Division was $30,105,830. Of this amount $26,151,473 was generated at Honolulu International Airport. Revenues collected at airports other than Honolulu International Airport are insufficient to meet the operating and maintenance expenses of these airports.

By Mr. MAGNUSON (for himself and Mr. COTTON) (by request):

S. 2927. A bill to amend the National Traffic and Motor Vehicle Safety Act of 1966 to authorize the Secretary to phase in motor vehicle safety standards by specified percentages over a period of time, and for other purposes. Referred to the Committee on Commerce.

Mr. MAGNUSON. Mr. President, I introduce by request, for appropriate reference, a bill to amend the National Traffic and Motor Vehicle Safety Act of 1966 to authorize the Secretary to phase in motor vehicle safety standards by specified percentages over a period of time, and for other purposes, and ask unanimous consent that the letter of transmittal be printed in the RECORD together with the text of the bill.

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

THE SECRETARY OF TRANSPORTATION,
Washington, D.C., December 28, 1973.

HON. GERALD R. FORD,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: The Department of Transportation has prepared as part of the legislative program for the 93rd Congress, 2nd Session, the enclosed proposed bill:

"To authorize the Secretary to phase-in motor vehicle safety standards by specified percentages over a period of time, and for other purposes."

The relevant provisions of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1391 et seq.) by which the Secretary of Transportation or his delegate is authorized to set effective dates for motor vehicle safety standards are as follows:

Sec. 103(c): *"Each order establishing a Federal motor vehicle safety standard shall specify the date such standard is to take effect* which shall not be sooner than one-hundred and eighty days or later than one year from the date such order is issued, unless the Secretary finds, for good cause shown, that an earlier or later effective date is in the public interest, and publishes his reasons for such finding." (Emphasis supplied.)

Sec. 103(f)(3): "In prescribing standards under this section, the Secretary shall . . . consider whether any such proposed standard is reasonable, practicable and *appropriate for the particular type of motor vehicle or item of motor vehicle equipment for which it is prescribed . . .*" (Emphasis supplied.)

Sec. 108(a)(1): *"No person shall manufacture* for sale, sell, offer for sale, or introduce or deliver for introduction in interstate commerce, or import into the United States, *any motor vehicle or item of motor vehicle equipment manufactured on or after the date any applicable Federal motor vehicle safety standard takes effect* under this title unless it is in conformity with such standard . . . " (Emphasis supplied.)

These provisions thus establish that motor vehicle safety standards shall set mini-

mum performance standards for "particular types" of vehicles, that each standard shall specify an effective date, and that no nonconforming vehicles shall be produced after the effective date. There appears to be no reasonable construction of the language of the statute, and nothing in its legislative history, that would provide authority to require manufacturers to "phase-in" a percentage of their production of a particular type of vehicle to conformity with a standard. We therefore conclude that an amendment of the statute would be necessary to provide authority for such a regulatory action.

Therefore, under its present authority the Department has no choice, when imposing a new safety requirement on manufacturers of motor vehicles, but to order that requirement into effect for all of a particular type of car made on or after a specified date. Frequently, this creates an undesirable situation since many manufacturers change the body designs of various different car lines in successive years over a cycle of three or more years. Thus, the single effective date often either does not achieve the degree of safety improvement that is possible with part of the industry's production, or imposes severe burdens with respect to a portion of production that has special problems.

The proposed bill would amend the National Traffic and Motor Vehicle Safety Act, so as to grant the Department phase-in authority whereby more realistic effective dates for safety standards could be established. Such authority would allow the Secretary, in his discretion, to specify a series of dates by which all motor vehicle manufacturers would have to bring into compliance with a standard specified percentages of their production manufactured for purposes of sale in the United States. For example, he could require a standard to be phased-in over a two-year period, so that after September 1, 1974, 25 percent of the manufacturer's production would meet the standard, after September 1, 1975, 50 percent, and after September 1, 1976, all of its production would conform to the standard.

We do not envision phasing-in every safety standard. However, the phase-in approach could be used with respect to those standards which were determined to entail substantial start-up problems for the industry.

The desirability of this authority can be demonstrated by viewing it in connection with our rulemaking on direct fields of view. A notice of proposed rulemaking was issued last year for a standard that would require all passenger cars, multipurpose passenger vehicles, trucks, and buses to provide drivers with specified amounts of unobstructed view of the driving environment. The standard would accomplish this by limiting the size of vehicle structures, such as roof pillars, that obscure the driver's view of other vehicles and the road. It appears likely that many of the manufacturers will experience difficulty in achieving compliance with the standard since they will need to do substantial redesigning and retooling. It may be practicable, therefore, for some of these manufacturers to achieve compliance only in accordance with their normal model changeover cycle. Under present authority, we would have to set the single effective date at a time when it was practicable for all manufacturers to achieve full compliance. Phase-in authority, however, would permit the Department to phase-in the standard over a several-year period. This approach would assure some improvement in motor vehicle safety at the earliest possible moment. Of course, the percentage of production selected would be applicable to all manufacturers.

In conclusion, we believe, as a general matter, that the gradual phase-in of an increasing percentage of a manufacturer's production to the requirements of a standard requiring major design changes would be beneficial to both manufacturers and the public. It would minimize a manufacturer's cost by permitting him to make the necessary changes in accordance with his normal model changeover, and the public would be afforded added vehicle safety earlier than otherwise possible.

The Office of Management and Budget has advised that there is no objection from the standpoint of the Administration's program to the submission of this proposed legislation to the Congress.

Sincerely,

CLAUDE S. BRINEGAR.

S. 2927

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

Section 103 of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1392) is amended by adding at the end thereof a new subsection (i) to read as follows:

"(i) (1) Notwithstanding any other provisions of this section the Secretary may, if by doing so he will be requiring the earlier availability of motor vehicle with improved safety features, by order specify a series of effective dates for a Federal motor vehicle safety standard, on or after which a specified percentage of motor vehicles, to which the standard applies, manufactured by each manufacturer for purposes of sale in the United States shall conform to that standard. Each order specifying a series of effective dates should include a statement of the reasons for which the series of effective dates is found to be in the public interest.

"(2) The effective dates within any series specified by the Secretary shall be at one-year intervals. During each six-month period after an effective date, the specified percentage of motor vehicles, to which a standard applies, manufactured by each manufacturer for purposes of sale in the United States shall conform to the standard. The final effective date in a series shall in all cases be not more than two years after the initial effective date, and all motor vehicles, to which the standard applies, manufactured on or after the final effective date for purposes of sale in the United States shall conform to the standard.

"(3) In the case where one or more manufacturers are wholly owned by another person or corporation, those manufacturers together with the owning person or corporation shall be considered as one manufacturer for purposes of this subsection. In all other cases each person or corporation that is a manufacturer shall be considered a separate manufacturer for purposes of this subsection."

By Mr. MAGNUSON (for himself, Mr. Moss, Mr. TUNNEY, and Mr. KENNEDY):

S. 2928. A bill to establish national goals for the effective, fair, inexpensive, and expeditious resolution of controversies involving consumers, and for other purposes. Referred to the Committee on Commerce.

Mr. MAGNUSON. Mr. President, today I am introducing, along with Senators Moss, TUNNEY, and KENNEDY, the Consumer Controversies Resolution Act. This bill is designed to make substantial gains in one of the most important areas of consumer protection—the resolution of controversies. We have enacted a number of laws designed to help protect the consumer—such as the Consumer Product Safety Act—and we have passed a number of laws which help bring fair play to the marketplace—such as the Magnuson/Moss Warranty-Federal Trade Commission Improvement Act. The warranty bill includes some attempt at seeing that consumers injured by unfair warranty practices have adequate redress mechanisms, but generally this is an area that has not been adequately treated.

For the majority of Americans, redress of grievances is at best a theoretical concept. The utilization of the legal system in general, and small claims courts in particular, is in most cases too expensive. Although the total amount of money involved each year in consumer controversies in the United States exceeds $100,000,000, the amount involved in any single controversy is apt to be small—less in many cases than the cost of legal representation for the affected consumer.

When the small claims court movement began in the early 1900's, it was geared to provide speedy and inexpensive justice for litigants who could not afford a lawyer. Now, many small claims courts serve only as collection agencies for professional creditors. Even those who dispute this claim concede that small claims courts have not been the panacea to consumer complaints resolution that they were intended to be: forms, rules, and procedures are sometimes complex; courts are not available for resolution of controversies during hours and on days that consumers can easily utilize them; and jurisdictional limitations are often too low.

Other mechanisms are being tried for the resolution of consumer controversies. Some have turned to arbitration. There have been a few successful arbitration programs, and several more have been initiated recently, but there is also a great deal of difference of opinion about the usefulness of arbitration. Business-sponsored mechanisms have not met with any great deal of proven success yet, but we have encouraged the use of such devices where they are fair in the warranty bill.

The Federal Government has for the most part neglected its responsibilities in this important area. A small claims tax court has been created, and the National Highway Traffic Safety Act encourages reforms of traffic courts, but for the most part effective methods to resolve grievances are absent. Furthermore, there is not any agreement on the optimum type or types of grievance redress mechanisms best suited to help consumers and citizens.

The legislation that I am proposing today would go a long way toward developing meaningful complaint resolution mechanisms. It is based on a 2-year study conducted by the National Institute for Consumer Justice which explored the adequacy of existing procedures for resolving disputes arising out of consumer transactions. The Institute grew out of President Nixon's consumer address of February 24, 1971, and was funded by a $150,000 research grant from the Office of Economic Opportunity. The Institute's final report offers 21 suggestions for upgrading small claims courts throughout the United States. Most of these recommendations have been incor-

porated, either directly or indirectly, in this legislation.

The legislation which I am introducing would establish a new bureau in the Federal Trade Commission which would administer a program of aid to the States so that they can formulate and effectuate ways in which the disputes of their citizens can be resolved effectively, fairly, inexpensively, and expeditiously. It is entirely possible that the programs that the individual States develop will vary considerably. The need of New York, for example, may be quite different than the needs of Utah or Nevada, or my own State of Washington. Any program that tends to effectuate the goals of the act could be approved by the new Bureau within the Commission so long as the State has an administrator and a plan, and it meets the requirements set out by the act and rules promulgated by the Commission. Furthermore, the Commission would be authorized to make demonstration grants for a wide variety of purposes. The bill also would direct the Bureau to conduct experimentation and exploration into ways of better resolving disputes.

The approach adopted in this legislation to rejuvenating small claims courts is adopted from a recommendation of the Institute. On page 30 of the Institute's report entitled, "Redress of Consumer Grievances," it is recommended that Congress allocate funds for payment to the States to stimulate the establishment and maintenance of effective small claims courts. The Institute states:

> A comparatively modest infusion of funds from the Federal Government, either on a non-recurring or a continuing basis, can stimulate states that now do not have small claims courts or that have only ineffective ones to establish efficient systems.

There is one important aspect of increasing the availability of redress to consumers that is not contained in this legislation. Because of various rulings by the Supreme Court, consumers are presently unable to bring class actions in Federal court. The Commerce Committee has worked on this issue in the past, but we were faced with widely differing views on the advisability of allowing consumers to use the class action device in Federal courts. Because of the various charges and countercharges surrounding the consumer class action issue, we tried to get some hard information on the subject, but discovered that there is not any, for example, there is no empirical information available regarding the use of the class action device in Federal courts. In order to correct this deficiency, and in order to form a sound legislative judgment regarding what to do about class actions, the Commerce Committee began the first empirical study of the experience with the class action device in Federal courts since rule 23 was amended to its present form in 1966.

That study has included both a national survey and an indepth study including interviews of the experience in the District of Columbia, and I am advised that it should be completed in the next few months. There are no provisions in this bill regarding class actions because we will not know what to do on that issue until we have the results of our study in hand.

I am looking forward to early hearings and committee consideration of the Consumer Controversies Resolution Act, and ask that the full text of the bill be printed in the RECORD at the conclusion of my remarks and the remarks of my colleagues, Senators Moss, TUNNEY, and KENNEDY, the cosponsors of this legislation.

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

(See exhibit 1.)

Mr. MOSS. Mr. President, I am pleased to cosponsor the Consumer Controversies Resolution Act along with Senators MAGNUSON, TUNNEY, and KENNEDY. The need for this legislation is well established. Only last November, the Consumer Subcommittee of the Commerce Committee held a joint hearing with the Subcommittee on Representation of the Citizen's Interests of the Judiciary Committee at which we received some very interesting testimony on the need to devise and stimulate the deployment of improved mechanisms by which consumers and citizens can effectively secure redress of their grievances quickly and at low cost.

The recently issued report of the National Institute of Consumer Justice focused on the adequacy of existing consumer redress mechanisms. The conclusions of that prestigious group were testified to at hearings which I chaired November 13. After extensive study and investigation the conclusion was reached that existing mechanisms for dispute resolution are woefully inadequate. The institute made a number of significant recommendations for reform of the way in which consumer disputes are handled, and this bill effectuates many of those recommendations.

Robert Braucher, the chairman of the National Institute for Consumer Justice and associate justice of the Supreme Judicial Court of Massachusetts, outlined for my subcommittee the recommendations of the institute. Included in those recommendations is recognition of the need for the establishment of arbitration machinery and experimentation with the use of arbitration as a mechanism for resolving consumer controversies. While arbitration alone may or may not be a successful method, arbitration used in conjunction with some other sort of dispute-resolving mechanism, such as a small claims court, may be extremely useful. I understand that this combination has worked rather well in the Harlem small claims court in New York City, for example.

The institute also recommended Federal aid to improve the small claims court device for resolving disputes between consumers. There are currently a number of problems facing small claims courts even where they do exist. A few courts have been sufficiently reformed and rejuvenated to indicate the potential of this device, however. A more or less model court exists in Los Angeles, for example, and I have already made reference to the Harlem court in New York City.

While small claims courts have been responsive to the needs of consumers and citizens in a few instances, for the most part they have failed. Today many of our small claims courts are used primarily by skilled lawyers representing large debt collection companies, credit stores, corporate defendants, and insurance companies. Furthermore, these lawyers and their organizations are almost without exception litigating against pro se parties. In spite of the court's informal practices, the pro se party is almost always at a definite disadvantage when he or she appears in court. The disadvantages faced by the citizen litigant have been faced in a few jurisdictions through the use of trained paralegal personnel whose duty it is to help the consumer make the most advantageous use of the legal system, so that the consumer and the corporate or business litigant stands on equal footing.

The institute also made what I consider to be some very significant recommendations regarding consumer class actions in Federal courts. After careful reading of these recommendations and the supporting material, I believe that the institute was able to cut through most of the misunderstanding of the class action device as an aid to consumers. The distinguished chairman of the Commerce Committee, Senator MAGNUSON, has already made reference to the study of the Senate Commerce Committee on this issue, and it would be premature to guess at this point what the position of the committee on consumer class actions will be, but speaking for myself, I can say that the recommendations of the institute make a lot of sense. One of the institute's recommendations on class actions regards the need to develop more information, and I am happy to say that the Commerce Committee will soon fulfill that recommendation through its class action study. At that point, there will be available the first empirical information regarding the use of the class action device in Federal courts, and the committe should then be in a position to make a legislative judgment on the issue.

Aside from the class action recommendations, the legislation we are introducing today goes a long way toward effectuating all the recommendations of the National Institute of Consumer Justice. Furthermore, we have drafted the bill in such a way as to give the maximum possible flexibility to the States in order to allow them to devise mechanisms that will enable the speedy, just, and efficient resolution of disputes while still paying attention to varying local conditions.

I think the bill is well suited to assisting reform on the local level in the most productive way possible, and I am looking forward to holding hearings on it early in the second session of the 93d Congress.

Mr. TUNNEY. Mr. President, I am pleased to cosponsor the Consumer Controversies Resolution Act along with Senators MAGNUSON, Moss, and KENNEDY. I am interested in this legislation both as chairman of the Judiciary Subcommittee on Representation of Citizens' Interests and as a member of the Commerce Subcommittee for Consumers. At

the close of last session both subcommittees held a joint hearing to receive the report of the National Institute for Consumer Justice.

The testimony elicited at that hearing as well as hearings which the Subcommittee on Representation of Citizens' Interests held on the subject of legal fees and their effect on representation showed time and time again a recurring theme. Because the amount in consumer controversies is generally insignificant to anyone but the person who feels wronged, legal representation is almost never available; consumer interests go unrepresented. There is no financial incentive to attorneys to vindicate individual claims, to define existing law, and to make new law. If consumer interests are to be represented in the grievance process, mechanisms for redress have to be structured so that consumers can represent themselves.

A person who buys a car which is a lemon, a family whose new home cannot pass minimum building code standards, an owner of a recently repaired washer that still does not work, are all without practical redress. The existing avenues of obtaining redress are not widely publicized, have limited hours, inconvenient locations, and often hostile judges, arbitrators and supporting personnel. By removing these obstacles consumers can help themselves.

I recognize, of course, that the large number of consumer complaints can and must be handled through informal business procedures. Expanded use of money-back guarantees, recommended by the National Business Council for Business Affairs, and internal business-sponsored mechanisms—such as consumer complaint divisions—are often effective ways to insure consumer satisfaction. And consumer satisfaction is good business. But when an informal resolution of such a dispute is impossible, adequate alternative courses must be open. If these alternative courses are truly effective, their very existence may promote more settlement at the informal level.

This bill would set up a program of matching Federal grants, administered by the Federal Trade Commission, to States that formulate a system of consumer redress, the total result of which is effective, fair, inexpensive, and expeditious resolution of consumer controversies. These mechanisms would include such things as increased use of arbitration, small claims courts, consumer complaint bureaus, and better use and access to already existing grievance mechanisms. It will help bring relief to the consumer which is speedy and inexpensive.

The Federal money will be conditioned on adequate assurances that the redress mechanism will have forms and procedures which the average consumer can understand, and that it will be open at times when working people will have access to it. Lastly, there must be assurances that assistance is provided the citizen in pursuing his claims from start to finish, and that information about the availability and the workings of these mechanisms are widely disseminated. Except for these conditions, the bill is otherwise designed to give maximum flexibility to States in fashioning their own programs.

While the institute looked at several models, including the Los Angeles Small Claims Court which bans attorneys except on their own behalf, and made several specific recommendations, under this legislation each State will be free to design its own program as long as the system furthers the goals set forth in the bill.

One recommendation not specifically dealt with in this legislation is the institute's limited endorsement of consumer class action in Federal courts. Class actions have proved to be an effective device for millions of consumers to obtain redress. As a member of the Commerce Committee and Chairman of the Judiciary Subcommittee on Representation of Citizens' Interests, I join Senators MAGNUSON, Moss, and KENNEDY in anxiously awaiting the findings of the Commerce Committee study. I am delighted that my subcommittee has been able to work cooperatively with the Commerce Subcommittee for Consumers in the past, and I am looking forward to collaboration in the future on this and other matters of common interest.

I believe that the Consumer Controversy Resolution Act is a timely and effective response to the needs of consumers. Redress through convenient, effective, and inexpensive methods at the local level is the just demand of today's consumer.

CONSUMER CONTROVERSIES RESOLUTION ACT

Mr. KENNEDY. Mr. President, today I am pleased to cosponsor along with Senators MAGNUSON, Moss, and TUNNEY, the Consumer Controversies Resolution Act. This bill provides financial assistance and encouragement to State governments in their efforts to balance the present disparity in resources that exists between industry and the average consumer in their access to legal remedies. It provides that any State may become eligible for Federal grants by submitting a plan for a statewide consumer courts and arbitration system which meets the requirements of the act. In addition, the act authorizes grants to the States for demonstration projects and directs the board, which will administer grants under the act, to explore new ways of improving consumer access to legal remedies.

This legislation would encourage means by which consumers could redress their grievances without burdensome costs, without undue delay, and while at the same time allowing full flexibility for the varying needs of the States. At present, the cost in legal fees and the time it takes for a case to be resolved in our traditional court system have made utilization of the process prohibitive to the average citizen. For a variety of reasons, alternative methods such as arbitration, small claims courts, business-sponsored mechanisms and class actions have not, in and of themselves, proven adequate for providing efficient, fair, and inexpensive resolution of consumer disputes.

Establishment of alternative consumer redress systems, such as a combination of arbitration and small claims courts, will provide an effective means for resolving consumer disputes.

Joint hearings were held last session by the Subcommittee on Citizens' Interests of the Judiciary Committee and the Consumer Subcommittee of the Commerce Committee on resolution of disputes arising out of consumer transactions. The testimony presented at those hearings, buttressing the conclusions of the report of the National Institute for Consumer Justice, clearly showed that present mechanisms for the resolution of consumer disputes are inadequate for the average American citizen.

The National Institute's report recommended the kind of Federal assistance to States for experimentation with alternative redress mechanisms which is provided for in the Consumer Controversies Resolution Act. As a continuing advocate of greater access by the poor and unrepresented to our legal institutions, I strongly support this bill and the efforts in the area of consumer law reform which it seeks to encourage among the States.

If we are to insure that access to our legal system is available on an equal basis to all Americans, we must make it financially possible for States to act as laboratories in which to implement reforms where that system is found lacking. The Consumer Controversies Resolution Act will do just that by providing the financial encouragement and initiative necessary for States to improve their consumer redress systems.

EXHIBIT 1

S. 2928

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 "Consumer Controversies Resolution Act".

DECLARATION OF POLICY

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

(1) For the majority of American consumers, mechanisms for the resolution of controversies involving consumers are unavailable, ineffective, unfair, or invisible.

(2) The total amount of money involved each year in consumer controversies in the United States exceeds $100,000,000, but the amount involved in any single controversy is apt to be small, less in many cases than the cost of legal representation for the affected consumer.

(3) This enormous volume of controversies involving consumers is adjudicated, settled, or handled inadequately, if at all, by the existing mechanisms for consumer controversy resolution.

(4) The substantial nonavailability, for the average consumer, of—

(A) meaningful remedies in cases of fraud, deception, and manipulation;

(B) adequate representation of the interests of consumers;

(C) meaningful protections in cases of overreaching and unfair repossession of goods and products;

(D) effective barriers against sewer service,

default judgments, and other unconscionable practices; and

(E) readily available forums for the fair, effective, and efficient resolution of disputes, constitutes an undue burden on interstate commerce, adversely affects the general welfare, and causes a loss of faith on the part of some in the free enterprise system itself.

(5) A major and inseparable portion of the goods and services, which form the underlying subject matter out of which most consumer controversies arise, flow through interstate and foreign commerce and the circumstances of their sale and distribution to consumers affect interstate commerce. Almost all of the consumer controversies involving the more than 40,000,000 Americans who live in the 31 metropolitan areas which encompass more than one State arise out of interstate commerce.

(b) PURPOSE.—It is therefore declared to be the purpose of the Congress in this Act to assure all consumers convenient access to a consumer controversy resolution mechanism which is effective, fair, inexpensive, and expeditious, and to facilitate better representation of consumer interests.

DEFINITIONS

SEC. 3. As used in this Act—

(1) "Administrator" means the individual or government agency which is designated, in accordance with State law, to direct, coordinate, or conduct a State system.

(2) "Bureau" means the Bureau of Consumer Dispute Resolution, established under section 4 of this Act.

(3) "Commerce" means commerce among the several States or with foreign nations or in any State or between any State and foreign nation, or any transaction which affects such commerce.

(4) "Commission" means the Federal Trade Commission.

(5) "Corporation" means any corporation, joint-stock company, partnership, association, trust, estate, or organized group whether incorporated or not.

(6) "Federal agency" means any executive department, agency, bureau, board, or independent establishment of the United States and any corporation primarily acting as an instrumentality of the United States.

(7) "Local" means of or pertaining to any political subdivision within a State.

(8) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Canal Zone, and the Trust Territory of the Pacific Islands.

(9) "State system" means all of the mechanisms and procedures within a State for the resolution of controversies involving consumers, which may involve, but is not limited to, small claims courts, arbitration, and other mechanisms and procedures set forth in the State or local plan or plans under section 6 of this Act.

BUREAU OF CONSUMER REDRESS RESOLUTION

SEC. 4. (a) GENERAL.—The Commission shall establish, within 30 days after the date of enactment of this Act, a new Bureau to be known as the Bureau of Consumer Redress.

(b) DUTIES.—The Commission shall, consistent with the purposes and goals of this Act—

(1) enter into or renew cooperative agreements with the States;

(2) allocate and pay to the States funds appropriated for financial assistance to States under cooperative agreements;

(3) issue, from time to time, such regulations as are necessary to carry out the provisions of this Act, in accordance with the provisions of section 553 of title 5, United States Code;

(4) encourage and assist the development and implementation of innovative concepts and approaches, which may include, but is not limited to, adapting or expanding the mechanism of the unsatisfied judgment fund in the automobile compensation law to satisfy unsatisfied judgments;

(5) investigate and award discretionary grants;

(6) determine whether a State plan is in accordance with this Act;

(7) review the operation of each State plan for the resolution of controversies involving consumers which has been approved under this Act;

(8) articulate and evaluate the goals for a model State system of consumer controversy resolution; and

(9) take such other actions as are appropriate.

COOPERATION WITH THE STATES

SEC. 5. (a) GENERAL.—In carrying out its functions under this Act, the Bureau and the Commission shall cooperate to the maximum extent practicable with the States. In addition to any other enumerated obligation, the Bureau shall consult, from time to time, with the Administrator, if any, in each State.

(b) FINANCIAL ASSISTANCE.—The Commission, through the Bureau, is authorized to enter into a cooperative agreement to provide financial assistance to any State which establishes and maintains a system for the effective, fair, inexpensive, and expeditious resolution of controversies involving consumers or to assist any State to develop such a system. Before a State shall be deemed eligible to enter into or renew a cooperative agreement for the development or maintenance of a State system, the Director of the Bureau shall make, justify, and publish in the Federal Register a finding that such agreement would further the policy of this Act and that such State has or is developing a system under which—

(1) the State has an administrator who is authorized under the law of the State to receive and disburse moneys, submit required reports to the Bureau and Commission, and supervise, direct, coordinate, or conduct the State system;

(2) a comprehensive survey of the State system has been or will be conducted which discloses (a) the nature, number and location of all consumer controversy resolution mechanisms within the State, (b) the annual expenditure and operating authority for each such mechanism, and (c) the existence of any program for informing the residents of the States of the availability of consumer controversy resolution mechanisms;

(3) funds expended pursuant to such system for the development and maintenance of consumer controversy resolution mechanisms within the State or localities for which application for a cooperative agreement is made are distributed in accordance with need and in a manner which would further the policies of this Act;

(4) the Administrator has submitted a four-year plan for the development or maintenance of consumer controversy resolution mechanisms within the State or locality for which the application for a cooperative agreement is made which is designed to meet or exceed the goals set forth in section 7 of this Act; and

(5) provision is made for participation by consumers, including low-income consumers, in developing and commenting upon such plan or plans, which comments become part of any application for a cooperative agreement.

(c) ALLOCATION OF FUNDS.—Moneys appropriated for financial assistance pursuant to this section shall be available to the Bureau for allocation to the States under cooperative agreements having a duration of no more than four years. The purposes for which such funds may be used include, but are not limited to—

(1) compensation of personnel engaged in the administration, adjudication, conciliation, or settlement of controversies involving consumers;

(2) recruiting, organizing, training, and educating personnel described in paragraph (1) of this subsection;

(3) public education and publicly relating to the availability and proper use of consumer controversy resolution mechanisms and settlement procedures;

(4) construction, improvement, purchase, or lease of buildings, rooms, vehicles, and other facilities and equipment for use in the settlement of controversies involving consumers;

(5) continuing supervision and study of the mechanisms and settlement procedures employed in consumer controversy resolution within the State; and

(6) research and development of more fair, less expensive, or more expeditious mechanisms and procedures for consumer controversy resolution.

The Bureau shall consider population density when allocating appropriated funds to the States under cooperative agreements. The proportion of the Federal share of the estimated cost of a cooperative agreement shall not exceed 70 per centum of the total cost of such agreement. The aggregate expenditure of funds of the State and political subdivisions thereof, exclusive of Federal funds, for such purposes shall be maintained at a level which does not fall below the average level of such expenditures for the last two full fiscal years preceding the date of application for a cooperative agreement.

(d) DISCRETIONARY GRANTS.—The Bureau is authorized to make grants, in a total amount each year not to exceed 25 per centum of the financial assistance appropriated under this Act. Grants may be made to units of local government, combinations of such units, or private nonprofit organizations, for research and demonstration projects or other activities which will encourage innovation or effectuation of the policies of this Act under such terms and conditions as may from time to time be established by the Bureau. No discretionary grant shall be made to any professional organization whose consumer controversy resolution mechanisms do not fairly represent the consumers of the services provided.

APPLICABILITY WITHIN STATES

SEC. 6. (a) STATE PLAN.—By the end of six months after the date of enactment of this Act, a State may establish and submit a plan in accordance with this Act for the resolution of controversies involving consumers. A plan is in accordance with this Act if it is designed to meet or exceed the requirements set forth in section 5 of this Act, responds to the goals set forth in section 7 of this Act, and represents an effective response to the Nation's need for fair, expeditious, and inexpensive resolution of such controversies. Upon the establishment of such a plan, the Administrator shall promptly transmit a certified copy to the Commission.

(b) DETERMINATION.—Within 90 days after the Commission receives a certified copy of a State plan established under subsection (a) of this section, the Bureau shall make a determination whether (1) the State is eligible to receive financial assistance under section 5(b) of this Act and (2) such State has established a plan which is in accordance with this Act. Unless the Commission determines, within 30 days after the Bureau determines that a State plan is in accordance with this Act, that such State plan is not in accordance with this Act, the Bureau shall, to the extent resources are available, enter into a cooperative agreement designed to effectuate such plan. A State may submit a revised or improved plan designed to

better effectuate the goals of this Act at any time.

(c) PERIODIC REVIEW.—The Bureau shall periodically, but not less than once every 2 years, review each State plan and each discretionary grant for the resolution of controversies involving consumers which has been approved and for which there is experience to determine whether such plan or grant is still in accordance with the goals of this Act, and to evaluate the success of such plan or grant in terms of the policy of this Act. Any plan or grant which is found not to be in accordance with such goals or which has not been successful shall be terminated in accordance with the procedures set forth in subsection (d). To facilitate such review, the Administrator in each such State shall submit to the Bureau no later than March 15 of each year an annual report containing all relevant information requested by the Bureau. The Commission, through the Bureau, shall submit an annual report to the President and Congress simultaneously each year on the results of such review, including any recommendations or alternative recommendations for legislation.

(d) PROCEDURE.—Before making any determination under this section, the Bureau, through the Commission, shall cause a notice and a summary of the plan under consideration to be published in the Federal Register and afford the affected State and all interested parties a reasonable opportunity to present their views by oral or written submission, or to propose amendments to the plan or grant program which would tend to better effectuate the goals of this Act, or to improve any plan or program. The Bureau, through the Commission, shall notify the affected State or grantee of any determinations made under this section and shall publish these determinations with reasons therefor in the Federal Register. Any final determination by the Bureau under this section shall be subject to judicial review in accordance with chapter 7 of title 5, United States Code, in the United States Court of Appeals for the circuit in which is located the State whose plan or grant is the subject of such determination or in the United States Court of Appeals for the District of Columbia Circut. Any such review shall be instituted within 60 days from the date on which the determination made by the Bureau is published in the Federal Register.

GOALS

SEC. 7. (a) FOR STATE SYSTEM.—A State system is responsive to national goals if—

(1) there are sufficient numbers and types of readily available consumer controversy resolution mechanisms responsive to the goals set forth in subsection (b) of this section;

(2) a public information program is effectively communicating to the residents of such State the availability and location of consumer controversy resolution mechanisms and consumer complaint offices in such State;

(3) each such mechanism and office files an annual report with the Administrator in such form and with such content as prescribed by him in consultation with the Bureau.

(b) FOR CONSUMER CONTROVERSY RESOLUTION MECHANISM.—A consumer controversy resolution mechanism is responsive to national goals if—

(1) its forms, rules, and procedures are, so far as practicable, easy and inexpensive for the citizens for whose use it is designed to understand and free from technicalities;

(2) it is designed so that assistance and appropriate personnel can be provided consumers and other citizens in pursuing claims and collecting judgments;

(3) it is open or available for the adjudication or resolution of controversies during hours and on days that consumers and other citizens can easily utilize it;

(4) it has a reasonable jurisdictional limit sufficient to allow all or substantially all consumer controversies to be resolved by it;

(5) it is governed by reasonable and fair rules and procedures which are published and approved by the Administrator, and which will—

(A) facilitate the early resolution of controversies by means in addition to the adjudication of claims;

(B) encourage the most effective use of the services of attorneys in the resolution of controversies involving consumers;

(C) discourage default judgments through judicial inquests and other means;

(D) encourage the finality and conclusiveness of the resolution of controversies;

(E) provide for the qualification, tenure, and duties of persons charged with resolving or assisting in the resolution of controversies involving consumers; and

(F) discourage the use of consumer controversy resolution mechanisms by collection agencies, corporations, assignees, and other nonconsumer parties to a controversy in a manner contrary to the policies of this Act.

RECORDS AND AUDIT

SEC. 8. (a) GENERAL.—Each recipient of assistance under this Act shall keep such records as the commission, through the Bureau shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount of that portion of the project or undertaking supplied by other sources, and such other records as will facilitate an effective financial and performance audit. This provision shall apply to all recipients of assistance under this Act, whether by direct grant or contract from the Bureau or by subgrant or subcontract from primary grantees or contractors of the Bureau or any Administrator receiving financial assistance from the Bureau under this Act.

(b) AUDIT.—The Commission or any of its designated representatives shall have access for purpose of audit and examination to any books, documents, papers, and records of the recipients of grants and financial assistance under this Act.

(c) COMPTROLLER GENERAL.—The Comptroller General of the United States, or any of his duly authorized representatives, shall, until the expiration of 3 years after the completion of the program or project with which the assistance is used, for the purpose of financial and performance audits and examinations, have access to any books, documents, papers, and records of recipients of financial assistance under this Act.

AUTHORIZATION FOR APPROPRIATION

SEC. 11. (a) For purposes of this Act, there are authorized to be appropriated such sums as are necessary, not to exceed $500,000 for the fiscal year ending June 30, 1974; not to exceed $30,000,000 for the fiscal year ending June 30, 1975; and not to exceed $60,000,000 for the fiscal year ending June 30, 1976.

(b) Whenever the Bureau submits any legislative recommendations, proposed testimony, or comments on legislation to the President or the Office of Management and Budget, it shall concurrently transmit a copy thereof to the Congress. No officer or agency of the United States shall have any authority to require the Commission to submit its legislative recommendations, proposed testimony, or comments on legislation to any officer or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress.

By Mr. BUCKLEY:

S. 2930. A bill for the modernization and general revision of the Patent Laws, title 35 of the United States Code, and for other purposes. Referred to the Committee on the Judiciary.

Mr. BUCKLEY. Mr. President, there are pending now two bills S. 1321 introduced by the Senator from Michigan (Mr. HART) and S. 2504 introduced by the Senator from Pennsylvania (Mr. SCOTT). These bills are proposed as amendments to title 35 of the United States Code entitled "Patents." Their purpose is to reform and modernize our U.S. patent incentive system.

The bills have very useful provisions and show that a real effort has been made to improve the patent law. However, the effort, as applied, is now widely recognized to involve costly, substantive as well as procedural provisions. Preliminary cost estimates appear to indicate the bills would require a 50-percent increase in the Patent Office budget, and about a doubling of the professional staff of the Patent Office: that is, an increase in staff of about 1,100 to 1,500 persons.

Accordingly, upon consideration of the many necessary objectives to be obtained, especially to preserve the access to the patent incentive system by the individual inventor and small business, I am introducing the patent law modernization bill prepared by the American Patent Law Association so that the views presented in the bill can be considered along with other patent legislation.

This bill can be helpful in securing the objectives of the other pending bills but will do so in a manner to preserve an equitable cost and budget balance. Also it will permit all inventors and their associates, including investors and business managers to decide readily to avail themselves of the system which has for its purpose to encourage disclosure of invention through the making of the same and through the securing of rights thereto by securing patents.

The U.S. patent incentive system is provided for as you know in article I, section 8, clause 8 of the Constitution which reads for its portion pertinent here that:

> The Congress shall have power "to promote the progress of . . . useful arts, by securing for limited times to . . . inventors the exclusive right to their . . . discoveries."

While I do not pretend that the bill I am introducing will not result in some moderate increase in cost of operation of the Patent Office and some increase in cost to applicants for patents in terms of fees, attorneys, and other costs, I am assured that implementation of this bill will not require any material or greatly increased budget for the Patent Office or increase in its personnel. It will improve operations and quality of product but without slowing up unacceptably the examination of patent applications and issuing of patents on those disclosures which contain an unobvious or patentable concept. My bill will not only place in the administration of the Patent Office, where it belongs, the rulemaking authority because it deals only with the

essential statutory guidance without which no Federal bureau can be expected to operate, but it will also permit the Patent Office, ultimately to be in step or in phase with the operation of the Patent Cooperation Treaty which has been ratified by this body.

Essentially there are several broad categories of problems faced by our country now and for the foreseeable future. The bill which I introduce today should help considerably to promote the advancement of science and technology and its early diffusion into industry.

The provisions which tend closely to parallel those of the other pending bills are several. Thus, my bill provides for a 20-year patent, improved disclosure, reexamination of patents after issue on the basis of publications and patents, public use, prior inventorship and originality proceedings.

In the bill, consideration has been given to job content of Examiners to attract and to keep the best possible personnel in the Patent Office. The bill preserves and improves the importance of substantive and procedural aspects of our patent incentive system.

I emphasize that I recognize that a bill finally reported might well partake of the essence of several bills and will not necessarily be based solely on the one introduced by me today.

Other provisions of my bill are: Section 294—Arbitration; Sections 102, 103—Conditions for patentability.

The bill provides in section 112 for disclosures which reasonably can be expected from applicants for patent sufficient to permit those skilled in the particular art involved to practice the invention claimed. The bill is careful to strike a balance between the necessary disclosure of concept, best mode and examples and a burden which can but turn away many applicants, especially the small ones.

Section 115 requires an oath from the inventor that he has in effect not withheld pertinent prior art known to him and that he knows of no prior use which under the law would bar a valid patent. The penalties for improper oath are severe. Under these severe penalties he is required to state under oath that he has fully disclosed all facts which are pertinent to the proper issuance to him of a valid patent.

The applicant under section 131 can be required to cite the best prior art known to him and to state in some detail why his claimed invention is patentable thereover. This gives to the Patent Office examiner a tool with which to pin down the applicant's knowledge in the record and to examine the same. Such provision insures in a proper case that the examiner will have the adequate help he needs when he requires it to more effectively and more rapidly examine the application for patent.

Sections 191 and 192, as earlier alluded to, permit any member of the public within 1 year of issuance of the patent to contest its validity in the form or manner issued. Thus, the public can bring to the examiner's attention prior art, prior use or sale, which would render the patent invalid under the law. Importantly, the disclosure of the patent is at this time available to the public and therefore the primary purpose of the patent incentive system has been fully served.

Section 123 provides that the Commissioner may establish regulations for the publication of pending applications at the request of applicants and that he shall publish applications in accordance therewith. Thus the applicant at his option can request publication to insure at an earlier date the citation by anyone of reasons or art over which the patent, if issued, may be invalid. However, there is no doubt that the applicant should have a reasonable time after filing but prior to publication of his disclosure of invention to decide whether he will continue to go forward toward issuance of his patent or take his chances by keeping his secret toward the disclosure of which he has taken steps in filing and prosecuting his application.

While not all inventions can be kept secret, there are a great many which can be and the applicant should be permitted to be the judge of whether he will continue the prosecution of his application for patent. A proper balance is therefore present in the structure of my Patent Law Modernization bill.

The bill properly leaves implementation as to details which can be changed as required to the Commissioner of Patents by his revision of the rules of practice. It has been designed and so worded that there is a minimum of procedural rigidity thus avoiding need for statutory changes in the foreseeable future.

Section 271(b) provides that whoever without authority imports into the United States a product made in another country by a process patented in the United States shall be liable as an infringer. Such provision which is similar to provisions of patent laws of other countries is needed if there is to be continued incentive to disclose new processes here in this country. Thus, if products are made abroad by the new processes disclosed in this country the patent holder who has disclosed his process in his patent has no recourse and can find the market flooded with the unpatented product made by his improved process abroad for considerably less than it can be made here.

By Mr. MONTOYA:

S. 2932. A bill to amend title 38 of the United States Code to provide that veterans' pension and compensation will not be reduced as a result of certain increases in monthly social security benefits. Referred to the Committee on Veterans' Affairs.

Mr. MONTOYA. Mr. President, today I am introducing legislation to amend title 38 of the United States Code to provide that compensation and pensions for veterans and widows of veterans will not be reduced as a result of certain increases in monthly social security benefits. An identical bill has been introduced in the House of Representatives by Congressman ROGERS. Under existing law, veterans pensions would be reduced January 1, 1975, as a result of the 11 percent social security benefit increases scheduled to take effect during 1974.

As a result of the 20 percent social security increases effective in October 1972, pensions for 1,264,000 retired veterans and widows of veterans decreased to offset the social security increase.

I would like to quote two paragraphs from letters which my constituents wrote at that time reflecting the concerns of veterans throughout the country. I am sure their statements are more convincing than anything further I could say.

I am a veteran of the Second World War and I was getting $98.00 a month from the VA. The VA cut that to $78 a month when I received a $20 increase in Social Security. You take $20 in one hand and add $20 to your other hand, and then take out the first $20—how will that help?

I am coming to you with a problem that I think is unjust. The enclosed copy of a letter from Veterans Administration shows them cutting my Veterans pension due to the raise we had in Social Security. If this raise was to offset the rising cost of living, why is the VA taking part of it away? Seems like they should be trying to help the Veterans instead of pushing him back.

Pensions paid to a veteran in any calendar year are based on the actual income earned by that veteran in the preceding calendar year. A veteran's 1974 pension payment, for example, is based on the actual income—including social security—he received in 1973, and the payment he receives in 1975 will be based on the income he receives this year.

This method of calculating benefits has always been unfair to veterans because it effectively denies them the increase in social security benefits granted to all other social security recipients. While other incomes rise, veterans' incomes remain stationary.

A year from now, the unfairness of this method of calculation will be felt especially keenly by 1,331,800 veterans who will suffer an actual loss in cash benefits over what they will receive in the first three quarters of this year.

The reason for this is simple: It is a result of recent social security legislation; all veterans entitled to social security benefits will receive one increase in social security benefits in April and another in June. These veterans will be allowed to keep the full amount of these increases until December when the annual calculation of their income takes place. At that time, these veterans will find their veterans' benefits cut back by an amount equal to the increases they received earlier in the year in social security benefits.

In short, a veteran will get less income in January 1975, than he will get between April and December of 1974—unless we change title 38.

Mr. President, the men and women who are the concern of this legislation are poor, elderly, and unable to provide extra income for themselves. In many cases they are disabled. The increases which have been made in social security payments were meant to combat the terrible effects of inflation on our elderly citizens.

Certainly if any group is deserving of our consideration these impoverished former servicemen and their widows make up such a group. They should not be penalized because their voice is small and their numbers are few. We must not let them think that we have forgotten them.

Mr. President, I ask unanimous consent to have the bill printed at this point in the RECORD.

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

S. 2932

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) subsection (g) of section 415 of title 38, United States Code, is amended by adding at the end thereof the following new paragraph:

"(4) In determining the annual income of any individual who is entitled to monthly benefits under the insurance program established under title II of the Social Security Act, the Administrator, before applying paragraph (1)(G) of this subsection, shall disregard any part of any such benefit which results from (and would not be payable but for) the general increase in benefits under such insurance program provided by section 201 of Public Law 93-66 or any subsequent cost-of-living increase in such benefits occurring pursuant to section 215(i) of the Social Security Act."

(b) Section 503 of title 38, United States Code, is amended by adding at the end thereof the following new subsection:

"(d) In determining the annual income of any individual who is entitled to monthly benefits under the insurance program established under title II of the Social Security Act, the Administrator, before applying subsection (a)(6) of this section, shall disregard any part of any such benefit which results from (and would not be payable but for) the general increase in benefits under such insurance program provided by section 201 of Public Law 93-66 or any subsequent cost-of-living increase in such benefits occurring pursuant to section 215(i) of the Social Security Act."

(c) In determining the annual income of any person for purposes of determining the continued eligibility of that person for, and the amount of, pension payable under the first sentence of section 9(b) of the Veterans' Pension Act of 1959, the Administrator of Veterans' Affairs shall disregard, if that person is entitled to monthly benefits under the insurance program established under title II of the Social Security Act, any part of any such benefit which results from (and would not be payable but for) the general increase in benefits under such insurance program provided by section 201 of Public Law 93-66 or any subsequent cost-of-living increase in such benefits occurring pursuant to section 215(i) of the Social Security Act.

SEC. 2. This Act shall apply with respect to annual income determinations made under the veterans' pension laws and section 415(g) of title 38, United States Code, for calendar years after 1973.

By Mr. YOUNG (for himself and Mr. HUMPHREY, Mr. DOLE, Mr. BURDICK, and Mr. PEARSON):

S. 2934. A bill to amend the Agriculture and Consumer Protection Act of 1973 to provide for an adjustment in the established price for the 1974 through 1977 crops of wheat and feed grains to reflect any change in the preceding year in the index of prices paid by farmers for production items, interest, taxes, and wage rates. Referred to the Committee on Agriculture and Forestry.

Mr. YOUNG. Mr. President, when the Senate Agriculture Committee was developing the farm bill, known as the 1973 Agriculture and Consumer Protection Act, I proposed the target price concept of $2.28 for wheat. This same concept was then adopted for feed grains at $1.53 for corn.

The level of the target price in the Senate bill was based on 70 percent of parity for the full duration of the farm bill, 1974–77. In the compromise worked out between House-Senate conferees, the Senate agreed to the House position of the escalator provision only applying to the last 2 years of the program, 1976–77. With the sharply rising costs of farming operations, it becomes more necessary now than when the bill was enacted to apply the parity or escalator concept to all 4 years of the program.

The bill I am introducing, which is cosponsored by Senator HUMPHREY, my colleagues Senator BURDICK, Senator DOLE, and Senator PEARSON, will apply the parity concept to the target price for all 4 years of the program for wheat and feed grains—corn, grain sorghum, and barley. Here is an example of how it will work. Instead of the $2.05 target price for the 1974 crop of wheat, the target price would be $2.40. If the operating costs continued to increase at the same rate as they have in the past year, the target price for 1975 would be $2.81; for 1976, $3.29; and for 1977, $3.85; with similar increases in the target price for feed grains—corn, grain sorghum, and barley.

Even though these target prices are far below present cash prices for these commodities, this will give farmers greater assurance if they go all out in production, as present intentions indicate. They will get greater needed price protection against price busting surpluses which are always possible.

By Mr. GURNEY:

S. 2935. A bill to authorize and direct the Administrator of the Federal Energy Office to conduct a study so as to determine whether or not there has been a disproportionate increase in the prices of propane and butane gases. Referred to the Committee on Banking, Housing and Urban Affairs.

Mr. GURNEY. Mr. President, I am today introducing a bill which directs the Administrator of the Federal Energy Office to undertake a study to determine if the current high prices of propane and butane have been caused by disproportionate and unfair price increases. The bill further directs the Federal Energy Office to prepare an assessment within 30 days of the probable effect of such price increases on end-consumers and on the retail liquified petroleum gas industry.

I have become extremely concerned over reports in my home State of Florida to the effect that the wholesale price of propane has increased from 6½ cents per gallon last January, to approximately 22 cents per gallon as of January 10, 1974. This represents an increase of some 267 percent in little over a year, and it means that many Floridians must now pay anywhere from 16 to 18 cents more per gallon than they did last year. No other energy product, not gasoline, heating oil, or natural gas, has increased by such an alarming amount. To those Americans who depend upon propane or butane to heat their homes or prepare their goods, this represents a special hardship. It is even more severe on those farmers, individual consumers, especially the elderly, and industries which use propane and butane to dry and process food products.

It is obvious to me that the price of propane and butane has increased in a manner which in no way resembles an equitable cost increase for all petroleum products, calculated as a percentage of sales or volume. Instead, much of the blame can be attributed to Cost of Living Council regulations which, as early as August 22, 1973, were interpreted to permit refiners to pass-through increased foreign petroleum costs and domestic crude prices in whatever amount they deemed appropriate, so long as the price increases for diesel, gasoline, and heating oil did not exceed the ratio of sales among these three major products.

There were no requirements—and there still are no requirements—that cost increases for products such as propane and butane be equitably distributed on a similar basis. Even Mr. Z. D. Bonner, president of Gulf Oil Corp., U.S.A., has admitted in hearings before the Senate Permanent Subcommittee on Investigations that gasoline and middle distillates are not carrying their share of the increased pass-through cost. According to Mr. Bonner:

> This causes a disproportionate rise in the other products. We don't happen to agree with this. We think it is wrong.

Nonetheless, the American consumer is now suffering from gigantic—and most unfortunately legitimate—price gouging for propane and butane products.

Mr. President, I strongly believe that not only should existing FEO price regulations be amended to remedy this defect, but that consumers have a right to know—once and for all—if propane and butane products have indeed suffered from a disproportionate price increase, and if so, to demand either a freeze, a rollback, or a refund. I, therefore, urge the Senate to adopt this amendment which will enable Congress, working in conjunction with the Federal Energy Office, to take corrective action.

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

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

S. 2935

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Administrator of the Federal Energy Office, shall within 30 days after the date of the enactment of this Act, by written report, inform Congress as to the following:

(1) the extent that increases in the prices of propane and butane gases have exceeded

price increases in other areas of the economy; particularly in those areas related to the petroleum industry; and

(2) the anticipated economic effects of current and projected 1974 price increases of domestic supplies of propane and butane gases upon domestic end consumers, and retail LPG dealers.

ADDITIONAL COSPONSORS OF BILLS

S. 847

At the request of Mr. NELSON, the Senator from Rhode Island (Mr. PASTORE) was added as a cosponsor of S. 847, the School Bus Safety Act.

S. 2738

At the request of Mr. NELSON, the Senator from South Dakota (Mr. ABOUREZK) and the Senator from Illinois (Mr. STEVENSON), were added as cosponsors of S. 2738, relating to the necessity of reorganizing certain departments and agencies of the executive branch, and for other purposes.

S. 2757

At the request of Mr. EAGLETON, the Senator from Maine (Mr. HATHAWAY), the Senator from Minnesota (Mr. HUMPHREY), the Senator from New Jersey (Mr. WILLIAMS), the Senator from South Dakota (Mr. ABOUREZK), the Senator from Wyoming (Mr. MCGEE), and the Senator from Montana (Mr. METCALF) were added as cosponsors of S. 2757, to prevent windfall profits by automobile insurance companies during any period when the casualty rates of such companies are reduced as a result of official action in connection with the energy crisis.

S. 2797

At the request of Mr. NELSON, the Senator from Indiana (Mr. HARTKE), the Senator from Michigan (Mr. GRIFFIN), the Senators from Minnesota (Mr. HUMPHREY and Mr. MONDALE), the Senator from New Hampshire (Mr. MCINTYRE), the Senators from Ohio (Mr. METZENBAUM and Mr. TAFT), the Senator from Vermont (Mr. STAFFORD), and the Senator from Wisconsin (Mr. PROXMIRE) were added as cosponsors of S. 2797, to require that the three U.S. Commissioners on the International Joint Commission of the United States and Canada be appointed by the President by and with the advice and consent of the Senate, to establish fixed terms of office for such Commissioners, and to make the Commission bipartisan.

S. 2801

At the request of Mr. PROXMIRE, the Senator from California (Mr. TUNNEY), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Georgia (Mr. TALMADGE), and the Senator from Alabama (Mr. SPARKMAN) were added as cosponsors of S. 2801, to amend the Food and Drug Act to provide that vitamins be treated as foods.

S. 2820

At the request of Mr. NELSON, the Senator from South Dakota (Mr. ABOUREZK), was added as a cosponsor of S. 2820, to establish administrative and governmental practices and procedures for certain kinds of surveillance activities engaged in by the administrative agencies and departments of the Government when executing their investigative, law enforcement, and other functions, and for other purposes.

S. 2854

At the request of Mr. CRANSTON, the Senator from Colorado (Mr. HASKELL), the Senator from Oregon (Mr. HATFIELD), the Senator from Wyoming (Mr. MCGEE), the Senator from Kansas (Mr. PEARSON), and the Senator from North Dakota (Mr. YOUNG) were added as cosponsors of S. 2864, to amend the Public Health Service Act to expand the authority of the National Institute of Arthritis, Metabolism, and Digestive Diseases in order to advance a national attack on arthritis.

S. 2880

At the request of Mr. MCGOVERN, the Senator from Iowa (Mr. HUGHES) and the Senator from Minnesota (Mr. MONDALE) were added as cosponsors of S. 2880, to amend the Agriculture and Consumer Protection Act of 1973 to provide additional incentives to farmers to produce wheat, feed grains, and cotton, and for other purposes.

S. 2892

At the request of Mr. MONDALE, the Senator from Massachusetts (Mr. KENNEDY), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from Montana (Mr. METCALF), the Senator from Maine (Mr. MUSKIE), the Senator from Rhode Island (Mr. PASTORE), and the Senator from Connecticut (Mr. RIBICOFF) were added as cosponsors of S. 2892, to amend the Economic Stabilization Act of 1970.

S. 2899

At the request of Mr. ABOUREZK, the Senator from South Dakota (Mr. MCGOVERN) was added as a cosponsor of S. 2899 to amend the Clayton Act to preserve and promote competition in the production of oil, natural gas, coal, oil shale, tar sands, uranium, geothermal steam, and solar energy.

REMOVAL OF COSPONSOR OF BILL

At the request of Mr. NELSON, the Senator from Illinois (Mr. STEVENSON) was deleted as a cosponsor of S. 2820, to establish administrative and governmental practices and procedures for certain kinds of surveillance activities engaged in by the administrative agencies and departments of the Government when executing their investigative, law enforcement, and other functions, and for other purposes.

SENATE RESOLUTION 260—SUBMISSION OF RESOLUTION CONTINUING, AND AUTHORIZING ADDITIONAL EXPENDITURES BY, THE SELECT COMMITTEE ON NUTRITION AND HUMAN NEEDS

(Referred to the Committee on Labor and Public Welfare.)

Mr. MCGOVERN (for himself, Mr. BELLMON, Mr. COOK, Mr. CRANSTON, Mr. HART, Mr. HUMPHREY, Mr. KENNEDY, Mr. MONDALE, Mr. NELSON, Mr. PERCY, and Mr. SCHWEIKER) submitted the following resolution:

S. RES. 260

Resolved, That the Select Committee on Nutrition and Human Needs, established by S. Res. 281, Ninetieth Congress, agreed to on July 30, 1968, as amended and supplemented, is hereby extended through February 28, 1975.

SEC. 2. (a) In studying matters pertaining to the lack of food, medical assistance, and other related necessities of life and health, the Select Committee on Nutrition and Human Needs is authorized from March 1, 1974, through February 28, 1975, in its discretion (1) to make expenditures from the contingent fund of the Senate, (2) to employ personnel, (3) to subpena witnesses and documents, (4) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable basis the services of personnel, information, and facilities of any such department or agency, (5) to procure the temporary services (not in excess of one year) or intermittent services of individual consultants, or organizations thereof, in the same manner and under the same conditions as a standing committee of the Senate may procure such services under section 202(1) of the Legislative Reorganization Act of 1946, (6) to interview employees of the Federal, State, and local governments and other individuals, and (7) to take depositions and other testimony.

(b) The minority shall receive fair consideration in the appointment of staff personnel pursuant to this resolution. Such personnel assigned to the minority shall be accorded equitable treatment with respect to the fixing of salary rates, the assignment of facilities, and the accessibility of committee records.

SEC. 3. The expenses of the committee under this resolution shall not exceed $399,000 of which amount not to exceed $100,000 shall be available for the procurement of the services of individual or organizations thereof.

SEC. 4. Expenses of the committee under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee.

SENATE RESOLUTION 261—ORIGINAL RESOLUTION REPORTED AUTHORIZING ADDITIONAL EXPENDITURES BY THE COMMITTEE ON PUBLIC WORKS FOR INQUIRIES AND INVESTIGATIONS

(Referred to the Committee on Rules and Administration.)

Mr. RANDOLPH, from the Committee on Public Works, reported the following original resolution:

S. RES. 261

Resolved, That, in holding hearings, reporting such hearings, and making investigations as authorized by sections 134(a) and 136 of the Legislative Reorganization Act of 1946, as amended, in accordance with its jurisdiction under rule XXV of the Standing Rules of the Senate, the Committee on Public Works, or any subcommittee thereof, is authorized from March 1, 1974, through February 28, 1975, in its discretion (1) to make expenditures from the contingent fund of the Senate, (2) to employ personnel, and (3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use

on a reimbursable basis the services of personnel of any such department or agency.

SEC. 2. The expenses of the committee under this resolution shall not exceed $904,920.00, of which amount not to exceed $20,000.00 shall be available for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202 (1) of the Legislative Reorganization Act of 1946, as amended).

SEC. 3. The committee shall report its findings, together with such recommendations for legislation as it deems advisable, to the Senate at the earliest practicable date, but not later than February 28, 1975.

SEC. 4. Expenses of the committee under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee.

SENATE RESOLUTION 262—ORIGINAL RESOLUTION REPORTED AUTHORIZING ADDITIONAL EXPENDITURES BY THE COMMITTEE ON COMMERCE FOR INQUIRIES AND INVESTIGATIONS

(Referred to the Committee on Rules and Administration.)

Mr. MAGNUSON, from the Committee on Commerce, reported the following original resolution:

S. RES. 262

Resolved, That, in holding hearings, reporting such hearings, and making investigations as authorized by sections 134(a) and 136 of the Legislative Reorganization Act of 1946, as amended, in accordance with its jurisdiction under rule XXV of the Standing Rules of the Senate, the Committee on Commerce, or any subcommittee thereof, is authorized from March 1, 1974, through February 28, 1975, in its discretion (1) to make expenditures from the contingent fund of the Senate, (2) to employ personnel, and (3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable basis the services of personnel of any such department or agency.

SEC. 2. The expenses of the committee under this resolution shall not exceed $1,922,478, of which amount not to exceed $60,000 shall be available for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202 (1) of the Legislative Reorganization Act of 1946, as amended).

SEC. 3. The committee shall report its findings, together with such recommendations for legislation as it deems advisable, to the Senate at the earliest practicable date, but not later than February 28, 1975.

SEC. 4. Expenses of the committee under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee.

SENATE RESOLUTION 263—SUBMISSION OF A RESOLUTION AUTHORIZING ADDITIONAL EXPENDITURES BY THE SELECT COMMITTEE ON SMALL BUSINESS

(Referred to the Committee on Rules and Administration.)

Mr. BIBLE (for himself and Mr. JAVITS) submitted the following resolution:

S. RES. 263

Resolved, That the Select Committee on Small Business, in carrying out the duties imposed upon it by S. Res. 58, Eighty-first Congress, agreed to February 20, 1950, as amended and supplemented, is authorized to examine, investigate, and make a complete study of the problems of American small and independent business and to make recommendations concerning those problems to the appropriate legislative committees of the Senate.

SEC. 2. For purposes of this resolution, the committee, or any subcommittee thereof, is authorized from March 1, 1974, through February 28, 1975, in its discretion (1) to make expenditures from the contingent fund of the Senate, (2) to employ personnel, (3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable basis the services of personnel of any such department or agency, (4) to procure the temporary services (not in excess of one year) or intermittent services of individual consultants, or organizations thereof, in the same manner and under the same conditions as a standing committee of the Seate may procure such services under section 202(1) of the Legislative Reorganization Act of 1946, and (5) to provide assistance for the members of its professional staff in obtaining specialized training, in the same manner and under the same conditions as any such standing committee may provide that assistance under section 202(j) of such Act.

SEC. 3. The expenses of the committee under this resolution shall not exceed $192,000, of which amount (1) not to exceed $2,500 may be expended for the procurement of the services of individual consultants, or organizations thereof, and (2) not to exceed $1,000 may be expended for the training of the professional staff of such committee.

SEC. 4. The committee shall report its findings, together with such recommendations for legislation as it deems advisable, to the Senate at the earliest practicable date, but not later than February 28, 1975.

SEC. 5. Expenses of the committee under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee.

SENATE RESOLUTION 264—ORIGINAL RESOLUTION REPORTED TO PROVIDE FOR ADDITIONAL EXPENSES FOR THE COMMITTEE ON POST OFFICE AND CIVIL SERVICE

(Referred to the Committee on Rules and Administration.)

Mr. MCGEE, from the Committee on Post Office and Civil Service, reported the following original resolution:

S. RES. 264

Resolved, That in holding hearings, reporting such hearings, and making investigations as authorized by sections 134(e) and 136 of the Legislative Reorganization Act of 1946, as amended, in accordance with its jurisdiction under rule XXV of the Standing Rules of the Senate, the Committee on Post Office and Civil Service, or any subcommittee thereof, is authorized from March 1, 1974, through February 28, 1975, in its discretion (1) to make expenditures from the contingent fund of the Senate, (2) to employ personnel, and (3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable basis the services of personnel of any such department or agency.

SEC. 2. The expenses of the committee under this resolution shall not exceed $235,000.

SEC. 3. The committee shall report its findings, together with such recommendations for legislation as it deems advisable, to the Senate at the earliest practicable date, but not later than February 28, 1975.

SEC. 4. Expenses of the committee under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee.

SENATE RESOLUTION 265—SUBMISSION OF A RESOLUTION RELATING TO MOTIONS TO RECOMMIT ON ACCOUNT OF AMBIGUITIES, INTERNAL INCONSISTENCIES, OR DUPLICATIONS ARISING THROUGH AMENDMENT

(Referred to the Committee on Rules and Administration.)

Mr. HATHAWAY. Mr. President, today I am submitting a resolution to amend the Standing Rules of the Senate to specifically allow for the recommital of a bill when it has become, through amendment, ambiguous, internally inconsistent, or duplicative.

The motion to recommit would instruct the committee having jurisdiction over the bill to report it back within a specified period of time, showing the text of the bill as amended, and pointing out any ambiguities or internal contradictions. Once provided with this information, the Senate could then clarify its position before final passage.

My intention in offering this proposed rules change is to provide a procedure that the Senate can utilize when complicated, technical bills have been amended on the floor, so extensively that it may be unclear how later amendments have affected amendments adopted earlier. We all experienced that problem to some degree in the pension reform bill last year.

I understand this problem is sometimes taken care of by getting unanimous consent to print an engrossed bill. However, I believe good legislative practice requires that a more regularized procedure be provided. Adoption of my proposed rule change would guarantee that there is a regular procedure to help minimize any confusion and uncertainty surrounding the Senate's position on a bill, as amended.

The resolution is as follows:

S. RES. 265

Resolved, That rule XXII of the Standing Rules of the Senate is amended by adding at the end thereof the following:

4. Whenever a Senator believes a bill or joint resolution may have become, through amendment, ambiguous, internally inconsistent, or duplicative, he may move—

(1) to recommit to the committee from which reported; or

(2) in the case of a bill not reported from a committee, to commit to the appropriate committee (as determined by the presiding officer)—

with instructions to that committee to report the bill or joint resolution back within such period of time as the Senator in his motion may designate—

(A) showing the text of the bill or joint resolution as it existed at the time such motion is made, including all amendments agreed to by the Senate and any committee amendments remaining to be considered; and

(B) stating and explaining any ambiguities, internal inconsistencies, or duplications, relating to the bill or joint resolution at the time such motion is made.

Such a motion is highly privileged and shall be decided without debate.

SENATE RESOLUTION 266—ORIGINAL RESOLUTION REPORTED AUTHORIZING ADDITIONAL EXPENDITURES BY THE COMMITTEE ON RULES AND ADMINISTRATION FOR INQUIRIES AND INVESTIGATIONS (S. REPT. NO. 93-672)

(Placed on the Calendar.)

Mr. CANNON, from the Committee on Rules and Administration, reported the following original resolution:

Resolved, That, in holding hearings, reporting such hearings, and making investigations as authorized by sections 134(a) and 136 of the Legislative Reorganization Act of 1946, as amended, in accordance with its jurisdiction under rule XXV of the Standing Rules of the Senate, the Committee on Rules and Administration, or any subcommittee thereof, is authorized from March 1, 1974, through February 28, 1975, for the purposes stated and within the limitations imposed by the following sections, in its discretion (1) to make expenditures from the contingent fund of the Senate, (2) to employ personnel, and (3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable basis the services of personnel of any such department or agency.

SEC. 2. The Committee on Rules and Administration, or any subcommittee thereof, is authorized from March 1, 1974, through February 28, 1975, to expend not to exceed $374,000 to examine, investigate, and make a complete study of any and all matters pertaining to each of the subjects set forth below in succeeding sections of this resolution, said funds to be allocated to the respective specific inquiries and to the procurement of the services of individual consultants or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946, as amended) in accordance with such succeeding sections of this resolution.

SEC. 3. Not to exceed $180,000 shall be available for a study or investigation of privileges and elections.

SEC. 4. Not to exceed $194,000 shall be available for a study or investigation of computer services for the Senate, of which amount not to exceed $20,000 may be expended for the procurement of individual consultants or organizations thereof.

SEC. 5. The committee shall report its findings, together with such recommendations for legislation as it deems advisable with respect to each study or investigation for which expenditure is authorized by this resolution, to the Senate at the earliest practicable date, but not later than February 28, 1975.

SEC. 6. Expenses of the committee under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee.

SENATE RESOLUTION 267—SUBMISSION OF A RESOLUTION RELATING TO THE SPECIAL COMMITTEE ON AGING

(Referred to the Committee on Rules and Administration.)

PERMANENT STATUS FOR THE COMMITTEE ON AGING

Mr. CHURCH. Mr. President, I submit for appropriate reference a resolution authorizing permanent committee status for the Senate Special Committee on Aging.

Senator HIRAM FONG, ranking minority member of the committee, is a cosponsor of this resolution; and I welcome his support.

It is my firm belief that the 22-member Committee on Aging has fulfilled a major role in the 13 years of its existence. The time has now come for the Senate to recognize the need for continuing the role for the committee, rather than year-to-year extension, as is now the case.

In establishing the Special Committee on Aging in 1961, the Senate clearly recognized that national issues relating to aging cut across many jurisdictions within the Congress and within the executive branch. Time and time again, it was stressed that the Senate stood in need of a unit which would take a broad view of aging while focusing on specific issues of immediate or long-range concern.

The language of the original resolution, and the subsequent resolutions, was specific about the far-reaching responsibilities of the committee:

The committee shall make a full and complete study and investigation of any and all matters pertaining to problems and opportunities of older people, including but not limited to: problems and opportunities of maintaining health, of assuring adequate income, of finding employment, of engaging in productive and rewarding activity, of securing proper housing, and when necessary, or obtaining care of assistance. No proposed legislation shall be referred to such committee, and such committee shall not have power to report by bill, or otherwise have legislative jurisdiction.

In the years since 1961, the committee has performed its factfinding mission on a large number of individual subjects and—through its individual members, often acting on committee or subcommittee recommendations—has helped advance important legislation.

Thirteen years of experience have clearly demonstrated that committee studies require continual updating or entirely new perspectives. For example, in the early 1960's, the committee considered many issues directly related to congressional enactment of medicare. In 1974, the committee is studying proposals which would incorporate medicare into a broader national health protection program.

My point is that aging is a dynamic and constantly changing field. Twenty-one million persons in this Nation are now 65 years or older; 29 million can be expected by the turn of the century, now just 26 years away. In addition, the trend toward earlier and earlier retirement is making it clear that "aging" issues are affecting greater and greater numbers of our citizens.

Several other reasons for permanent status should also be considered:

The committee probably should have become permanent under the Legislative Reorganization Act of 1970. That action should be taken now.

With permanent status, the Committee on Aging could be considered in the planning for office space during the expansion of the Dirksen Senate Office Building.

With permanent status, the Committee on Aging would not have to request as much as it does each year by resolution from the Senate Committee on Rules and Administration.

With 22 members, the Senate Committee on Aging is the second largest Senate committee. Its seven subcommittees and the full committee have engaged in a wide range of factfinding missions. Permanent status would enable members and staff to plan such activities more efficiently.

The present resolution would not, of course, give the committee power to receive and report bills. The major purpose remains, as it is now, to engage in factfinding missions and make reports and recommendations to the Senate. I believe that this is a vital function and that it will become even more necessary as the number of older Americans in our Nation continues its growth. A nation with 21 million persons of age 65 and over requires coherent Senate attention and concern on matters affecting older Americans. I believe that the resolution offered today by Senator FONG and by me will help us toward that goal.

The resolution which I submit, on behalf of myself, Mr. WILLIAMS, Mr. FONG, Mr. BIBLE, Mr. RANDOLPH, Mr. MOSS, Mr. KENNEDY, Mr. HARTKE, Mr. PELL, Mr. EAGLETON, Mr. TUNNEY, Mr. CHILES, Mr. CLARK, Mr. MUSKIE, Mr. MONDALE, Mr. STAFFORD, Mr. BROOKE, and Mr. DOMENICI, reads as follows:

S. RES. 267

Resolution providing that the Special Committee on Aging is continued in existence as a permanent special commitee and authorizing additional expenditures therefor

Resolved, That the Special Committee on Aging, established by Senate Resolution 33, 87th Congress, agreed to February 13, 1961, as amended and supplemented, is continued in existence and shall hereafter be a permanent, special committee of the Senate (hereafter referred to as the "committee"). The committee shall continue to consist of twenty-two members appointed by the President of the Senate, thirteen of whom shall be appointed from the majority party and nine of whom shall be appointed from the minority party. The President of the Senate shall continue to appoint the chairman from among members of the committee appointed from the majority party.

SEC. 2. (a) The committee shall make a continuing study and investigation of any and all matters pertaining to problems and opportunities of older people, including but not limited to, problems and opportunities of maintaining health, of assuring adequate income, of finding employement, of engaging in productive and rewarding activity, of securing proper housing, and, when necessary, of obtaining care or assistance. No proposed legislation shall be referred to the committee, and the committee shall not have power to report by bill, or otherwise have legislative jurisdiction.

(b) A majority of the members of the committee or any subcommittee thereof shall constitute a quorum for the transaction of business, except that a lesser number, to be fixed by the committee, shall constitute a quorum for the purpose of taking sworn testimony.

(c) The committee shall continue to be an additional committee for purposes of par-

agraph 6(d) of Rule XXV of the Standing Rules of the Senate.

SEC. 3. (a) The committee, or any subcommittee thereof, is authorized, in its discretion (1) to make expenditures from the contingent fund of the Senate, (2) to hold hearings, (3) to sit and act at any time or place during the sessions, recesses, and adjournment periods of the Senate, (4) to require by subpena or otherwise the attendance of witnesses and the production of correspondence, books, papers, and documents, (5) to administer oaths, (6) to take testimony orally or by deposition, (7) to employ personnel, (8) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable basis the services of personnel, information, and facilities of any such department or agency, (9) to procure the temporary services (not in excess of one year) or intermittent services of individual consultants, or organizations thereof, in the same manner and under the same conditions that a standing committee of the Senate may procure such services under section 202 (i) of the Legislative Reorganization Act of 1946, and (10) to provide assistance for the training of its professional staff in the same manner and in accordance with the same conditions that a standing committee may provide such assistance under section 202 (j) of such Act.

(b) The minority shall receive fair consideration in the appointment of staff personnel pursuant to this resolution. Such personnel assigned to the minority shall be accorded equitable treatment with respect to the fixing of salary rates, the assignment of facilities, and the accessibility of committee records.

SEC. 4. (a) For the period from March 1, 1974, through February 28, 1975, the expenses of the committee under this resolution shall not exceed $415,000, of which amount not to exceed $15,000 shall be available for the procurement of the services of individual consultants or organizations thereof.

(b) The committee shall report the results of its study and investigation for the period referred to in subsection (a) of this section, together with such recommendations as it may deem advisable, to the Senate at the earliest practicable date, but not later than February 28, 1975.

(c) Expenses of the committee under this section shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee.

SEC. 5. This resolution is effective March 1, 1974.

Mr. CHILES. Mr. President, as you know the Special Committee on Aging was established in the 87th Congress. Each year it has been rather routinely extended and today Chairman FRANK CHURCH is introducing a resolution of which I am a cosponsor to provide that it be named a permanent special committee. I strongly support this effort and view it as an even more firm commitment of the Congress to deal with the concerns of our older Americans.

It is obvious that in the 13 years of its existence the problems of our aged population have grown more and more complex, while at the same time their very number has escalated. At the turn of the century, there were 3 million older Americans—aged 65 or over—comprising 4 percent of the total population. But today this same segment of the population makes up 10 percent of our total. And thus the job of the committee—to keep a close watch over issues crossing many jurisdictions of congressional units and executive branch agencies—has, in my opinion, grown increasingly more important.

I think it is essential we keep in mind the point the President made 2 years ago in a message to the Congress on the aging. He said:

We often hear these days about the "Impatience of youth." But if we stop to think about the matter, it is the elderly who have the best reason to be impatient. As so many older Americans have candidly told me, "We simply do not have time to wait while the Government procrastinates. For us, the future is now."

I was particularly pleased to have been appointed to the Committee on Aging at the beginning of the 93d Congress as my own State of Florida has a larger percentage of population in the over-65 category than any other State in the Union. Since my appointment I have followed closely and participated actively in the committee's investigations and hearings in a variety of areas pertaining to the problems and opportunities of old people including assuring adequate income, finding employment, engaging in productive and rewarding activity, securing proper housing, health care, and other matters. Through its work and the competent leadership of its chairman, the committee has been able to alleviate some problems and better pinpoint areas where difficulties persist, making recommendations for ways of overcoming them.

I believe the committee's work has been of outstanding value to our older Americans and strongly support Senator CHURCH's resolution authorizing its permanent status. For our older Americans the future is indeed now, and the Congress must channel its energies more vigorously toward the solution of the problems facing this growing segment of our population in order to assure them the security and dignity they deserve.

SENATE RESOLUTION 268—ORIGINAL RESOLUTION REPORTED AUTHORIZING ADDITIONAL EXPENDITURES BY THE COMMITTEE ON GOVERNMENT OPERATIONS

(Referred to the Committee on Rules and Administration.)

Mr. ERVIN, from the Committee on Government Operations, reported the following original resolution:

S. RES. 268

Resolved, That the Committee on Government Operations is authorized to expend from the contingent fund of the Senate, during the Ninety-third Congress, $10,000 in addition to the amount, and for the same purposes, specified in section 134(a) of the Legislative Reorganization Act of 1946.

SENATE RESOLUTION 269—ORIGINAL RESOLUTION REPORTED AUTHORIZING ADDITIONAL EXPENDITURES BY THE COMMITTEE ON GOVERNMENT OPERATIONS

(Referred to the Committee on Rules and Administration.)

Mr. ERVIN, from the Committee on Government Operations, reported the following resolution:

S. RES. 269

Resolution authorizing additional expenditures by the Committee on Government Operations for inquiries and investigations

Resolved, That, in holding hearings, reporting such hearings, and making investigations as authorized by sections 134(a) and 136 of the Legislative Reorganization Act of 1946, as amended, in accordance with its jurisdiction under rule XXV of the Standing Rules of the Senate, the Committee on Government Operations, or any subcommittee thereof, is authorized from March 1, 1974, through February 28, 1975, for the purposes stated and within the limitations imposed by the following sections, in its discretion (1) to make expenditures from the contingent fund of the Senate, (2) to employ personnel, and (3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable basis the services of personnel of any such department or agency.

SEC. 2. The Committee on Government Operations is authorized from March 1, 1974, through February 28, 1975, to expend not to exceed $20,000 for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(1) of the Legislative Reorganization Act of 1946, as amended).

SEC. 3. The Committee on Government Operations, or any subcommittee thereof, is authorized from March 1, 1974, through February 28, 1975, to expend not to exceed $2,292,017 to examine, investigate, and make a complete study of any and all matters pertaining to each of the subjects set forth below in succeeding sections of this resolution, said funds to be allocated to the respective specific inquiries and the procurement of the services of individual consultants or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946, as amended) in accordance with such succeeding sections of this resolution.

SEC. 4. (a) Not to exceed $1,056,000 shall be available for a study or investigation of—

(1) The efficiency and economy of operations of all branches of the Government including the possible existence of fraud, misfeasance, malfeasance, collusion, mismanagement, incompetence, corruption, or unethical practices, waste, extravagance, conflicts of interest, and the improper expenditure of Government funds in transactions, contracts, and activities of the Government or of Government officials and employees and any and all such improper practices between Government personnel and corporations, individuals, companies, or persons affiliated therewith, doing business with the Government; and the compliance or noncompliance of such corporations, companies, or individuals or other entities with the rules, regulations, and laws governing the various governmental agencies and its relationships with the public: *Provided*, That, in carrying out the duties herein set forth, the inquiries of this committee or any subcommittee thereof shall not be deemed limited to the records, functions, and operations of the particular branch of the Government under inquiry, and may extend to the records and activities of persons, corporations, or other entities dealing with or affecting that particular branch of the Government;

(2) The extent to which criminal or other improper practices or activities are, or have been, engaged in the field of labor-management relations or in groups or organizations of employees or employers, to the detriment of interests of the public, employers, or employees, and to determine whether any changes are required in the laws of the United States in order to protect such interests against the occurrence of such practices or activities;

(3) Syndicated or organized crime which may operate in or otherwise utilize the facilities of interstate or international commerce in furtherance of any transactions which are in violation of the law of the United States or of the State in which the transactions occur, and, if so, the manner and extent to which, and the identity of the persons, firms, or corporations, or other entities by whom such utilization is being made, what facilities, devices, methods, techniques, and technicailties are being used or employed, and whether or not organized crime utilities such interstate facilties or otherwise operates in interstate commerce for the development of corrupting influences in violation of the law of the United States or the laws of any State, and further, to study and investigate the manner in which and the extent to which persons engaged in organized criminal activities have infiltrated into lawful business enterprise; and to study the adequacy of Federal laws to prevent the operations of organized crime in interstate or international commerce, and to determine whether any changes are required in the laws of the United States in order to protect the public against the occurrences of such practices or activities;

(4) All other aspects of crime and lawlessness within the United States which have an impact upon or affect the national health, welfare, and safety;

(5) Riots, violent disturbances of the peace, vandalism, civil and criminal disorder, insurrection, the commission of crimes in connection therewith, the immediate and longstanding causes, the extent and effects of such occurrences and crimes, and measures necessary for their immediate and long-range prevention and for the preservation of law and order and to insure domestic tranquility within the United States; and

(6) The efficiency and economy of operations of all branches and functions of the Government with particular reference to—

(A) the effectiveness of present national security methods, staffing, and processes as tested against the requirements imposed by the rapidly mounting complexity of national security problems;

(B) the capacity of present national security staffing, methods, and processes to make full use of the Nation's resources of knowledge, talents, and skills;

(C) the adequacy of present intergovernmental relationships between the United States and international organizations principally concerned with national security of which the United States is a member; and

(D) legislative and other proposals to improve these methods, processes, and relationships;

(7) The efficiency, economy, and effectiveness of all agencies and departments of the Government involved in the control and management of energy shortages including, but not limited to, their performance with respect to—

(A) the collection and dissemination of accurate statistics on fuel demand and supply;

(B) the implementation of effective energy conservation measures;

(C) the pricing of energy in all forms;

(D) coordination of energy programs with State and local government;

(E) control of exports of scarce fuels;

(F) the management of tax, import, pricing, and other policies affecting energy supplies;

(G) maintenance of the independent sector of the petroleum industry as a strong competitive force;

(H) the allocation of fuels in short supply by public and private entities;

(I) the management of energy supplies owned or controlled by the Government;

(J) relations with other oil producing and consuming countries;

(K) the monitoring of compliance by governments, corporation, or individuals with the laws and regulations governing the allocation, conservation, or pricing of energy supplies;

(L) research into the discovery (and development of alternative energy supplies.

Provided, That in carrying out the duties herein set forth, the inquiries of this committee or any subcommittee thereof shall not be deemed limited to the records, functions, and operations of the particular branch of the Government under inquiry, and may extend to the records and activities of persons, corporations, or other entities dealing with or affecting that particular branch of the Government;

of which amount not to exceed $20,000 may be expended for the procurement of the services of individual consultants or organizations thereof.

(b) Nothing contained in this section shall affect or impair the exercise by any other standing committee of the Senate of any power, or the discharge by such committee of any duty, conferred or imposed upon it by the Standing Rules of the Senate or by the Legislative Reorganization Act of 1946, as amended.

(c) For the purpose of this section the committee, or any duly authorized subcommittee thereof, or its chairman, or any other member of the committee or subcommittee designated by the chairman, from March 1, 1974, through February 28, 1975, is authorized, in its, his, or their discretion, (1) to require by subpena or otherwise the attendance of witnesses and production of correspondence, books, papers, and documents, (2) to hold hearings, (3) to sit and act at any time or place during the sessions, recesses, and adjournment periods of the Senate, (4) to administer oaths, and (5) take testimony, either orally or by sworn statement.

SEC. 5. Not to exceed $372,900 shall be available for a study or investigation of intergovernmental relationships between the United States and the States and municipalities, including an evaluation of studies, reports, and recommendations made thereon and submitted to the Congress by the Advisory Commission on Intergovernmental Relations pursuant to the provisions of Public Law 86–380, approved by the President on September 24, 1959, as amended by Public Law 89–733, approved by the President on November 2, 1966; of which amount not to exceed $10,000 may be expended for the procurement of the services of individual consultants or organizations thereof.

SEC. 6. Not to exceed $395,000 shall be available for a study or investigation of the efficiency and economy of operations of all branches and functions of the Government with particular reference to—

(1) the effects of laws enacted to reorganize the executive branch of the Government, and to consider reorganizations proposed therein;

(2) the operations of research and development programs financed by the departments and agencies of the Federal Government, and the review of those programs now being carried out through contracts with higher educational institutions and private organizations, corporations, and individuals in order to bring about Government-wide coordination and elimination of overlapping and duplication of scientific and research activities; and

(3) the adequacy of present intergovernmental relationships between the United States and international organizations, exclusive of those principally concerned with national security, of which the United States is a member;

of which amount not to exceed $30,000 may be expended for the procurement of the services of individual consultants or organizations thereof.

SEC. 7. (a) Not to exceed $278,158 shall be available for a study and investigation of any and all matters pertaining to budget and accounting measures and operations, other than appropriations, including but not limited to—

(1) the formulation of the budget (including supplemental and deficiency appropriations (and its submission and justification to Congress;

(2) the review and authorization of budget obligations and expenditures by the Congress;

(3) the execution and control of such authorized obligations and expenditures;

(4) the accounting, financial reporting, and auditing of all Government expenditures; and

(5) the evaluation of Federal program performance and fiscal information and management capability;

of which amount not to exceed $15,000 may be expended for the procurement of the services of individual consultants or organizations thereof.

(b) Such study and investigation shall be limited to budgeting and accounting measures and operations of the Federal Government, and shall not be extended to the operations of any State or local government, any business or other private organization, or any individual, except that information with respect to these parties may be obtained on a voluntary basis.

SEC. 8. Not to exceed $189,959 shall be available for a study or investigation of Government procurement practices (including a review of recommendations submitted to Congress by the Commisssion on Government Procurement), of which amount not to exceed $15,000 may be expended for the procurement of individual consultants or organizations thereof.

SEC. 9. The committee shall report its findings, together with such recommendations for legislation as it deems advisable with respect to each study or investigation for which expenditure is authorized by this resolution, to the Senate at the earliest practicable date, but not later than February 28, 1975.

SEC. 10. Expenses of the committee under this resolution, which shall not exceed in the aggregate $2,312,017 shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee.

ADDITIONAL COSPONSORS OF A RESOLUTION

SENATE RESOLUTION 222

At the request of Mr. MANSFIELD (for Mr. MAGNUSON), the Senator from Hawaii (Mr. FONG), the Senator from Nebraska (Mr. HRUSKA), the Senator from Minnesota (Mr. MONDALE), and the Senator from Hawaii (Mr. INOUYE) were added as cosponsors of Senate Resolution 222, to authorize a National Ocean Policy Study.

NOTICE OF HEARINGS ON CREDIT REPORTING ABUSES

Mr. PROXMIRE. Mr. President, the Subcommittee on Consumer Credit of the Committee on Banking, Housing, and Urban Affairs will commence oversight hearings on the Fair Credit Reporting Act at 2 p.m. on February 5 in room 5302, New Senate Office Building.

The subcommittee will receive testimony on credit reporting abuses from former employees of investigative re-

porting agencies. Persons seeking information about these hearings should contact Kenneth McLean, room 5300, New Senate Office Building; telephone: 225–7391.

NOTICE OF HEARINGS ON CONSERVATION AND DEVELOPMENT TO HARD MINERAL RESOURCES OF THE DEEP SEABED

Mr. METCALF. Mr. President, I take this means to notify my colleagues that the Subcommittee on Minerals, Materials, and Fuels of the Senate Committee on Interior and Insular Affairs will, on March 5 and 6, resume hearings on legislation to promote the conservation and orderly development of the hard mineral resources of the deep seabed, pending adoption of an international regime relating thereto.

The subcommittee will direct its attention solely to the proposed amendment—No. 946, which appeared at page 893 of the CONGRESSIONAL RECORD of January 28, 1974—in the nature of a substitute for S. 1134, on which we have had extensive hearings.

From previous hearings we know the general position of Federal agencies, representatives of the mining industry, and of public interest groups. We now will take testimony on a specific piece of legislation.

We will not hear a rehash of remarks already a matter of record before the Subcommittee on Minerals, Materials, and Fuels or the Special Subcommittee on the Outer Continental Shelf which held extensive hearings in 1969 and 1970.

The hearings will begin at 10 a.m. on each day in room 3110, Dirksen Senate Office Building. Those wishing to testify will notify Mike Harvey of the committee staff. His telephone number is 225–1076.

Mr. President, a note of urgency to these hearings and to subsequent action on this legislation was added by a press release issued January 29, 1974, by the Kennecott Copper Corp.

The release announced that Kennecott and four other major corporations had joined in a 5-year research and development program to determine the feasibility of mining manganese nodules from the deep sea and extracting metals from them.

Mr. President, I ask unanimous consent that the text of the Kennecott press release and the accompanying fact sheet be inserted in the RECORD following my remarks.

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

OCEAN MINING R. & D. PROGRAM ANNOUNCED

(News release issued by Kennecott Copper Corps.)

NEW YORK, January 29.—A five-year research and development program to determine the feasibility of mining manganese nodules from the deep sea and extracting metals from them was announced today by Kennecott Copper Corporation (New York), Rio Tinto-Zinc Corporation, Ltd. (London), Consolidated Gold Fields, Ltd. (London), Mitsubishi Corporation (Tokyo) and Noranda Mines, Ltd. (Toronto). Program costs are estimated to exceed $50 million.

Kennecott Copper Corporation has 50 percent interest in the program, Rio Tinto-Zinc 20 percent, and the other parties 10 percent. Kennecott will manage operations for the group.

Manganese nodules are found at great depths—12,000 to 20,000 feet—on the floor of the deep oceans, far from continental land masses. Pacific Ocean nodules, which contain manganese, nickel, copper, cobalt and molybdenum are a potential major new source for helping meet future mineral needs.

The agreement announced today covers the study of nodule deposits and research and development of economic methods to bring nickel/copper rich nodules to the surface, transport them to land and process them to extract metals—an expensive and complex operation.

A multi-company approach was agreed upon to take advantage of worldwide technical expertise and to share research costs, the high risks involved in such a pioneering effort and the substantial capital required should actual mining prove feasible.

Kennecott has accumulated a bank of information and technology through 10 years of study, including research on the deposits, mining system development and pilot metallurgical operations. Further research and development will take place at, or be coordinated through, existing Kennecott laboratories and through sea-based experiments in the Pacific Ocean.

The agreement assigns a value to this prior Kennecott work and recognizes it as part of Kennecott's financial contribution to the group research project. The agreement also calls for periodic review of progress to expenditures may vary according to developments.

(News release issued by Kennecott Copper Corp.)

OCEAN MINING FACT SHEET

MANGANESE NODULES

Man has been aware of the existence of these black, rock-like nodules for many years. HMS Challenger, a British deep-sea research ship, dredged a supply of them from the Atlantic Ocean 100 years ago. Only within the past decade, however, has their potential as a source for minerals been considered seriously. Growing minerals consumption and the extent of known land-based reserves combined with technology advances have led geologists and scientists throughout the world to propose the nodules as a practical source of metals.

Presently, the United States imports about 18 percent of its copper, 74 percent of its nickel, 95 percent of its manganese and 98 percent of its cobalt. The trade deficit for these metals is now running about $500 million per year and is projected to approach $2 billion in 1935 (1970 dollars). Furthermore, the Department of the Interior projects that by 1985, primary copper consumption in the United States will increase by about 1,400,000 tons, requiring major new sources.

It is estimated that hundreds of millions of tons of useful nodules dot the floor of the Pacific Ocean with typical concentrations of 0.7 to 1.5 percent copper and 0.8 to 1.6 percent nickel. Other metals typically found in the nodules include manganese, cobalt, molybdenum and iron.

Manganese nodules are a variety of rock which grows by inorganic chemical precipitation in an aqueous environment. Such material is called hydrogenous (water-derived) as opposed to terrigenous (land-derived). These nodules are part of a large family of manganese and/or iron-rich chemical precipitates found on the floors of most of the world's oceans, in many large and small lakes, in brackish water inlets, streams, bogs, and even in some man-made reservoirs and water distribution systems. Only those in the deep ocean are of large scale commercial interest, although a variety of iron-rich crust in Swedish lakes has been occasionally recovered.

ENVIRONMENTAL CONSIDERATION

The regions of potential undersea mining are nearly void of sea-bottom life due to a combination of circumstances. There is no light at these great depths. Environmental studies made to date have indicated that there will be no adverse environmental impacts on ocean life due to ocean mining. However, the multi-company agreement announced today calls for continuing impact studies.

Land-based metals processing stations will face waste disposal questions but, generally, processing of nodules appears to have fewer environmental problems than processing of terrestrial ores. For example, unlike much land ore, nodules do not contain sulfur, which eliminates the problem of discharging sulfur gases or acids.

MINING TECHNIQUES

Three primary methods of mining nodules have been proposed for commercial applications:

1. dragline bucket method
2. continuous bucket line method
3. hydraulic suction dredging method

Drag line bucket collecting is the use of a dredge bucket attached to a steel rope. Mud and nodules enter the dredge as it is dragged across the ocean bottom and then, as the dredge is recovered up through the water, mud is washed through a wire mesh screen leaving only nodules.

A continuous bucket line uses a continuous loop of synthetic fiber cable to which a series of buckets is attached. This method of operation is much like the drag line bucket method but with more than a single bucket.

Hydraulic suction dredging involves connecting a ship with the ocean bottom through a conduit. A collector would scoop up nodules which would then enter the water stream in the conduit and be moved upward to the ship by either pumps or air injected into the pipe.

EXTRACTING METALS

Kennecott has done extensive laboratory experimental work on a metals extraction process and in 1973 operated a pilot plant which processed half a ton of ore per day. This work was carried out at the corporate laboratory in Lexington, Massachusetts.

The manganese nodule ore is very porous and, of course, is soaking wet when mined. Actually, when drained, the ore still contains about 40 percent moisture. To dry this ore would require great amounts of energy, so Kennecott has studied hydrometallurgical processes. Several unique chemical processing techniques have been developed, some involving liquid ion exchange.

The metals are produced in the standard forms now marketed and with high purity. There are no minor byproducts. However, if in future it should prove economically justifiable to produce manganese it can be recovered. The tailings, or waste material, could constitute a stockpile of higher grade manganese than any domestic deposit plus small amounts of other metals which could be extracted if metals prices reach a point which justifies recovery.

UNDERSEA MINING LAW

Little specific international law presently covers undersea mining. The subject is to be treated at the upcoming United Nations Law of the Sea Conference at Caracas, Venezuela, in June, 1974.

Present international law does permit exploration, experimental activities, and mining itself to be carried out. Nevertheless many uncertainties exist which would be clarified by a treaty or by legislation now in Congress.

Two bills (HR 12233 and S 2878) designed to remove these uncertainties and to encourage U.S. industry to continue ocean mining research and development have been introduced in Congress.

Lengthy hearings were held on predecessor bills last year by the Senate Interior and Insular Affairs Subcommittee on Minerals, Materials and Fuels and the House Merchant Marine and Fisheries Oceanography Subcommittee.

NOTICE OF ANTIBUSING HEARINGS—FEBRUARY 19, 20, 21, 1974

Mr. ERVIN. Mr. President, on February 19, 20, and 21, 1974, the Senate Subcommittee on Constitutional Rights will hold hearings on legislative proposals dealing with the problem of court-ordered busing of schoolchildren. In addition to considering S. 1737, which I introduced, the subcommittee will take testimony on S. 179, S. 287, and S. 619. The hearings will be held in room 2228, Dirksen Senate Office Building, and will begin each morning at 10 o'clock.

As I stated in the CONGRESSIONAL RECORD of December 17, 1973, when first giving notice of these hearings, more Americans than ever before are expressing opposition to the senseless, massive busing of schoolchildren to achieve "racial balance" in the public schools.

Mr. President, as chairman of the Constitutional Rights Subcommittee, I look forward to conducting these hearings and bringing this most serious subject to the public's attention.

ADDITIONAL STATEMENTS

THE PRESIDENT'S MESSAGE ON THE STATE OF THE UNION

Mr. FANNIN. Mr. President, last night we were privileged to hear a state of the Union message which provides us with an excellent blueprint for attacking the current problems facing America and the world.

It was especially heartening to hear President Nixon state clearly and emphatically that he will not be harassed out of office.

Not for 1 minute have I believed he would resign, nor have I seen any evidence which justifies impeachment proceedings in the Congress.

Regardless of these facts, irresponsible elements have been spreading rumors that the President would resign. In light of this, it is good that the President has made it clear he will not be intimidated by self-appointed inquisitors.

President Nixon stated that he will cooperate with the House Judiciary Committee to the greatest extent consistent with his obligations to the Office of the Presidency. I applaud this statement, and I am astounded that some journalists and some Members of Congress interpret this statement as indicating he will defy committee in its impeachment investigation.

President Nixon is a man of broad vision and he has a deep sense of responsibility to the Presidency, not only during his own term of office but for the future as well. He is not going to let the impeachment investigation destroy the Presidency. There are some men and women of narrow vision who in their determination to destroy Richard Nixon do not care how much damage they do to the American people and the American system of government. There are others who see impeachment as an opportunity to do great damage so that they can radically change the American system of government.

Let me also say that I realize there are some who support impeachment who do so very reluctantly and not out of the motives I have mentioned. Although their motives are pure, I still believe they are wrong.

When the President said 1 year of Watergate is enough, I believe most Americans said "Amen." The time has come for conclusion of the several investigations that are going on. The guilty should be punished and the innocent should be cleared. We should get on with the business of legislating and administrating to serve the people.

President Nixon quite appropriately assigns top priority to solving the energy crisis. This is far away the most serious problem for America now and in the foreseeable future.

The President has provided us with comprehensive, reasonable and effective proposals for dealing with the energy crisis. It is a positive program that is keyed to problem-solving rather than to blame-finding.

Just as too many Members of Congress are preoccupied with persecuting the President rather than solving the problems of the people, so there are too many Members of Congress who are more concerned with finding scapegoats than they are in finding solutions for the energy crisis.

Mr. President, I pray that the positive approach in the State of the Union message will help to cure this negativism that infects Congress.

The program laid down by President Nixon in his message is perhaps one of the most realistic and sensible addresses delivered to Congress by any President in the past decade and a half. It does not propose any grandiose schemes to meddle in the affairs and the freedoms of Americans. It does not make any gigantic promises about what Government can and will do for the people. God knows that we have had enough of these grandiose schemes and gigantic promises.

Such utopian schemes and promises have been great for building bureaucracy and spending tax money, but they have accomplished little to help the Nation. Indeed, too often they have caused the Nation to slip backward rather than make any great jump forward.

President Nixon did not suggest retrenchment in the face of our energy and economic problems. What he did propose, in my interpretation, is that we strive for perfection rather than proliferation in government. Rather than requesting that Congress consider a shiny new parcel of programs, he asked that we resolve some of the issues which have now been before the Congress for a number of years, such as adequate health care for all Americans and welfare reform. He suggested we perfect and expand revenue sharing to help strengthen local government and that we improve the strongest Federal commitment ever for development of mass transit, and he proposed a program to insure the personal privacy of all Americans. He reminded Congress that he must have a flexible trade bill to help create a freer exchange of goods between all nations.

President Nixon once again underscored his devotion to building a stable and lasting world peace. This peace will be possible only if we have a strong national defense to complement the outstanding diplomatic efforts of the Nixon administration.

Mr. President, we have been presented with a program of realistic and achieveable goals. I would urge that we proceed swiftly but deliberately to accomplish these ends.

Mr. President, I also was very pleased that the state of the Union message included a brief summary of some of the great progress that has been made during the past 5 years.

Under President Nixon we have ended our involvement in the Vietnam war, we have ended the draft, we have ended riots on campuses and in our cities, we have brought a new hope for peace both in international relations and within our own borders. These are just a few of the accomplishments.

In conclusion, I would like to restate my hope that the Congress will accept the positive program put forward by President Nixon so that we can all start pulling together in our common desire for an ever better America and an ever more peaceful world.

FAREWELL TO JAMES NEVILLE OF FARMERS HOME

Mr. ABOUREZK. Mr. President, thanks is too seldom accorded to dedicated public servants when they announce plans to leave Government and go trout fishing.

I hope this will not be the case with James Neville, the capable Rural Housing Administrator, who joined Farmers Home after a career at FHA. I understand that he has announced plans to retire.

I have not always agreed with Mr. Neville. Indeed, our offices have had some healthy disputes. We often did not see eye-to-eye on policy matters.

When all of that was said and done, though, it must be said that it was good to have him around.

He is a straight shooter.

He always kept his word.

He was always willing to work with us, to try and iron things out and to come up with good answers to hard problems.

I have enormous personal respect for James Neville and his sincerity, integrity, and dedication.

We will be diminished by his absence in Federal service, and I wish him all good luck and every happiness in the years ahead.

GOVERNOR LANDON DISCUSSES KANSAS RESOURCES

Mr. DOLE. Mr. President, it was recently my privilege to attend the annual

meeting of the Native Sons and Daughters of Kansas in Topeka and to hear the comments made there by former Gov. Alf M. Landon regarding the current world situation, and Kansas' important standing in it. Governor Landon's perceptive observations have long been a source of interest to the citizens of his State and Nation, and it was encouraging to me on this occasion to hear his expressions of confidence in the future of our great country.

Governor Landon noted the tremendous technological advances that have benefited farmers during this century, and he brought attention to the fact that improved agricultural procedures and implements have always been obtained as a result of teamwork between the farmer and the technologist. Furthermore, Mr. Landon points with justifiable pride to the significant role that Kansas grain and livestock have played, and will continue to play in meeting international demands for food. In this regard, he foresees 1974 as a recordbreaking year of prosperity for those who are vitally involved in feeding the hungry of the world.

Mr. President, I encourage my colleagues to take note of the remarks of this experienced elder statesman on the essential task that Kansas' and America's agriculture performs in maintaining the prosperity of our Nation, and in contributing to the improvement of our relations with all nations of the world.

I ask unanimous consent to have the statement of Governor Landon printed in the RECORD.

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

KANSAS RESOURCES

The resources of Kansas must first be considered relative to disorderly world conditions and the American economy. I am speaking tonight as a politician and practical economist seasoned by experience. If our professional economists knew more about politics and our politicians knew more about economy, we would all be better off.

I foresee great changes in our daily lives confronting us—in politics—in pleasures and in business. They are all linked together.

The threat of a confrontation between the biggest Communist nation in the world and the biggest capitalistic nation in the world has been put on the back burner at least by President Nixon's reversing our "containment of Communism by force" policy first forced on President Truman in Korea and wisely handled by him in his different international relations. Subsequently that was vastly expanded by Secretary of State John Foster Dulles and the Eisenhower, Kennedy, and Johnson administration.

President Nixon initiated a detente with China in his first sixty days in office. Then subsequently with Russia. For some twenty years, I had urged this policy.

There always has been some doubt as to whether the leopard could change its spots. And whether he wanted to if he could.

At the time of Chairman Khrushchev's visit to the United States and the so-called "Spirit of Camp David," I said I was willing to sleep in the same bedroom with Krushchev but was not willing to leave my wallet in my pants nanging over the back of a chair.

A world nervously watching the Middle East War got its answer two weeks ago in the first test of Chairman Brezhnev's intentions and whether he was able to handle the opposition to his international relations developing in the Soviet hierarchy.

Russian influence is strong today throughout all of Asia and Africa. It was easy for Chairman Brezhnev—after Russia had amply supplied the Arabs and Egypt with military logistic material—to have stepped aside.

Instead, Chairman Brezhnev cooperated with the United States of America to bring about a settlement of that war with a reasonable prospect that it is more than temporary. At the least, he has turned down temporarily the fires under the back burner. That can have far wider and deeper meaning in sowing better Russian and American relations than the Middle East settlement between Israel and Egypt.

It must be noted that the oil rich Arab states are buying tremendous amounts of military equipment and there is a sizeable arms race on to supply their orders.

Two other major political problems are of pressing concern—inflation and the fuel energy crisis—that threaten the economy of the world industrial nations. Both interrupt the need in the world for a steady money market and the current energy fuel supply demand. The unrealistic price of Arab oil, plus the embargo, are worldwide disruptive factors to an orderly world.

I think the settlement of the Middle East War—the opening of the Suez Canal—new discoveries of oil all over the world—and increase in American production—can and probably will ease the present unrealistic price and embargo by Arabs on crude oil. That means a worldwide stimulant to business and more jobs.

The current energy crisis in America could be blurred for the immediate present. The critical long range problem that an unlimited supply of crude oil as energy fuel is no longer dependable still remains.

As we proceed to solve that complicated problem—as we will—the present fuel energy crisis can be a blessing in disguise in the warning it gives of the future. It gives us a breathing spell, as it were, to meet the radical change in the fuel energy supply.

Resurgent, in-built inflation remains a great stumbling block. The world is covered with the wreckage of inflation.

There is only one time-tested answer—a balanced budget. President Nixon's attempt to establish that time-tested fiscal policy failed because the Congress refused to cooperate.

Despite six wars in sixty years—the threat of a nuclear war—three revolutions in three major countries and a number of smaller ones—and a hundred years of colonialism—the world is gradually recovering political and economic stability.

As this intensifies, the Kansas factor in today's world resources grows.

First, I mention the development of small industries all over our state by individual Kansans' resourcefulness—supplementing our big manufacturing plants such as aircraft.

There is a growing successful small industrial plant in our neighboring town of Wamego started because its founder had the wide reputation of being able to temper horseshoes and plows best.

There is another plant up at Seneca that ships its improved equipment all over the world because of the resourcefulness of its founders.

The Hesston Corporation is an example of the growth of a Kansas company. Because of suggestions by farm boys experienced in the field and through its successful management, it is improving and manufacturing new and better farm implements.

The president of the corporation was good enough to take me through its operations one day in 1972 when seven Russians had just left after investigating its new equipment. He showed me a new method they were just experimenting with for eliminating waste in feeding dry ensilage to cattle, at the suggestion of one of the farm boys working in the plant. I asked him if he showed that to the Russians. He laughed, "We are not ready to do that yet."

The first question I asked Mr. Yost tonight was how that new feeder had developed.

Farmers and cattlemen in the largest valley in the United States of America—from the Rio Grande to the frosty north line, and from the Alleghenies to the Continental Divide—have just finished the most profitable peace time year ever.

I foresee that 1974 will break that outstanding record.

Here are a few facts that support that assertion and in particular the place Kansas and its people and their products occupy today in the course of world events.

One hundred years ago, the greatest natural resource of Kansas was its rich earth lands. We come back to that same place today. During that hundred-year cycle we have exhausted our lead and zinc. Our coal—like our oil and gas—has reached its peak production. While they will continue to produce for many years and new discoveries will be made, they will never reach their peak again.

In contrast, our incipient land productivity is just reaching its peak—with 29 million acres of rich crop land and 20 million acres of range and pasture land.

Our weather has not changed. Our soil has not changed. Our people have not changed. Our technoolgy has—by the research and technology of Kansas State University in partnership with the practical experience of our good farmers and stockmen.

However, our markets have basically changed.

I can remember when wheat in Kansas around the turn of the century averaged only ten or eleven bushels to the acre in good crop years. Last year it was a record 37 bushels an acre yield. Research at Kansas State accounts for at least 30 per cent of that increase, or $300 million, by development of better seed and better farming methods. We have not seen the end of that, by any means. Hybrid seed wheat will soon reach the farmers to further increase the yield per acre.

I can remember the old steam threshers. Then came cutting the wheat with tractors. Then the present combines that can account for probably another ten per cent increase in the yield.

Some of the '50's were actually drier than the terrible and tragic black blizzard years of the 1930's. Conservation methods developed and taught at our great agricultural university—cultivating the surface rougher so that it would not blow away—crop rotation, a joint development by the farmers themselves and Kansas State—helped to keep more cover on wheat land so that the dry soil would not blow away.

That is a simple illustration of the place Kansas University occupies among land grant universities. Its faculty is willing to learn from the farmers' practical experience as well as teach. And they have a smart and energetic audience.

Kansas corn averaged 105 bushels in 1973 compared with 25 bushels an acre in 1928, a relatively good farm year. Again, research on corn is reasonably estimated for half the 1973 value of $340 million—or $170 million.

I can remember when kafir corn was first planted and grown in very small quantities for chicken feed. It was a small cob on a stock as tall as regular corn. That was about 1915 or so.

Out of that kafir corn, with so little value that no records were kept, came by research our state's grain sorghum—with a big head and short stock that, with the introduction of hybrids some twenty years ago—came to 477 million bushels in 1973, with an average of 59 bushels an acre in Kansas, at a total

value of $480 million that starts from zero as for the value of kafir corn.

Just a few years prior to 1940, soy beans were started in Kansas. The agricultural extension service taught the farmers how to grow them and world war two made them profitable. They went from 15 bushels an acre in Kansas in 1948 to 23 bushels in 1973, with a value of $47 million.

Alfalfa was first started in Kansas somewhere around 1905. With disease and insect-resistant varieties developed at Kansas State University, the record crop in 1973 was 3.8 million tons, worth most conservatively $135 million.

Kansas is thought of as a wheat state. The production of livestock for years has contributed more to the state. That amounted in 1973 to $1.36 billion.

Kansans now harvest millions of tons of high moisture grain to be fed to livestock—a practice first investigated 20 years ago at the Fort Hays branch station. Both high moisture sorghum and corn give eight to ten per cent gain in feed efficiency. That saving is estimated at $2 million annually in Kansas.

K.S.U. veterinary doctors and Garden City branch scientists developed health practices for replacement feeder calves that cut death losses 66%—an estimated annual saving of 2.8 million dollars in our state.

K.S.U.'s discovery that sows do better on less feed saves 1,000 pounds of feed annually per sow, or 5 million dollars a year in Kansas.

There is no way of accurately estimating the tremendous value of veterinary research leading to control of livestock diseases.

When you add meat packing in Kansas to meat production, it may surprise some of us Kansans that livestock becomes our state's major source of wealth, despite the prodigious contributions from wheat and grain—all for human consumption in a hungry world.

In a state that is not supposed to have any trees, Kansas has a burgeoning forest industry increasing at the rate of a million dollars a year.

All this was accomplished by Kansas State agronomists and agriculturalists working it out together with Kansas farmers and ranchers. That's the kind of solid, substantial and efficient people we have in Kansas.

A year ago—speaking in Salina—I supported President Nixon's farm policies of removing a national subsidy and throwing open 26 million acres that had been held out of production by the national government's farm aid programs and policies—approximately 8 million acres in Kansas. There was fear then—and some now—of over-production by farmers that would again create the old cycle of surplus and disastrously low prices.

I supported the President's new farm policies because there is a basic change in the farm produce market.

For a hundred years or more, we have followed a high protective tariff to protect our infant industries for more jobs that would require better living and food.

That has all changed. Kansas farm products are a definite factor in today's world of rising population and living standards. The poorest nation in Africa may have increased only an average of 25 or 50 dollars a year per person, but their first requirement is more and better food with more proteins.

It looks as if Russia will have a bigger wheat crop this year by increased acreage and better weather. It also has increased demands from one-sixth of the world's population facing famine where it has responsibilities from its strengthening influence.

Our wheat and other grains storage carryover is so low that we may well have a short interim before the 1974 crops are harvested when we may have difficulty in meeting our commitments on wheat and other food crops we have already sold. However, there is no basis for the talk of any shortage of wheat at any time for the American consumer.

According to President James A. McCain of Kansas State University, "1973 was the first billion dollar wheat crop in Kansas history and 1974 will be the first two billion dollar wheat crop in Kansas history."

Likewise, in this huge valley in which we live—unmatched anywhere in the world—1974 is going to be another record-breaking year in farm products cash income. That insures prosperous conditions for every line of activity.

How are you going to have a sweeping economic depression when that great area is going to be so prosperous? Of course farmers face problems. Who does not—and when has that not been so?

Our national economy is tied close today to this record volume of farm and ranch products. Our industrial productivity may slow down somewhat but not our agricultural productivity. What's good for the farmer is good for General Motors—and all Americans generally.

The amazing rise in America's farm exports is due to the mounting world demands that promise to continue to hold true as long as we have a peaceful world. That is going to have a political effect not only here but elsewhere in the world.

President McCain has facetiously said on several occasions that the Kansas wheat farmer can be credited with having overthrown the Russian government of Nikita Krushchev. This assumes that his finding it necessary to buy wheat from the United States was the development that finished him off.

By the same token, Leonid Brezhnev played it differently when Russia had to buy wheat from the United States. He has joined with President Nixon in a detente that so far is amazingly successful. His cooperation with our president in the Middle East gives hope of establishing better relations between all the governments in that area and supports the viability of the Nixon-Brezhnev detente.

I quote from the New York Times News Service from Paris of January 20 in the Kansas City Star:

"The world abroad is not biting its nails over U.S. morality, but over if and whether its foreign policy works. So far it does."

The whole world—relieved of the fear of a third world war—a nuclear war, at that—will be a better place to live and work in, with peace and good will escalating instead of war and the threat of war.

ENERGY AND THE CONSUMER

Mr. STEVENSON. Mr. President, last Friday, January 25, I had the opportunity to address the eighth annual consumer assembly of the Consumer Federation of America. I discussed the energy crisis and, in particular, its disastrous impact on the American consumer.

The President's response to the plight of the consumer comes down to more of the same, higher prices for the consumer and more profits for the major oil companies. I believe, therefore, that it is incumbent on the Congress to protect the consumer and the economy from the ravages of the oil cartel. With the distinguished Senator from Washington (Mr. MAGNUSON) and other Members, I will soon introduce "The Consumer Energy Act of 1974." My address before the Consumer Federation of America covers the purposes and thrust of this legislation. As I stated, the energy crisis is not a crisis of nature. There is abundant petroleum in the Earth and under the sea. It is a crisis of our economic and political machinery. The crisis began with failures and misuses of the machinery. It is up to us to find solutions by changing and improving that machinery.

Mr. President, I ask unanimous consent that a copy of my address before the Consumer Federation of America be printed in the RECORD.

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

REMARKS BY SENATOR ADLAI E. STEVENSON

I'm glad to be here—to pay tribute to an organization that foresaw, more than a year ago, the impact of the energy crisis on the American consumer.

Last January you established an energy task force under the forceful and imaginative leadership of Lee White. Since then you—and he—have distinguished yourselves as energy watchdogs and tough-minded thinkers for the American consumer.

I feel some pride that, like you, some members of Congress have been thinking, talking and working on energy problems—while indifference was the keynote elsewhere in Washington.

Senator Jackson's hearings this week are one example of that Congressional concern. And as we look toward legislation that expresses the consumer's interest, I should mention the Chairman of the Senate Commerce Committee—the great friend of the American consumer, Senator Warren Magnuson. Senator Magnuson, who has made the Commerce Committee the spearpoint for major consumer legislation, last year established a special project on energy legislation. He assigned to me the job of steering its efforts. Out of that effort—four months and twelve hearings—comes the consumer energy action program that I will sketch for you this morning.

The slogan Senator Magnuson has made famous in his campaigns provides an effective motto for us as we face the energy crisis: Let's keep the big boys honest.

We should not be surprised that the major oil companies are more concerned about their self-interest than the public interest; their motive and purpose is profit. But I am shocked by their unwillingness to level with the public.

Despite the concealment or plain nonexistence of information, a pattern is emerging:

Energy stocks are not as low as the public had been led to believe.

But prices are higher—far higher—than we were led to expect.

The cartel of oil producing nations and international corporations raises the price of foreign crude oil; the corporations then force up the price of domestic oil. Having shifted about $25 billion in 1973 from United States consumers to the producers of oil, they now seek to do the same with natural gas, the nation's principal source of energy.

The American people are, to put it bluntly, being ripped off.

The White House—which should be the guardian of the public interest and the consumer interest—leaves the American people to the whim of the giant oil companies. In fact, it proposes still more of the same—more tax breaks (an investment credit); more public lands to plunder; and, with de-regulation of natural gas, more inflation. This Administration is threatening, Samson-like, to bring down the American economic temple upon our heads.

On Wednesday the President sent his legislative package on energy to the Congress.

Once again, the President has asked al-

most nothing from the giant oil companies—and almost everything from the American consumer.

He trumpets the cause of "tax reform"—including elimination of the foreign depletion allowance. But the major oil companies enjoy such large foreign tax credits that to eliminate the depletion allowance on foreign production is virtually meaningless.

The President proposes a so-called "excess profits tax" which is nothing more than an excise tax to be levied on the price of crude oil and passed on to the consumer.

When all is said and done, the President's message comes down to this: higher prices for the American consumer.

For every penny of increase in the price of a gallon of gasoline, one billion extra dollars flow into the coffers of the oil industry. The price of gasoline rose 12 to 15 cents per gallon in the past year; the industry proposes to raise it 10 to 15 cents in 1974. The price of other petroleum products is increasing even more sharply.

At this rate revenues reaped by the major oil companies would increase on an annual basis by far more than their $25 billion increase for 1973.

Why does the Administration tolerate such steeply rising energy prices?

One claim is that domestic oil prices must go up because world oil prices have gone up.

We are told that the price of Middle Eastern oil has tripled in the last three months to nearly twelve dollars a barrel—and that is true.

But that fact alone does not justify ever-increasing domestic prices. The foreign prices are set artificially; they bear no relation to production costs abroad—or in the United States. Actually, the price increases imposed by foreign governments result in higher revenues and profits for the major oil companies which produce in those countries. And the Internal Revenue Code then permits them to receive a credit against United States taxes for the taxes and royalties they pay the government of the foreign producing nations. That credit works so well for them that few of them have any significant tax liability in the United States. The price increases they are passing through to the consumer are far in excess of their actual costs. And the American taxpayer winds up subsidizing the governments of Libya, Saudi Arabia and the other nations of the oil producers' cartel.

Another claim is that prices must go up because the oil companies need more money to spend on exploration.

Let us ask, however: How much is enough?

Certainly we should be spending more on exploration—by the best available estimates, about $2 billion more each year than the $5 billion annual average over the past five years.

But the current squeezing of the consumer has already funneled additional revenues at a $25 billion annual rate into the treasuries of these companies.

There is no way such huge amounts can be spent on new exploration and development. Perhaps this explains why Gulf announced this week that it will invest some of its profits in an important new source of energy—the Ringling Brothers Barnum and Bailey Circus.

In fact, about $13 billion of the oil giants' $25 billion in additional annual revenues will be windfall dollars for the oil giants.

To offer the people no better hope than high prices and more high prices—while the major oil companies grow fat—offends our sense of justice. It cannot be justified as the price for free enterprise because there is little free enterprise in this largest and most basic industry.

Most seriously, a policy of consumer-gouging is a prescription for economic disaster.

The year 1973 saw the consumer price index advance nearly nine percent—the worst inflation since the end of World War II.

For 1974, the median prediction of twenty different economic forecasting groups, including the Council of Economic Advisors, is for inflation of 5.9 percent. Estimates of unemployment range from six to nine percent.

And these gloomy forecasts, for the most part, do not allow for recent massive petroleum price increases—or those that will come if the Administration has its way.

The outlook is bleak indeed. For energy is not some isolated commodity like coffee or chocolate. It is as basic to our economic life as air and water are to our physical life. Its influence on our economy—on supplies, on prices, on our whole standard of living—is pervasive.

The price of steel, for example, includes a 17 percent energy component—and the price of fuels to the steel industry has nearly doubled.

The Agriculture Department tells us that fertilizer makers, farmers, food processors, transporters and others account for 30 percent of annual fuel consumption in the United States. If energy prices rise fast—food prices will rise by at least the amount needed to pay the extra cost.

Rising energy prices hit our economy at every stage of the manufacturing and marketing process. And so they have a reverberating impact—a multiplier effect—that could buffet our national economy unmercifully.

My purpose in saying all this is not to play the dismal role of Cassandra; I have always been an optimist about America—and I am trying, notwithstanding Mr. Nixon, to remain one!

My purpose, rather, is to underscore the danger of imposing ever-higher prices as a device to regulate supplies.

Above all, my purpose is to suggest an immediate alternative to that disastrous policy: a consumer energy action program that is comprehensive, practical, fair to both the public and the oil industry—and urgently needed now.

The Administration has shown its unwillingness or inability to represent the consumer interest.

That leaves us—the Congress and the people.

Next week, Senator Magnuson and I will introduce the Consumer Energy Act of 1974.

It will distribute more fairly the burdens of the energy crisis; infuse new vitality and competition into the oil industry; develop, for the future, increasing energy supplies at reasonable prices.

It offers a plan for action in the Congress and a focus for consumer action across the country.

First, we propose an immediate rollback of petroleum prices.

On December 19, the Cost of Living Council permitted the price of old flowing oil to rise from $4.25 to $5.25 per barrel—a three-billion-dollar-per-year Christmas present to the oil industry. Even before that, the Administration had removed all price controls on so-called new oil—allowing an increase in new oil prices from $3.40 to more than $10 per barrel in less than a year. Neither the Administration nor the petroleum industry have produced any cost figures to justify these increases. Surely the December wholesale price increase—reflecting an annual rate of 26 percent—is proof enough what flagrant price increases for oil and gas will do to the consumer.

The massive transfer of dollars from consumers to oil companies has already gone too far—far beyond the oil companies' ability to invest these funds in expanded exploration. We propose, therefore, a rollback for all domestically produced crude oil prices to December 1 price levels. All price increases in petroleum products would also be rolled back except for actual non-petroleum cost increases, such as gasoline station overhead, that have occurred since then. Such a rollback would cancel approximately one-fourth of the petroleum price increases of the last year. It would be taken from the major oil companies' windfall profits—and it would slow down the runaway inflation brought on by skyrocketing energy prices.

The Administration already has the authority to impose such temporary controls immediately. If it does not act, it is essential that Congress act.

Second, we propose a Federal Oil and Gas Corporation—a TVA for energy—a supplier that could hold down prices and increase competition.

The multinational corporations of the oil industry have told us, in effect, that they are willing to abandon the American consumer; they would rather take their business abroad, where their profits are greater, than try to supply our national energy needs at reasonable prices. They have done so. Even with oil import quotas and all their tax incentives, they developed production and built refineries abroad at the expense of both here.

It is time to create a national enterprise whose first concern is not runaway profits, but the national interest. The Federal Oil and Gas Corporation—first conceived by the Consumer Federation of America and proposed in legislation which I introduced last November—would develop oil and gas resources on publicly owned lands. Those lands contain 50 to 75 percent of all the nation's future oil and gas resources. The people own these resources.

This corporation would stimulate competition in the oil industry. It would offer the public a reliable yardstick on production costs. It would give us a way of checking, through actual experience, the efficiency and pricing performance of the private oil companies. In Senator Magnuson's phrase, it would help "keep the big boys honest."

Most importantly, it would provide additional fuel supplies at reasonable prices to independent refiners and independent marketers who, once again, could compete vigorously with the major oil companies. It would enable us to make a long overdue inventory of the nation's vast publicly-owned oil and gas resources—before they are all exploited by the major oil companies.

Third, we propose regulatory reforms which will revive competition in the energy marketplace—and, while reviving competition, will protect the consumer from price-gouging.

This means giving incentives to the smaller, independent sector of the oil and gas industry—incentives large enough to make them effective competitors of the major oil companies. We propose to create competition by helping the smaller operators enlarge their share of the market, from their current negligible share to one-third of the market.

Consider natural gas. Only one and one-half percent of the nation's 4,700 producers account for 85 percent of the nation's natural gas supply. We propose to remove FPC wellhead price controls from the small producers who compete and deserve a price incentive because they conduct most of the nation's exploratory drilling.

Meanwhile, we propose to retain regulation of the major oil company producers and to streamline the Federal Power Commission's regulatory procedures.

We also believe that wellhead price controls are needed to protect the consumer from these same giants in the oil sector of the industry. The FYC is therefore given authority, in our proposals, to establish wellhead oil prices which will assure the major oil companies their costs and a reasonable return. These controls would give the small exempt companies a chance to compete—and an incentive to explore. The controls would be confined to those large corporations which have used their own economic power to drive competition from every link in the industry chain—from producing to marketing.

To avoid diversions of oil and gas from the interstate to the intrastate markets, the controls would apply in both—but only to the largest oil companies.

When established, these price controls would replace the rollback I mentioned earlier. This approach guarantees the major corporations a reasonable rate of return; it protects the consumer against price extortion—and endeavors to create a free enterprise system in the oil and gas industry.

Any increase exports of U.S. oil and gas to higher priced world markets could be subjected to export controls. Such controls are already in effect.

Fourth, we propose legislation guaranteeing fair access to petroleum pipelines by all members of the petroleum industry.

At present, petroleum pipelines are the private preserve of the major oil companies. They are, for the most part, owned by a few of the largest majors. Yet they are the lifeline upon which independent producers, refiners and marketers depend.

The independent oil company is at the mercy of the majors for storage facilities near major pipelines—and for access to their pipelines.

All too often, the independents have been excluded from the pipeline network; the major oil companies' control over oil pipelines has permitted them to divide markets and to raise prices—in short, to engage in anticompetitive practices.

We propose, for the short run, FPC rules that make the oil pipelines common carriers in fact as well as in name. Over the long run, we propose that the pipelines be divested from the giant companies in an orderly fashion—and transferred to independent ownership. Only thus can all shippers obtain fair access to the pipeline network.

This is an essential step toward restoring true competition. As it is now, the major integrated oil companies transfer oil and gas to pipelines they control; next they move the product to their refineries—and then to their own company marketers, who in turn sell to a helpless consumer. There is no real competition in this chain of transactions. Pipeline divestiture would establish competition in an essential link of the chain.

Fifth, we propose that Federal lands be leased to oil companies under a new system of royalty bidding.

In the past, valuable Federal oil, and now oil shale, leases have been won by a system called "bonus bidding." This system requires an enormous capital outlay by the bidder—so large that even most major oil companies band together in joint ventures. This old bidding system raises a price barrier that only the major oil companies have been able to cross successfully.

Under the royalty system bidders would offer to the Government a share of the oil recovered—or a combination of cash and oil. The royalty to the Government would be paid—in part at least—out of future production.

By moving toward such a system of royalty bidding, we can open up the rich Federal domain to the independent oil man and over time increase the income of the Federal Government too.

Sixth, we propose, on behalf of the small gasoline dealer who must deal with the major oil companies, a major reform of the franchise system.

The nation's independent gasoline dealers have invested their time and money in efficient gasoline stations which sell oil products at a discount and give the major oil companies competition. Today, because major oil companies have cut off or curtailed their supplies of gasoline and other petroleum products, the independent dealers are an endangered species. About 3,000 independent dealers were forced to close their doors last year.

In times of scarcity, the major distributors should be required by law to allocate their products fairly to the smaller independent dealers. And the small gasoline dealer should be protected by an explicit law forbidding arbitrary termination of his lease or franchise.

Seventh, we propose reform of the current energy-wasting rate structure for natural gas and other forms of energy.

In the past, when we imagined our supplies of energy to be limitless, the Federal Power Commission and other agencies adopted rate structures that encouraged waste. As consumption went up, utilities charged less for each unit of energy used.

We are paying a high price for that policy today. Residential consumers are paying far more for each unit of fuel they use than the larger industrial customers. Despite growing shortages and an urgent need for conservation, the incentive for natural gas users is to use more.

The time has come to reverse priorities. We proposed graduated rate increases for increased consumption to encourage conservation rather than waste. This rate structure should also feature lower rates for residential consumers than for industrial consumers. The industrial consumers are far better equipped to convert to alternative sources of energy than the individual householder with a gas stove or water heater.

Eighth—and finally—we propose a full and honest accounting from the nation's petroleum companies.

If we are to restore the nation's faith in a workably competitive energy industry and make policy wisely, then we must have all the facts—facts about supplies and reserves; facts about the major oil companies' tax returns; facts about exports and imports. All these facts should be gathered in a timely fashion and made public. Our bill will call for complete public disclosure; it gives the Federal Trade Commission ample investigative duty and authority to obtain all such information and make it public.

The energy crisis is not a crisis of nature; there is abundant petroleum in the earth and under the sea. It is a crisis of our economic and political machinery. The crisis began with failures and misuses of that machinery—and we can find solutions only by changing and improving that machinery.

The legislation I have outlined is a start toward making those necessary changes.

If we fail, the entire cost of the energy crisis will fall upon the Ameircan people; and that cost could be written in lurid letters of economic collapse.

The energy crisis, and the public frustration and outrage it has produced, are a kind of handwriting on the wall. The message is this: If this country continues to suffer at the hands of one large, concentrated, interconnected and unaccountable industry, public patience will run out—and the industry will some day be totally regulated, broken up, even nationalized. I do not want to see the free enterprise system abandoned. I want to see it work. I believe the American people feel the same way.

So my fellow consumers, let us in the Congress and in the Consumer Federation of America take up the cause of the American people—the cause of two hundred million beleaguered consumers. The Administration by its indifference, and the oil industry by its greed, have proven that unless we advance their cause, no one else will.

WATERGATE NO ISSUE IN UPCOMING ELECTION

Mr. HUGH SCOTT. Mr. President, a recent article by the Associated Press which was printed in the Christian Science Monitor places proper light on the upcoming congressional contest in Pennsylvania's 12th District, left vacant by the untimely death of Congressman John Saylor.

Many are watching this heavily conservative district for anticipated backlash from Watergate. I fear they will find, as AP so aptly points out, that the people of this western Pennsylvania area are more concerned with the issues that come closer to home. Foreign and fiscal policy appear much more important, as I am sure the polls will reflect.

Because of the major importance of keeping this election in perspective and of the insights by AP 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:

[From the Christian Science Monitor, Jan. 25, 1974]

WATERGATE NO ISSUE IN UPCOMING ELECTION

JOHNSTOWN, PA.—The first federal election since the Watergate scandal escalated into an overwhelming public concern soon will be held, but the candidates involved are downplaying the issue.

On Feb. 5, voters in Pennsylvania's 12th Congressional District will elect a successor to the late Rep. John P. Saylor, a 13-term Republican congressman. The race pits Democrat John P. Murtha Jr., a state legislator, against Republican Harry M. Fox, Representative Saylor's former executive assistant, in this Appalachian region of steel mills, coal mines, and truck farms.

While many observers see the election as a test of Nixon administration standing, aides for both candidates emphasize that the election is a local race with the stress on local solutions to problems of unemployment, inflation, and the energy crisis.

WATERGATE NO ISSUE

Indeed, neither Mr. Murtha nor Mr. Fox mentions the word Watergate unless asked by voters, and in this conservative district, where Democrats hold a 7,000 registration edge among 223,000 voters there are few questions.

Mr. Murtha has plastered the hillsides with billboards that proclaim: "One honest man can make a difference." And in his door-to-door campaigning, he passes out brochures that declare: "At no time in our national history has there been such a crisis of confidence."

But seeing little value in Watergate as an issue and fearing possible backlash, the Murtha staff declared early not to push it too hard.

Mr. Fox, who worked for Representative Saylor for 24 years, has proposed a $42,500 voluntary limit on campaign spending. He emphasizes the "open" procedure used by district delegates to select him as their candidate while Mr. Murtha, according to party rules, was selected by the executive committee of the state Democratic party.

EXPERIENCE STRESSED

Mr. Murtha, a Johnstown businessman and Vietnam veteran, campaigns most frequently about effecting a compromise with environmentalists to permit increased soft coal mining, an industry that employees some 17,000 workers in the district. He also talks often about finding young people in the area where the population declined 4.3 percent during the 1960's while increasing statewide 4.2 percent

Mr. Fox, from rural Armstrong County, stresses his experience with his World War II shipmate, Representative Saylor.

Both candidates are staunch opponents of gun control and proponents of defense spending. Mr. Fox adds his opposition to detente with Russia and China and says negotiations with Communist countries should only be carried out through the United Nations.

Though Democrats have the registration edge, Republicans have carried the district often enough to consider it a swing district. Mr. Saylor's margin over his Democratic opponent in 1972 was more than 2 to 1.

So far the campaigns have not stirred much enthusiasm. A suburban bank manager noted that many of the people he has talked with complain about the expense of holding an election for an 11-month term.

HEALTHY AND VITAL RURAL COMMUNITIES

Mr. ABOUREZK. Mr. President, the administration has adopted very strange methods to meet its proclaimed goal of healthy and vital rural communities.

A few months before last year's state of the Union message the President froze all the Federal subsidy programs for housing and community development.

To this day he refuses to use all but one of the grant provisions of the Rural Development Act.

Desperately needed water and sewer systems will be denied to thousands of rural communities which cannot afford the remaining 5-percent loan program.

No compilation of the violence done to rural programs could pretend to be complete, so today I will just add another item to the general list.

In his September special housing message to the Congress, the President said:

> The problems of providing good housing in our rural areas are especially challenging, not only because the proportion of substandard housing is greater in rural areas but also because these areas often lack the resources to foster greater economic development and better housing.

That is the rhetoric.

The performance is something else.

During the latter years of its troubled life, the Office of Economic Opportunity also recognized the special problems of rural America and provided resources to Community Action programs in most rural areas to fill the vacuum at least partially.

Despite limited resources and a surplus of difficult problems, these agencies by and large did a yeoman's job in providing services to the poor and elderly. In many rural communities they are the only resource for housing assistance, with emphasis on the word "only."

In characteristic fashion, once the problem had barely been identified, the administration moved to eliminate one of the few resources available to its solution.

The OEO programs were sent hither and yon to various departments. Migrant programs were sent to Labor, Indian programs to HEW, and some of OEO's housing programs found their way to HUD, primarily those of a research nature.

Since the OEO programs were created, at least in part, to pester and otherwise stimulate old-line agencies whose concern for poverty had put us into a condition where it was necessary to declare a war on poverty in the first place, one might wonder for their fate in such new hands.

My staff inquired of HUD as to the fate of what had been what you might roughly call the OEO rural housing research program, never more than a meager affair in its heyday but at least better than nothing.

What was learned was disconcerting. No figures were available as to how much of that program's money fell through the cracks in the floor at OMB in the process of the transfer.

Nor were we able to learn much about how much of that money would be spent on the special programs of rural America as opposed to the ongoing battle in the cities.

Our cumulative impression was that some of the old things that had been started under OEO might be continued. It also seemed clear that little thinking, if any, might be given to original and innovative ideas for rural America.

It also began to look like some of those rural housing research funds were going to be siphoned off into that grand social research scheme which travels under the "housing allowance" label.

Nearly everyone who knows the rural housing program will tell you the simple truth about housing allowances and rural America: there is not enough decent housing stock to make the idea worth wasting a taxpayer nickel.

HUD apparently does not know that, of course, but that is not alarming considering the agency's dismal nonperformance in rural areas. HUD is for the cities.

My interpretations of what we were told about all these things may be lacking somewhat. The usual practice is to insert the correspondent and let it speak for itself. I cannot do that this time, because HUD refused to put their answers in writing.

It appears that those who warned us early on were quite right: the dismembering of OEO, at least in the case of rural housing, amounted to the destruction of its usefulness.

All I can say, Mr. President, is "So it goes."

INTERSTATE HIGHWAY SYSTEM A SUCCESS

Mr. HUGH SCOTT. Mr. President, in a January 18 article in the Philadelphia Inquirer, George F. Will wrote what he called "a defense" of the Interstate Highway System. Chiding critics of the system, Mr. Will said this great highway program, initiated by President Eisenhower, "saves lives and money."

Mr. Will wrote:

> The fact that it is a success distinguishes the system from most of the expensive domestic programs of the New Deal, Fair Deal, New Frontier and Great Society. And it is the kind of success some people find insufferable, a success launched by Republicans, during the Eisenhower Administration.

Mr. President, I agree with Mr. Will that the Interstate Highway System is a great success and I am proud that it began in Pennsylvania when our late colleague, Senator Edward Martin of Pennsylvania, first gave thought to the idea. And it was a much deserved tribute to the late President when the Congress designated portions of this great highway system as the "Dwight D. Eisenhower Highway."

I ask unanimous consent that Mr. Will's article be printed in the RECORD.

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

INTERSTATE HIGHWAYS: A DEFENSE

(By George F. Will)

WASHINGTON.—Because symbols have a strong hold on weak minds, some of today's ideologues deride the interstate highway system as a national disaster. The interstate system is a symbol of the American "system" that allegedly is subservient to the internal combustion engine, which has become a threat to men and chipmunks.

The ideologues say the interstate system is a boondoggle foisted on an unsuspecting nation by the sinister "highway lobby" that seduced Americans into reliance on automobiles. As a result, the ideologues say, energy is scarce, air is dirty, cities are congested, and we are on the verge of "paving the nation," thereby depriving cute chipmunks of their green leafy glens.

But the interstate system is a fact, not symbol, and consider the facts about it.

When the $76 billion, 42,500 mile system is completed around 1978 it will involve only 1 percent of the nation's road and street mileage but will carry 25 percent of the traffic, connecting 90 percent of all cities over 50,000.

Traffic will be approximately twice as safe on the system. Recent statistics show that 2.99 persons are killed for each 100 million vehicle miles of travel on the interstate system, compared with 5.62 on all other roads. The completed system will save 8,300 lives each year, one life for every five miles.

Aside from reducing the annual $13 billion cost to the nation of two million personal injuries from accidents, the system will produce huge savings through improved productivity of the men and machines of the transportation industry.

Because there are few step grades and no traffic lights on the system, some truck companies have cut in half the number of engine overhauls. What used to be a two-day trip is made in a day. Given the importance of long-distance trucking to the economy, these productivity gains are significant anti-inflation factors.

Through improved safety and productivity the system should save more than $100 billion—more than the cost of the entire system—each year.

Only 17 percent of the system will be urban, but the urban portion will carry more than 40 percent of the traffic. This statistic causes critics to unfairly blame the system for America's congested downtowns.

Congestion antedates the system. It derives from our love affair with the automobile. But it makes no more sense to blame good highways for that love affair than it does to blame obesity on the existence of knives and forks. The appetite preceded and called into existence the means of enjoying it.

Anyway, the principal effect of the system has been to keep interurban traffic off downtown streets. In the early 1950s when my family drove from central Illinois to grandma's house in Western Pennsylvania we took old U.S. Route 40, and it took us into downtown Springfield and Columbus, O., Wheeling, W. Va., and Washington, Pa. Today Interstate 70 bypasses those downtowns.

The entire pavement area of the completed system will be the equivalent of a parking lot 20.5 miles square. That is big: It would hold half America's motor vehicles. But it involves only 420 square miles, leaving a lot of American real estate for the chipmunks and other fauna.

So the interstate system saves lives and money. It makes life more pleasant in downtown Zanesville, O. And it is not going to cause a ton of concrete to be poured on the last American chipmunk. Why, in spite of its success, is the system so criticized?

I think much of the criticism reflects nothing more serious or high-minded than resentment about the fact that the system is such an obvious success.

The fact that it is a success distinguishes the system from most of the expensive domestic programs of the New Deal, Fair Deal, New Frontier, and Great Society. And it is the kind of success some people find insufferable, a success launched by Republicans during the Eisenhower Administration.

American intellectuals spent the 1950s condescending to the man who administered the defeat of the Axis. They said Mr. Eisenhower couldn't "get things done."

Of course what he did was launch the largest public works program in history, the interstate system, which he rightly considered his most significant domestic achievement.

But, oh, how sharper than a serpent's fang it is to drive over the hills and through the woods to grandmother's house, knowing that President Eisenhower gets credit for the remarkable safety, economy and convenience of the trip.

ISOLATIONISM SHOWS LACK OF WISDOM AND FORESIGHT

Mr. McGEE. Mr. President, there is a growing belief in the Congress that, somehow, this country can go it alone in a world that stands on the brink of economic chaos and collapse.

This mood was never more evident than when the House of Representatives killed the administration bill to fund the International Development Association—IDA. IDA is the World Bank's soft loan window and is vital to the developing nations of the globe.

What is particularly disturbing about this growing isolationism within the United States, as evidenced by the Congress these days, is that it belies a disturbing ignorance on our part as to the international interrelationships that tie us to events around the globe, so much so that our own survival is at stake.

Here stands the United States—the least-affected Nation in the world by the energy crisis. Here stands the United States—the richest Nation in the world. It is a sorry sight, indeed, that our riches and good fortune are not matched by wisdom and foresight.

In yesterday's edition of the Washington Post, there appeared a column by Marquis Childs addressed to the problem upon which I have briefly commented. It would be well worth the time of all in the Senate to give serious consideration to the points made by Mr. Childs in his column.

Mr. Childs makes a very poignant observation which I hope is not lost on members of this body when he points out:

The underlying belief is that the United States, best able of all nations to ride out the oil crisis, can wall itself off from the poverty, disease, breakdown of the poor nations. This is a perilous illusion as recent history illustrates. In 1930 Herbert Hoover—a President who, for quite different reasons than those of today, suffered a breakdown of authority—signed a tariff bill putting up a wall against goods from the rest of the world. That was a principal reason for the worldwide depression.

In light of the implications of the House vote on IDA, I will do all I can to see that the Senate approves funding for IDA. If the Senate does not reverse the House action, then Congress has not served the interests of this Nation in a responsible manner. It is inconceivable that such foolishness should still permeate our decisions.

I ask unanimous consent that Mr. Childs' column 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, Jan. 30, 1974]

A GROWING MOOD OF ISOLATIONISM ON THE HILL

(By Marquis Childs)

Absorbed in our own troubles, we are slamming the door on the rest of the world or on that part of the world least able to survive the oil crisis. By a vote of 248 to 155 the House of Representatives killed the administration bill to fund the International Development Association (IDA), the World Bank's soft loan subsidiary.

IDA has been the recourse for sub-Saharan countries suffering a terrible drouth. Up to 55 per cent of supportive loans for India, Pakistan and Bangladesh come from the bank's soft loan window. Without this support and with a boost in oil prices of up to 100 per cent, the outlook is not just for bankruptcy but for starvation and the breakdown of the social structure.

Immediate concern is over how the Senate can undo the action of the House. If it is not reversed and the United States finally defaults on the contribution of $500 million, 33 per cent of the total, then the consortium of the industrialized nations put together in 18 months of effort by the World Bank collapses. It means IDA will be out of business on July 1.

Treasury officials who rushed up to Capitol Hill to try to get quick action on the reversal, urging that it come before the conference of oil consumers in Washington on Feb. 11, came up against a stone wall. They discovered that the mood on the Senate side matched that of the House.

Key members of the Senate foreign relations committee that must first pass on World Bank funds have long been skeptical of the administration's approach to foreign aid. Chairman J. William Fulbright has opposed the bilateral aid programs ranging from $2.5 to $3 billion a year, if only because such a large proportion goes for military assistance. While there was never any doubt of its quick passage, some senators feel that the $2.2 billion for Israel at the time of the Mideast war used up both good will and available surplus.

But as reflected in the Senate, the lopsided House vote signifies a sour attitude that can be described, for lack of a better word, as isolationist. In the House, 130 Republicans voted against the President and only 47 supported him. On the Democratic side, 108 voted for IDA, 118 against.

The underlying belief is that the United States, best able of all nations to ride out the oil crisis, can wall itself off from the poverty, disease, breakdown of the poor nations. This is a perilous illusion as recent history illustrates. In 1930 Herbert Hoover—a President who, for quite different reasons than those of today, suffered a breakdown of authority—signed a tariff bill putting up a wall against goods from the rest of the world. That was a principal reason for the worldwide depression.

A worldwide depression is today no idle threat, given the linkage between the rich and the poor through the medium of oil and the skyrocketing prices levied by the oil shieks. India, for example, is dependent on chemical fertilizers for food production, much of it coming from Japan. Yet with Japan's bill for imported oil, the raw material of fertilizer, doubling last year and likely to double again in 1974, exports to developing countries are being drastically cut.

This means a pinch not only in developing industries in smaller Asian nations, industries dependent on Japanese imports for plastics, textiles and electronics, industries just getting a start in South Korea, Taiwan and Singapore. Far away places with strange sounding names as we once thought, we cannot quarantine away collapse in, say, India or Pakistan with the resulting famine, rioting, breakdown.

To reverse the House vote will take long and painstaking effort. Certainly it cannot come overnight. Whether this administration can bring it about is an open question, given the evident paralysis of will. Much of the effort will have to come from Secretary of State Henry Kissinger, and Secretary of Treasury George Shultz, both of whom have many pressing demands.

Americans are feeling the discomforts of the oil crisis—which may become hardships as it worsens. We have lived at a profligate level: 6 per cent of the world's population using more than 35 per cent of its resources. But with internal reserves far beyond those of any other nations, this is little compared with the suffering of masses of people in large areas of the earth.

THE VA HOSPITAL AT TAMPA

Mr. GURNEY. Mr. President, too often these days, truly fine work goes unnoticed. I believe this is especially true in many of our Government facilities where

good service is expected by those who receive it.

In Florida, we are lucky to have a new Veterans' Administration hospital which delivers high-quality care as a matter of course. Mr. Glenn T. Stitt, a retired Air Force lieutenant colonel, received more than average care and took the time to bring that care to the attention of the Administrator of the Veterans' Administration and myself. Believing that good news should be shared with my colleagues, I ask unanimous consent that Lieutenant Colonel Stitt's letter be printed in the RECORD.

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

MELBOURNE, FLA.,
January 16, 1974.

OFFICE OF THE ADMINISTRATOR OF VETERANS' AFFAIRS,
Washington, D.C.

DEAR SIR: During the recent holiday season it was my misfortune to have to undergo cysto surgery in the Tampa Veterans Administration Hospital. Since I am inordinately pleased with the treatment accorded me by the Admission Section and all other hospital sections involved in preparing me for surgery, I would indeed be remiss not to acknowledge the fact.

Unfortunately, I failed to record the names of all of the doctors, nurses, and other personnel in surgery, the recovery room, and on Ward 5W who accorded me the most professional and courteous treatment that it has been my lot to receive of late.

I would specifically mention Dr. Jones in Urology and other doctors in surgery and commend them to you as outstanding men and doctors in their field; the Veterans Administration should be thankful to have these doctors.

For the nurses and other personnel on Ward 5W, words are inadequate to truly express my thanks for their excellent care and solicitude. It may indeed be well worth while for some Veterans Administration hospital representatives in Florida to visit this ward and pattern their actions accordingly.

Frankly, I would rate the Tampa Veterans Administration Hospital as Number One at least in this state, and am well pleased that in my condition it was available to me. Upon reflection and being somewhat familiar with military hospitals, perhaps better medical attention could be afforded in these facilities if under Veterans Administration control.

I would appreciate your office informing the Tampa Veterans Administration Hospital of the esteem in which I hold them.

Respectfully yours,

GLENN T. STITT,
Lieutenant Colonel (Retired).

OIL: BREAKING THE TIES THAT BIND

Mr. BIDEN. Mr. President, many voices, reflecting the strain of eternal optimism which abides in the national consciousness, have recently been raised to welcome the challenge of the snowballing fuel shortage as a stimulus to a renewal of a frontier spirit and an opportunity for review of the lifestyle to which, as consumers of nearly one-third of the world's total energy output, Americans have become accustomed. Perhaps the keenest analysis of the creative possibilities of the fuel slump to date was published in the December 5, 1973, New York Times, editorial opinion column. A choice confronts the Nation, both in its perception of the situation, which can be seen as either severely restrictive or unintentionally liberating, and the public policy which results as well. America's experience in the crucible of energy shortage may find the Nation bending all its sinews to maintain the levels of consumption which have characterized our recent past and rank us as the globe's premiere "energy pigs," to borrow a phrase from former Secretary of the Interior Stewart Udall; or perhaps it will provide her people an opportunity to reforge its lifestyle, as well as its economy, in the light of the realities and dimensions of the tremendous inflation of our cheapest fuel.

Part of the positive possibilities of the crisis are reflected in a speech by Stewart Udall which was reprinted in the New York Times, titled "The Energy Illusions." In it he declares:

A nation that bases a vital national policy on illusions is inviting trouble. The energy crisis—which is worsening each week—is a classic example of policy-making by myth. For the last two years we have seen monumental miscalculations both by energy executives and the Nixon Administration . . . we have ridden our illusions of omnipotence into a long-term impasse. The crunch this winter is but a preview of things to come. This situation sets the stage for a painful comeuppance. The President must stop pretending there are easy, painless solutions. Billions and bold changes in our policies are needed to build excellent public transportation, to legislate a 25-miles-per-gallon compact car, to squeeze out the scandalous waste in industrial energy uses and to force individuals to make permanent changes in their lifestyles.

As the price of oil soars from $3 a barrel to nearly $10, a wide range of alternate power-generating sources previously noncost effective have become economically feasible investments in a seller's market. The Nation must not compromise its environment, its economy, indeed, even its national security by mindless submission to the crisis mentality which has been generated by the onset of the Arab oil embargo. The fact is petroleum products are in short supply, whether by malice aforethought or inadvertance. And the time is long since past when America can afford to crawl from source to source like a trembling addict, begging after oil sufficient to maintain the consumption rates to which we have accustomed ourselves. If the fuel drought is the product of conspiracy on behalf of the profit-hungry oil conglomerates then it is a criminal betrayal of the principle of the competitive marketplace to subsidize such destructive greed; and, if, indeed, America has exhausted her readily extractable domestic oil supplies, then we owe it to ourselves to preserve the independence of spirit which has nurtured the Nation from its frontier days. Either way, hard-headed decisions need to be made on the basis of some pragmatic analysis of the availability of energy and the uses to which our fuels are to be put. As the Times remarks:

The notion of national self-sufficiency in energy which President Nixon has set as a goal for 1980 begs a crucial question for the American future: energy sufficient for what purposes? In interrupting the flow of oil, a handful of Arab leaders has inadvertently given this nation an opportunity for far-reaching creativity through short-term adversity, a chance to reorder some priorities which have evolved into something called the American way of life without thought whether this is a rational ordering of a society. President Nixon promises "We will once again have those plentiful supplies of inexpensive energy which helped to build the greatest industrial nation in the world." But the country would fumble an important opportunity if this meant that the national policy is simply to allow Americans to perpetuate their profligate ways of spending energy as if there were no tomorrow, as if there were no other people on earth who also need energy to raise their standard of living. In industry, one Government specialist has calculated that about 40 per cent of the fuel used in the nation's factories is wasted—and needlessly so.

The capacity for dispassionate decisions in the public interest has seemingly lodged by default with the Congress in the area of energy policy. The self-interest of the oil profiteers and the malfeasance of the executive branch have combined to throw the country into the lurch, and Members of Congress are now responsible to their constituents to make themselves expert and knowledgeable on the issues of the fuel crisis, and to use the diversity and resourcefulness inherent in the legislature to focus and resolve an energy overview to direct the Nation in time of crisis. In the words of the New York Times—

Any serious consideration of energy requires thought to some fundamental points of public policy: Is there some minimal level of energy consumption to which every individual has a right? Does the state have any right to determine how the individual uses energy? Is the tendency toward higher civilization, or the reflex action of a person hooked on a habit-forming drug? Threatened shortages are successfully refining perceptions of energy. It is not a commodity to be bought and sold like any other, it is a central component on the functioning of the society. In that light, the goal of energy self-sufficiency becomes far more profound than the securing of sources; it involves consideration of the uses which the society wants its energy to serve.

In summation, Mr. President, I ask unanimous consent that these two articles be inserted at the conclusion of my remarks, and I quote Stewart Udall:

The oil companies (with the President acting as their echo) have led us to a cul de sac that is bound to cripple our economy. Their fatuous slogan "A nation that runs on oil can't afford to run short," reveals their disastrous philosophy. From here on, the making of national energy policy is too important to be left to the oilmen.

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

[From the New York Times, Dec. 5, 1973]

THE NATURE OF ENERGY

The notion of national self-sufficiency in energy, which President Nixon has set as a goal for 1980, begs a crucial question for the American future: energy sufficient for what purposes?

In interrupting the flow of oil, a handful of Arab leaders has inadvertently given this nation an opportunity for far-reaching creativity through short-term adversity, a chance to re-order some priorities which have evolved into something called the American

way of life without thought whether this is a rational ordering of a society.

President Nixon promises, "We will once again have those plentiful supplies of inexpensive energy which helped to build the greatest industrial nation and one of the highest standards of living in the world." But the country would fumble an important opportunity if this meant that the national policy is simply to allow Americans to perpetuate their profligate ways of spending energy as if there were no tomorrow, as if there were no other people on earth who also need energy to raise their living standards.

Torrents of energy conservation literature now flooding the public consciousness give ample description of how ordinary Americans can make painless savings in what was once considered an infinite supply of energy. In industry, one Government specialist has calculated that about 40 per cent of the fuel used in the nation's factories is wasted—and needlessly so. There is no virtue in restoring a situation in which such wastage can be held beneath notice.

More important, threatened shortages are successfully refining perceptions of energy. It is not just a commodity to be bought and sold like any other, it is a central component in the functioning of the society. Well before the current crisis, Dr. Marvin R. Gustavson of California's Lawrence Livermore Laboratory wrote:

"The thread of energy runs through so many areas of human endeavor that it creates not only a conflict between various people, but leads to difficult problems of fairness and equity within each thinking person's spectrum of concerns. . . . What is at stake is a whole diversity of value systems which exist, at least in people's minds, as independent and unrelated areas of human concern."

Where to live? What hours to work? How to get to the job? These are questions raised by the energy crisis as much as oil import policies and standards of nuclear safety. Any serious consideration of energy requires thought to some fundamental points of public policy: Is there some minimal level of energy consumption to which every individual has a right? Does the state have any right to determine how the individual uses energy? Is the tendency to use ever more energy a trend toward higher civilization, or the reflex action of a person hooked on a habit-forming drug?

Dr. Gustavson concludes that energy is like "air and water and land—a dimension of human existence inextricably intertwined with all that man chooses to be." In that light, the goal of energy self-sufficiency becomes far more profound than the securing of sources; it involves consideration of the uses which the society wants its energy to serve.

[From the New York Times, Dec. 3, 1973]

THE ENERGY ILLUSIONS

(By Stewart L. Udall)

BETHESDA, MD.—A nation that bases a vital national policy on illusions is inviting trouble. The energy crisis—which is worsening each week—is a classic example of policymaking by myth. For the past two years we have seen monumental miscalculations both by energy executives and the Nixon Administration—and the President's latest special message (his fourth on energy since April) essentially applies a band-aid to hemorrhage.

In my opinion, the President and the energy industries have been floundering because they have been unwilling to push aside their 1950-vintage illusions and face the grim facts. Most of the script for the nineteen-seventies has already been written—by gluttonous increases in U.S. consumption—and not by the new uncertainties about Arab oil supplies. Consequently, we cannot come to grips with the real issues until we first face the urgent need to make drastic changes in our energy economy.

The illusions that are paralyzing bold action are these:

Illusion one is the misconception that the crisis is a "temporary emergency." The crunch is, in fact, a deepening long-term impasse that is certain to escalate and send back shock waves through our economy for at least a decade.

Illusion two is the misconception that we have "reserve" resources which can bail us out in the near term. The hard truth is that for the last five years U.S. consumption has increased much faster than production. All of the energy industries need six- to ten-year "lead times" to produce big results—and these lead times have already been irretrievably lost. The President grossly misled the American people on this point: there is no way we can become energy-sufficient by 1980.

Illusion three is the presupposition that the U.S. is so rich and powerful (and so capable of pulling off quickie "technological miracles") that any serious long-term "energy gap" is unthinkable. Yet the unthinkable has already happened, as a cocksure nation has allowed gargantuan shortages to develop. The hard reality is that the era of abundant, cheap oil has ended—and there have never been any short-cut substitutes in sight for this versatile commodity.

Illusion four is the misconception that radical, mandatory conservation measures are not necessary. Despite the ominous indicators, until this month the Nixon winter conservation program has been largely hortatory. The sooner mandatory across-the-board rationing and waste elimination programs are imposed the better. Our energy economy is bloated and profligate. At least one-third of the energy we use is wasted.

Illusion five is the assumption that the U.S. oil depletion policy is still sound. Depletion was probably wise several decades ago when oil was an infant industry. Now that U.S. oil production has peaked and begun its long decline, rigorous conservation must become our new oil policy.

Illusion six is the wishful thinking that the Arabs would not dare to use their "oil weapon" against us. Events have rudely shattered this mirage. The oil weapon has a sharp edge, and the Arab oilmen are wielding it with relentless skill. From now on they will call the tune for the global oil game.

In a moment of exasperation a few weeks ago, Treasury Secretary George Shultz asserted that we would have to crank up a "crash plan" to develop our own resources (Illusion Two) to "cool the swagger of the Arab nations." Yet it is we who are the swaggerers—and the energy pigs as well. We are consuming nearly one-third of the world's petroleum even though we have only a dwindling 9 per cent of the world's oil reserves. This is the situation that sets the stage for a painful, overdue comeuppance.

We have ridden our illusions of omnipotence into a long-term impasse. The crunch this winter is but a preview of things to come. The President must stop pretending there are easy, painless solutions. Billions and bold changes in our policies are needed to build excellent public transportation, to legislate a 25-miles-per-gallon compact car, to squeeze out the scandalous waste in industrial energy uses and to force individuals to make permanent changes in their lifestyles.

The oil companies (with the President acting as their echo) have led us into a cul de sac that is bound to cripple our economy. Their fatuous slogan, "A nation that runs on oil can't afford to run short," reveals their disastrous philosophy. The energy conservation imperative now dictates a new credo: "A nation that is running out of oil must stretch its supplies as far as it can." From here on, the making of a national energy policy is too important to be left to the oilmen.

SITUATION IN SOUTH VIETNAM

Mr. BROOKE. Mr. President, in the past year I have, on several occasions, called attention to North Vietnamese refusal to abide by both the letter and the spirit of several of the provisions of the Paris peace agreements. Massive movement of men and materiel into South Vietnam, as well as refusal to cooperate with U.S. officials in determining the fate of our MIA's, are two examples that come to mind.

While recognizing Hanoi's intransigency, I have not been blind to the fact that the South Vietnamese Government has proved equally unwilling to take the risks necessary to see if some form of political competition can replace the present violence. President Thieu has apparently been more interested in consolidating his own power than effectively coming to grips with the need to seek reconcilation within his country before economic collapse leads to its complete disintegration. In this regard, the recent legislative manipulations allowing President Thieu to serve a third term in office are particularly alarming. In insisting upon a third term, he exhibited a lack of sensitivity to the feelings and views of both intellectuals and moderate politicians who could serve to bridge the gulf of suspicion and hatred separating the belligerents.

Neither side in Vietnam feels any great compulsion to abide by the terms of the peace agreement. Each appears to be searching for the proper balance of military and political coercion that will optimize control over territory and people and create conditions suitable for an eventual triumph of one side over the other. This syndrome of violence and counterviolence is the determinate factor in the situation. Whether or not the United States, by leverage provided by its military and economic aid and/or by diplomatic initiative can influence the relevant parties to alter or break this syndrome, is the crucial question that must be addressed during this session's debate on the Indochina issue.

Mr. President, I ask unanimous consent that the article from the Christian Science Monitor, January 29, 1974, entitled "Thieu Legalizes Stay in Power," be printed in the RECORD.

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

OPPOSITION INFURIATED BY SWIFT ASSEMBLY VOTE: THIEU LEGALIZES STAY IN POWER

(By Daniel Southerland)

SAIGON.—Hardly anyone outside paid attention when President Nguyen Van Thieu's supporters in the National Assembly in Saigon recently rammed through a bill giving Mr. Thieu an almost certain third term in office.

Opposition Senators and Deputies hurled ashtrays and teacups and turned over chairs after the vote. But outside the meeting hall, apathy reigned.

For one thing, the vote came as no surprise. It had long been accepted that Mr.

Thieu intended to stay in power beyond the expiration of his current term.

And thanks to inflation and growing unemployment, most Saigonese are too hard-pressed at the moment to pay much attention to political happenings or the activities of those whom they refer to contemptuously as the "big men."

To ensure the least stir possible, his legislative supporters timed the vote—amending the Constitution to give Mr. Thieu a possible five-year extension in power—to come just before the lunar New Year holiday. It caught most Vietnamese busily preparing for the celebration.

PARIS GUIDELINES IGNORED

The Paris peace agreement signed just a year ago sets down rough guidelines for a political settlement in South Vietnam which would include elections—organized by a new National Council and "under international supervision."

But it has been clear from the start that Mr. Thieu intended to ignore these guidelines and to continue following the plans for consolidating his own control which were formulated well before the agreement was signed. The new measure enabling him to remain in office under an election organized by his own government merely confirmed this.

Many of his opponents among Saigon politicians and intellectuals consider Mr. Thieu a vulgar and ill-educated military man. His attitude toward most of them is equally disdainful.

Throughout the years, his men have bought off those who could be bought off, arrested those who seemed to be moving too close to the Communist-led National Liberation Front, and merely harassed those whose arrest or continued detention might have caused too much of a stir in the U.S. press and Congress.

OPPOSITION FRAGMENTED

This mixture of disdain, intimidation, harassment, and payoffs has helped perpetuate splits in the non-Communist opposition.

It has left many politicians feeling helpless to do anything. They feel impotent, they say, as long as the United States continues to support Mr. Thieu.

Their hopes of somehow coalescing as a "third force" under the terms of the peace agreement have all but vanished.

Some of the politicians saw a possible role for themselves in the National Council of Reconciliation and Concord called for in the agreement. This is the council which was supposed to organize general elections, and would have consisted of three equal segments—including representatives from Mr. Thieu's Republic of Vietnam (RVN), the Communist-led Provisional Revolutionary Government (PRG), and a third neutral segment or "third force."

But Mr. Thieu is not interested in sharing power with politicians, intellectuals, and professional men who see themselves as a potential third force and who might favor a more reconciliatory policy toward the PRG.

ECONOMY IN TROUBLE

Mr. Thieu's real preoccupations, however, are not with the Saigon politicians and intellectuals or the details of the peace agreement. He has his hands full at the moment trying to cope with a deteriorating economic situation.

The American military withdrawal cost the South Vietnamese many jobs and several million U.S. dollars in military spending. With a low-level war persisting, local and foreign investors are reluctant to commit any money to the economy.

In recent months, reports of malnutrition have begun to come in from the northern part of South Vietnam. In the cities, there are widely believed stories of suicides in families which could no longer make ends meet. A U.S. aid index shows general price increases averaging a staggering 60 percent over the past year. The worldwide oil crisis has greatly intensified the price squeeze.

American officials are delighted that none of this has resulted in riots or any other form of open disturbances. But it has resulted in what one official described as "a form of deterioration in government services and the fabric of society."

RURAL STRENGTH DECEIVING?

Because he is still at war, Mr. Thieu has rejected suggestions that he demobilize some of his troops. This means that most of his expenditures have to go toward maintaining his Army, thus perpetuating huge budget deficits. And an Army fighting a war with American-style artillery and air support can be an expensive one indeed.

On the surface, Mr. Thieu's position in the countryside looks as strong as ever. But in some rural areas, accommodations encouraged by the Communists have undermined his efforts to "eradicate" National Liberation Front cadres.

In areas contested by both sides, his Army is not taking advantage of the lower level of combat to win any hearts and minds. If anything, the Army is looting more than ever because of the economic squeeze.

Mr. Thieu is going forward with plans to strengthen the powers of his province chiefs, who are all military men, while weakening the grip of the cumbersome civilian bureaucracy. This, he thinks, will streamline the administration.

But in the end, all of Mr. Thieu's administrative changes and political party organizing are likely to matter much less than the impact of the country's current economic decline.

REFRESHING THE NASA CHARTER

Mr. MAGNUSON. Mr. President, on September 26 and 27, 1973, the Senate Aeronautical and Space Sciences Committee under the chairmanship of my distinguished colleague, Senator Moss, conducted hearings on the state of the aerospace industry.

During these hearings, I introduced S. 2495, for myself, Senator Moss, and Senator TUNNEY, to provide for the more effective utilization of the scientific and technological resources of the United States in the solution of critical domestic problems. S. 2495 responded to testimony from witness after witness proving that not only have our scientists, engineers, and technicians passed the critical test of outer space, but also they have proven their capability of applying technology to problems in our daily lives.

Mr. Daniel J. Fink, who is the president of the American Institute of Aeronautics and Astronautics for 1974, testified during the hearings. I would like to commend to my colleagues his article in the December 1973 issue of Astronautics and Aeronautics. In this article he reviews the substance of his testimony.

Mr. President, I ask unanimous consent to have the article printed in the RECORD.

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

REFRESHING THE NASA CHARTER

(By Daniel J. Fink)

Recently I appeared before the Senate Committee on Aeronautical and Space Sciences to try to answer questions posed by its distinguished chairman, Senator Frank E. Moss. The questions concerned the aerospace goals set by Congress, government-industry roles, and international competition and cooperation. I would like to share my reflections with you.

You may have joined me in carefully rereading the Space Act of 1958. I finished that reading with a renewed respect for the legislators who drafted this wide-ranging, forward-looking document which has guided us through an era of unprecedented achievements. There is no need for me to enumerate these achievements because we are all familiar with them, but merely to say that the goals of the Act have been realized to a degree that its framers could hardly have hoped for, and that the Act deserves characterization as a singularly appropriate response to the challenge of its time.

The nation can take pride in the agencies that managed the pursuit of these objectives so conscientiously, the industry that carried out demanding aerospace tasks, and the Congress which showed such leadership and wisdom in drawing up the Act.

Nevertheless, as Chairman Moss has pointed out, recent years have brought some tendencies which warrant serious attention. Program terminations and budget reductions have caused massive layoffs and dislocations of highly skilled people; foreign competition threatens our leadership position; the flow of tangible benefits from space technology may not be as rapid as some may have wished; and public enthusiasm for space utilization has waned as familiarity has made even the most dramatic achievements seem almost commonplace. So perhaps it is time for stock-taking, time to renew our perspective.

I would contend that our very success is in part the source of our problem, and perhaps recognition of this success should be reflected in amended goals set by the Congress. A good way to begin is to recreate the environment of 1958 to discover why the Act was framed in the manner it was. I believe two points are most pertinent.

First, we knew there was great potential in space that could benefit mankind, but our crystal ball could not possibly give us the specifics. Thus the Act makes reference to "the expansion of human knowledge" and calls for "long-range studies of the potential benefits." Only the potential military applications of space research were recognized sufficently to call for appropriate cooperation and technology transfer between the DOD and the new civilian space agency.

Second, we had little knowledge of the tools that would be required to venture out and operate in space. So the most specific goals in the Act refer to performance measures and development of space vehicles, instruments, and equipment that would have to serve as the working tools for the investigative process, no less towards meeting any new-found applications.

By 1973 we had attained or surpassed all of the objectives set forth in the Act. We had developed vehicles which operated responsively and reliably in space, put instrumentation, men and life-support systems into them, and used them successfully for the broad investigative and experimental objectives of the Act.

Even more important, we developed space systems that have been directly applied or show clear promise of being applied to endeavors here on Earth—communicating with our neighbors, near and far, predicting the weather, surveying crops and the oceans, monitoring the environment, precisely navigating ships and aircraft, and a myriad of other down-to-Earth occupations.

The question I would now raise is this: Had we known the speed and efficacy with which these space applications would be uncovered, would not the Space Act have made

more specific reference to them and to the agencies involved in their development and application to our earthbound problems?

Let's look for a minute at applications which have become truly operational to see if they offer any lessons.

First, as to potential military applications recognized in the 1958 Act, without question operational military space systems have contributed and will continue to contribute to our national security. And this will occur despite occasionally voiced concerns about duplication of effort. Duplication has been minimal because of the scrunity of the Congress and the cooperation of the agencies involved following the guidelines set forth in the Space Act.

Second, the most visible success in space, satellites, have taken a strong position in long-haul communications all across our globe. What was the avenue of success here? Again, it was necessary for Congress to step in to achieve the full benefit of NASA-developed technology, through the appropriate legislation, the Communications Satellite Act of 1962. Technical progress has been so rapid in recent years that the government regulatory processes have now cleared the way for further exploitation by private industry in domestic satellite communications. It is difficult to see how this progress could have been made without the foresighted enabling legislation.

Our meteorological satellite program represents a third successful operational application, one implemented quite differently from the previous two. Here we have an example of an aggressive NASA development program creating a viable weather data-gathering system, now being routinely applied by the National Oceanic and Atmospheric Administration (NOAA). The transfer from NASA to NOAA was managed through an interagency agreement carefully, if sometimes painfully, worked out over a period of time. We have the happy result of these two agencies meshing their unique capabilities in a manner that virtually assures us of continued progress.

What will be the future of new space-application efforts? Will they make the expeditious transition from NASA-developed technology to operational use? I do not see a smooth road ahead; I see budgetary and institutional bumps. And I hope the Congress will smooth these out of the 1958 Space Act that will recognize the tremendous potential to our citizenry of space-system applications, their expedient realization.

The Congress could act in several ways:

1. Specify legislation for each application, in the manner of the Communications Satellite Act. But this could prove a time-consuming burden on Congress, if the applications are as numerous as we predict.

2. Give other government agencies the same recognition that DOD now has, to encourage them to do space-oriented R&D as well as to implement operational programs. But none of the other agencies has the technical base that DOD has developed, and to staff them up to meet new responsibilities would involve duplication of effort and enormous cost.

3. Give NASA responsibility to bring application programs to quasi-operational status matched to the capabilities of the user. I favor this option. It would encourage the using agencies to make best use of NASA's capabilities, with a division of responsibilities similar to what now prevails in the meteorological satellite program.

I would like to turn now to NASA's relationships with one of its working partners in space ventures—the aerospace contractors who support it. Early in its life, NASA recruited competent engineers and scientists to solve the problems of surviving and functioning in space. They led much of the research in power, communications, attitude control, thermal balance, guidance, human factors, and other essential technology.

Now that these space techniques have been in good part mastered, NASA's emphasis should shift to mission management and the science and applications technologies, allowing industry to assume fuller responsibility for subsystem design and development. This division of effort would assure optimum utilization of talent at every level in a strong partnership.

Congress could also maximize the return from our investment in the space-related sciences by chartering NASA to design and manage a broad-based, *goal*-oriented science program. NASA has already provided most of the capability in lunar, planetary, and astronomical hardware. We had a phenomenally successful Apollo moonship program, but we have no continuing lunar-science program. Similar statements could be made regarding other projects. We often have a series of spacecraft programs with catchy titles but miss the long-term commitment that one needs to develop the scientific information base that is being sought. This mission orientation could be embodied in the expressed goals of the Space Act.

Let me turn now to the third area of major concern, international cooperation and competition in space. I would like to point out how closely these are tied to what seem to be purely domestic policies.

As Chairman Moss has noted, competition in space is a fact of life about which we have little choice. The developed nations and their industries inexorably increase their efforts in the space arena. We do have a choice, however, about cooperation in space. From discussions with my colleagues, I know that most of us favor international cooperative space ventures so long as they are backed by an aggressive research and development (R&D) program of our own. We only fear cooperation when we give away our technology with nothing coming in to fill the pipelines.

We are not comforted, for instance, by the recent decision to remove NASA from communication satellite R&D, on the assumption that industry and common carriers are now ready to take on the full burden of R&D, with no further government stimulus. This seems to us to be an illusion, fostered by the phenomenal success of these operational systems. What is forgotten is that in the early 1960s NASA went into flight hardware with multiple approaches to the problem—notably the Echo passive reflectors, the Relay low-altitude repeater, and Syncom. Commercial exploitation was rapid only because this relatively expensive three-way evaluation, paid for by NASA, reduced the technical risk to an acceptable level. Thus U.S. companies gained viable footholds in international markets. Similarly, NASA exploratory flights of competitive technologies advanced operational systems throughout the late 1960s and well into this decade.

Now, however, Canadian, Japanese, and European organizations, with heavy government backing, have technical capability approaching ours and are willing to take high risks. In this environment, can we expect a U.S. publicly-owned company to risk $50-100 million for R&D in the arena of direct-broadcast satellites (or other, more distant capabilities) on which the payoff may not come for 10 years?

More likely, we shall see programs sponsored by foreign governments, and not U.S private industry, take the R&D leads. As a byproduct, leadership in new technology could pass from this nation by the end of *this* decade, because technology will move forward whether we choose to move with it or not. If NASA 10 years ago had been subjected to today's pressures for quick commercialization, I doubt that either the communications or meteorological satellites would have reached their present advanced state of development.

So I ask: Do we see here a loss of perspective in determining the most efficient way to remain viable in a highly competitive international marketplace. NASA has shown great resourcefulness in assuming the front-end risks in the communication-satellite field, leaving commercial companies and common carriers free to devote maximum resources to competition in the services and markets they know best. In communication satellites, we may have seen the end of this productive relationship.

We know that foreign companies have high capabilities also in the technologies for environmental, meteorological, and Earth-resource satellites. We can expect them to be highly competitive in these fields. If the U.S. charter for continuing R&D in these areas, covering cost and risk burdens, passes too quickly from NASA to user hands, the U.S. could lose its competitive position. With it would go most of the basic R&D investment which NASA alone was willing and able to make during the costly gestation period.

In summary, I think our posture in aerospace policy can be summed up rather simply. For 15 years, NASA has done an admirable job as *implementor*, the do-it agency that designs and executes programs of wide national interest, Apollo being the most obvious, but space segments of the application programs and the space-science events being equally important. NASA also served as a *facilitator*, providing a technical base for the use and participation of other organizations in space activities. NASA should continue to do both—as it has done, for example, with the ERTS satellite—developing the hardware and managing the program for all the users who wish to avail themselves of it. Its role in the space-shuttle program should be a step toward a *primary charter* to bring the benefits of space directly to the largest possible segment of the public; but this will require new policies embodying legal, financial, and administrative tools for much more positively encouraging widespread beneficial use by government and commercial users.

NASA will fill these roles best if it is given clearly defined responsibilities in nurturing space applications until they reach the most efficient handover point; if it is directed toward system integration and management rather than subsystem engineering and design; if it becomes the executive agency for an integrated space-science program; if it maintains its role as the advanced space-systems application-technology house for all users; and if it remains the active working partner of the aerospace industry in all programs, domestic or international, cooperative or competitive.

Fifteen years ago, we sent our NASA-Industry team out into strange and hostile territory with a rather vague mandate to investigate, observe, and develop. By applying imagination and flexibility, it fulfilled this mandate better than anyone had any right to expect, and in so doing it changed forever our perspective on our planet and on ourselves.

Today we need the same imagination and flexibility to apply what we have learned to the betterment of the human condition all over the globe. We think the same NASA-Industry team, operating in the same productive relationship, can do this job if it is once more given the right mandate.

MIA'S

Mr. PACKWOOD. Mr. President, somewhere in Indochina, Robert Brett and Ron Dodge may be alive.

These military men are among the almost 1,300 Americans listed as missing in action. They may be alive but, up to

this point, all efforts to discover what has become of them—and the other MIA's—have been stymied by an almost total lack of cooperation on the part of the North Vietnamese and the Vietcong. Our continuing hope for any knowledge of the MIA's rests in their hands.

1st Lt. Robert A. Brett, Jr., of Klamath Falls, Oreg., took off from a base in Thailand the evening of September 28, 1972, on a strike mission over North Vietnam. He maintained the scheduled radio silence after crossing the Thailand-Laos border and has not been heard from since. When an intensive search of the area yielded no trace of Lieutenant Brett or his F–111A, he was officially classified as missing in action.

The story of Lt. Comdr. Ron Dodge is a particularly unsettling one. We know that Lieutenant Commander Dodge, who attended college in Oregon, was captured alive. A photo of Dodge, in prisoner pajamas, was on the cover of Paris-Match. Still, he was not returned last spring with the other POW's, nor was he mentioned on any of the prisoner lists exchanged at that time.

Like 57 other men, we have seemingly conclusive proof of Dodge's survival and capture. And, yet, the North Vietnamese have never acknowledged this proof, some of which was gathered from their own propaganda. The lists of prisoners of war repatriated to this country and those of the POW's who died in captivity, released by the DRV last spring, only further confuse and obscure the fate of these 58 men. The path of each life seems to stop with capture by the North Vietnamese.

The specific case of Lt. Comdr. Ron Dodge has been introduced at least three times in negotiating sessions. In each instance, it was mechanically routed to their "channels" for further information. This has been the routine response to all American requests for an explanation of the existing discrepancies and, to date, their "channels" have yielded nothing.

Last Sunday marked the first anniversary of the signing of the Paris peace agreement. In that document, specific provision was made for accounting for those men listed as missing in action:

> The parties shall help each other to get information about those military personnel and foreign civilians of the parties missing in action, to determine the location and take care of the graves of the dead so as to facilitate the exhumation and repatriation of the remains, and to take any such other measures as may be required to get information about those still considered missing in action.

Immediately, the teams of experts were readied to begin the long and arduous task of piecing together the fates of these men. But, over the last year, we have learned that the cooperation promised in the Paris Peace Agreement has fallen far short of even the most skeptical of estimates.

The North Vietnamese and Vietcong representatives have refused to release any information they have and, with the exception of two trips to Hanoi to view the gravesites of those POWs who died in captivity, our investigators have not been permitted to enter their territory to search for crash sites. Over 95 percent of the crash and combat sites to be inspected lie in areas under Communist control.

Further, Mr. President, on December 15, 1973, one team of investigators was ambushed south of Saigon. An American Army Captain and a Vietnamese pilot were killed and several others injured. These men were unarmed. They were wearing uniforms obviously marked to show that they were part of the Joint Casualty Resolution Center's field operation and the vehicles in which they were traveling were similarly marked. Both the North Vietnamese and Viet Cong officials had been previously notified that the team would be at that location and they were invited to send representatives along with the team. There can have been no mistake about the identity of the investigators or the reason for their being there. The attack on them was unprovoked and they were unable to protect themselves. Mr. President, that is murder. It is intolerable and indefensible.

I think that most people will agree that we have asked the members of the Joint Casualty Resolution Center to perform a Herculean feat and I have no doubt of their dedication and commitment to its accomplishment. The search for the MIAs will go on, despite the frustrations and adversities encountered thus far. But, it is for us to continue to press the North Vietnamese and the Vietcong to cooperate in this humanitarian effort. We must not let them slowly numb our hopes with their cold silence. We must persevere. We must urge them to honor the commitments they made in Paris. Lt. Col. (Ret.) Robert Brett and his wife want to know about their son, Lt. Comdr. Ron Dodge's family and friends want to know about him. I want to know too.

DISINTEGRATION OF THE TWO-PARTY SYSTEM

Mr. McGEE. Mr. President, we stand on the verge of a complete disintegration of the two-party system in this Nation. What is particularly disturbing about this course of events is the apparent lack of concern exhibited over the implications of this development.

In both domestic and international terms, we just cannot afford a fragmentation of our political processes. Such a development could not come at a less propitious time in light of the responsibilities which have fallen on our shoulders over the course of the last 25 years. At a time when the international community is looking more and more to this Nation for leadership in dealing with innumerable crises shaking the globe, it ill-behooves us to destroy the very basis of our stability and continuity. The United States, in its unique international leadership role, is constantly being challenged to deal with monolithic states and nations with varying degrees of political diversity and stability, on a day-to-day basis. Stability and certainty are the necessary ingredients to meeting this challenge.

On the domestic scene, we should heed the lessons of such parliamentary systems of Europe as France and Italy, for example. Governments rise and fall for need of consensus when consensus is required for a change in direction of domestic or international policy. It has been impossible, on many occasions, for these governments to achieve the necessary political consensus during times of crises which have resulted in worsening conditions. These systems experience increasing difficulties in forging a stable and workable policy, whether it be on the domestic or international fronts. They rely more on the personality of their leadership, rather than on the smooth functioning of a system of government.

My point is that both parties have room for a diversity of political thought. The political party serves as the tool for hammering out a consensus from this diversity. It does not require a party for every political philosophy or belief, in hopes that a consensus is achieved at some later stage of the game. Rather than achieving a more effective assault on our problems, we only increase our inability to deal with these problems.

In this connection, it is vitally important that we have a strong two-party system, not just a strong Democratic Party or a strong Republican Party. A weakening of either party only weakens the entire system. As we strive for a strengthening of the two-party system, we must also restore integrity to the office of the Presidency now crippled into near impotence by the Watergate scandals. This integrity must be restored both in the eyes of the Nation and in the eyes of the world. The present situation dangerously weakens the delicate balance of power between the executive and legislative branches of Government, which impedes our efforts to meet domestic problems, and is detrimental to our ability to conduct relations with other nations effectively when so much uncertainty surrounds the Presidency.

What is happening in this country is very serious. We are fast losing our leadership capabilities, our stability, our continuity. The world cannot tolerate the vagaries of a destruction of the two-party system in the United States. On the other hand, our citizens cannot cope with a worsening domestic situation if we disintegrate into the chaos of multiplicity of political groups feebly searching for a handle to these problems.

While all of us can cite many failures and weaknesses in the two-party system, our viability as a Nation has been maintained because of the strengths of such a system.

David Broder, in a column appearing in yesterday's Washington Post, addressed himself to the problem posed by a breakup of our political parties. I think his observations are particularly noteworthy and should force us to reexamine how we view the two-party system in this Nation.

I ask unanimous consent that Mr. Broder's column be printed in the RECORD.

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

BREAKING UP POLITICAL PARTIES

(By David S. Broder)

"It is common knowledge that in modern day political life in the United States, the individual voter in large part is not wed to any political party."

That down-to-earth comment on the growing independence and ticket-splitting proclivity of American voters comes not from a politician or a journalist or a political scientist but from a federal district judge, ruling, of all things, on the makeup of a political party convention.

It was cited by Judge William B. Jones on Jan. 11 as the grounds for rejecting part of the Ripon Society's lawsuit against the 1976 delegate apportionment formula. And it scared the dickens out of at least one Democrat, William B. Welch.

Welch is the former research director of the Democratic National Committee, now chief political operative for the American Federation of State, County and Municipal Employees (AFL–CIO). He is trying to raise the alarm that the two-party system, already reeling, may soon be demolished by the courts and by Congress.

Welch's argument is essentially this: The only real power that the national parties have is to determine who has access to, and the right to participate in, their national conventions and the selection of the presidential candidates. If that power is taken over by the courts and Congress, the effect is likely to be the speedy disintegration of the national parties.

This is no idle threat. In 1973, the Senate passed one bill declaring that national conventions may not begin earlier than the third Monday in August—a date many party officials, unconsulted by the lawmakers, consider unrealistically late.

It passed another bill prescribing how much money candidates may spend in seeking the presidential nomination and providing part of that sum from Treasury funds.

Welch fears that those measures are only the tip of the camel's nose, hinting a complete federal takeover of the presidential nominating and election process. He notes, for example, that there is increasing interest in proposals for national legislation to regulate the times and places where presidential primaries are held, or to abolish the convention system entirely in favor of a presidential primary.

All these measures reveal an antiparty bias that could quickly undercut the efforts both parties have made in recent years to develop and enforce "party law" that satisfies the constitutional requirements while preserving the party's own role in the nominating process.

The Democratic Party, for example, has ordered that henceforth only Democrats will be allowed to participate in primaries choosing delegates to the Democratic convention—an essential requirement for a responsible party system. But will the courts allow that rule to stand against state "open primary" laws? Will Congress permit the "disenfranchisement" of thousands of independents?

One cannot be optimistic about the prospect. An Illinois judge sowed mischief in 1972 by opening that state's primary to crossover votes on the eve of the balloting. Judge Jones, in the ruling cited earlier, discarded the contention that bonus delegates at the Republican convention should reflect Republican voting strength, on the grounds that it might be unfair to "the political independent who disavows affiliation with any political party."

There is nothing unprecedented, of course, about judicial review of certain aspects of internal party affairs. The courts ruled out the "white primary" long ago and have several times tested convention delegate apportionment plans against the standards of the equal protection clause.

But there is a danger—on both legislative and judicial fronts—that in today's antiparty climate, increasing intervention by the courts and Congress will come at the expense of the already weakened party structures.

Welch's conclusion is that the parties have little time left in which to strengthen their own codes of operation and to draft rules which meet the relevant constitutional standards without sacrificing the needed degree of internal party discipline.

The question, he argues, is not whether there will be codes written for the nominating process; there will. The question is whether these reforms will be prescribed by party people interested in preserving and strengthening the parties, or by legislators and judges who then share the popular antiparty bias.

Will the Democratic Party's charter commission and the Democratic National Committee write rules this year that will protect the integrity of the convention nominating system, or will Senate Democratic Leader Mike Mansfield and his allies succeed in legislating a national primary law?

Will the Republican Party committee taking up the question of vice presidential selection this week find a way to avoid new Agnew cases, or will Senate Republican Whip Robert P. Griffin and his supporters succeed in taking the vice presidential choice away from the party altogether, and substituting a post-election choice by the President-elect and Congress?

"This may be the last real chance to salvage a two-party system," Welch says. And he does not exaggerate.

TEST FLIGHT OF THE MINUTEMAN II

Mr. PACKWOOD. Mr. President, in December of 1973, the Air Force announced that it would seek the approval of Congress to test fly the Minuteman II Missile from two of its operational base sites. As presently projected, the test would involve the launching of two missiles during each of the winters of 1974–75 and 1975–76.

Many Oregonians have expressed special concern about this proposal because the path of the missile—if shot from Malmstrom AFB in Montana—would cut diagonally across the State from the northeastern corner to the southwestern corner. I have been briefed by the Air Force on the Giant Patriot project and I have determined to withhold final judgment on it until I have seen the environmental impact statement and the results of the hazard and feasibility studies.

However, I believe that, in addition to the concerns of those people in the States beneath the flight pattern of the missile, there are legitimate questions we should all be asking about the proposal. In an article on the editorial page of yesterday's New York Times, Alton H. Quanbeck, a retired Air Force Colonel, and Barry M. Blechman, both senior fellows at the Brookings Institution, explored some of the potential risks of the project in light of the anticipated gains. I think their treatment of the matter is worthy of my colleagues' attention and I ask unanimous consent that the text of the article, "Risks of Missile Tests in the Pacific Northwest," be printed in the RECORD.

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

[From the New York Times, Jan. 30, 1974]

RISKS OF MISSILE TESTS IN THE PACIFIC NORTHWEST

(By Alton H. Quanbeck and Barry M. Blechman)

WASHINGTON.—The Air Force has long wanted to test-launch Minuteman intercontinental ballistic missiles from operational silos. Under its plan the missiles would be fired from Malmstrom Air Force Base in Montana, pass some 350 miles above parts of five states in the Pacific Northwest, and land 5,000 miles away at Canton Island, southwest of Hawaii.

Early in the Nixon Administration, the former Secretary of Defense, Melvin R. Laird, shelved the proposed experiment quietly, despite intense pressure from the military. Widely known for his political sensibilities, Mr. Laird presumably recognized that the benefits of such tests were not commensurate with the danger to lives and property and the other risks that they implied.

But such proposals do not die easily. In December, the Defense Department announced that it planned to ask Congress to approve four operational test flights during the next fiscal year. The missile's nuclear warhead would be removed, of course, and replaced with test instruments and conventional explosives to destroy the missile during flight should it veer off course.

If the launch were successful, the spent first stage and four other large pieces of debris would fall on sparsely populated sections of Idaho, and the rest of the missile would fall into the Pacific.

The announcement offered assurances that the dangers were minimal. It also indicated that additional tests, possibly from different missile bases, were planned in future years.

The ostensible purposes of these tests would be to demontrate Minuteman's reliability, to provide data not obtainable at normal test facilities, and to train combat crews under more realistic conditions than usual.

But in our view, launches from operational bases would provide only marginal benefits in these respects, if any, as compared with the usual test program. Minuteman missiles originating at Vandenberg Air Force Base on the California coast have been tested hundreds of times on the western test range. For these flights, missiles are selected at random from the 1,000 Minuteman silos. The missiles and crewmen are flown to California and installed in launching facilities almost identical to their operational sites, the only difference being protection in the silo against the intense heat generated by the rocket motor and replacement of the nuclear warhead by a test package.

The missiles have then been launched in a simulated operational environment and followed through flight by radar and radio telemetry. Minuteman has performed very well in reliability and accuracy during this series of tests.

What then would the launches from Montana add to this procedure? Very little. The missiles still must be removed from their silos. The nuclear warhead would be replaced by a test package and the silo would be fireproofed so that expensive electronic equipment was not destroyed. Most of this work would be performed by civilian contractors. Certainly, the publicity that would attend these tests and the extensive safety precautions that would be undertaken would not lead to a more realistic combat simulation.

The data provided by tests on this new course could not possibly match that elicited from firings on the heavily instrumented western test range. And four launches under these conditions hardly can add to already extensive data on Minuteman's performance and reliability. Basically, what would be proved was that a missile could be launched from Montana as well as from California.

As against these minimal benefits one must weigh certain costs and risks. First is the cost—$26.9 million to prepare the silos, provide instrumentation and make other preparations. Second, there would be some danger to lives and property. If all went well, the site of probable damage would be in national forests, and the danger, that of forest fire, would likely be small. If something went wrong, however, the risks would be far more serious.

If the missile appeared to be going off course within the first minutes of flight, the booster, which essentially is a container of high explosives, would be destroyed. In such an eventuality, pieces of the missile and explosive propellant would be scattered over a wide area. And even though the probability of personal injury was still low, the repercussions for domestic attitudes toward the military, should any of this debris land near populated areas, in a schoolyard, for example, would be severe.

In addition, there would be some chance that the missile would veer off course and not be destroyed. In the past United States missiles have crashed in Mexico and Brazil during tests.

The third and most important risk concerns the effects of a series of failures in the tests. In the mid-nineteen-sixties, Minuteman missiles were launched from silos in North and South Dakota. The top two stages of these missiles were inert; they were expected only to fly for seven seconds and land within a few thousand feet of their silos. But the program ended in disgrace after several successive failures.

A similar experience in the new test program would erode United States confidence in, and reduce Soviet respect for, the United States nuclear deterrent. Because of the high success rate in the normal test program, the reliability of Minuteman presently is not questioned either here or in the Soviet Union. And thus there is nothing to be gained in this regard by four successes.

We conclude therefore that the proposed test program is a poor gamble: The nation would be accepting serious risks for minimal gains. Fortunately, the project requires the approval of the Congress, and while Defense Department spokesmen are optimistic regarding its chances, the early announcement indicates that the proposal is more of a trial balloon than a serious initiative at this point.

Governors Tom McCall of Oregon and Cecil D. Andrus of Idaho already have indicated their opposition to the plan. Other interested parties would do well to consider carefully the trade between risks and gains before determining their own positions.

MEETING THE NEEDS OF SPACESHIP EARTH

Mr. MAGNUSON. Mr. President, on September 27, 1973, I introduced S. 2495, a bill to provide for the more effective utilization of the scientific and technological resources of the United States in the solution of critical domestic problems. S. 2495 was introduced for myself, Senator Moss and Senator TUNNEY because our achievements in space have demonstrated, beyond any doubt, this Nation's capability for marshaling its scientists, its technicians, its managers, its private industry, and its government into a single problem-solving team. The legislation I introduced would build on that model and the knowledge our space program has produced to attack the technological problems we face in our everyday lives—the problems of illness, transportation, safety, housing, pollution, the energy crisis, and many others.

On January 30, my colleague, Senator Moss, spoke before the annual banquet of the American Institute of Aeronautics and Astronautics and clearly presented the case for S. 2495. The remarks of Senator Moss entitled "Meeting the Needs of Spaceship Earth" are of such significance to American scientists and engineers that I request unanimous consent that they be printed in the RECORD.

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

MEETING THE NEEDS OF SPACESHIP EARTH

(By Senator FRANK E. MOSS)

It is certainly a great honor and a real pleasure for me to be asked to speak tonight. As you know, just this month, I completed my "rookie year" of official connection with aeronautics and space, and here I am speaking to an illustrious assembly of all stars.

I firmly believe we can all take great pride, and even a modestly optimistic stance, in view of the accomplishments of the past year and the hopes for the months immediately ahead.

I'll list just a few—

Skylab was, and is, a fantastic success.

ERTS–1 is proving even more valuable than its strongest boosters predicted, and the launch of ERTS–B will now be nearly 2 years earlier than announced a year ago.

We've looked at Jupiter up close for the first time, and can now have high hopes for the second Pioneer visit late this year.

In a few days we'll fly by Venus again, and then proceed on toward our first visit to Mercury a few weeks later.

The NASA launch rate will double this year, and the long-heralded age of space applications will become a reality with ATS–F, with the first domestic communications satellites, and with synchronous environmental satellites very much in the forefront.

The shuttle program *is* gaining real momentum, despite repeated delays, and though we may not match the record-breaking support in the Senate last year. I believe we're firmly underway.

And finally, and most important, when the NASA budget is unveiled next Monday, it will show a reversal in the dismal downward plunge of recent years. It will not be as high as the level we all worked so hard to attain, but it will represent a modest step back up the ladder toward realistic, stable levels.

Each of you here tonight could add to this list. I have not mentioned progress in aeronautics, or NASA energy efforts, or Apollo-Soyuz, or many other important signs of vitality in aeronautics and astronautics.

The hour is late, and without keeping you overlong, I want to spend a few minutes on a specific subject dear to my heart and important to all of you.

An author always gets in a plug for his latest book. As a Senator, I cannot resist this opportunity to promote a bill I believe you should support.

Let me start by summarizing three main points.

1. Our current drift toward becoming a "status quo" nation is not merely a threat to the employment security of scientists and engineers, it is a very real threat to the livelihood of every American.

2. As a nation, we must do a far better job of predicting the occurrence of critical domestic problems and providing the resources—often scientific and technological—to solve them.

3. Those who view NASA as an agency in search of a mission not only have the shoe on the wrong foot, they are dead wrong.

To take these three points one at a time, I'll begin with the dangers of what I'll call "creeping status-quoism." In recent years, we have seen a flurry of rebellions against rapid societal and technological change, and repeated calls for return to the "good old days," even though a wag tells us "nostalgia ain't what it used to be."

Perhaps in part because of these forces, and certainly in large measure because of well-warranted revulsion at some of our mistakes, there is I believe an increasing trend toward wanting to hold on to what we've got, to stay about where we are, in every important aspect of American life.

Increasingly, one sees our foreign policy referred to in the press as that of a "status quo" power. And perhaps that is what "balance of power" diplomacy is all about.

Other nations, which once marveled at "American ingenuity," seem increasingly more ready, willing and able than we to seize technological opportunity in every field from heavy machine tools to hand calculators, from internal combustion engines to high performance aircraft.

And in less tangible areas, opinion polls show that many of us feel our societal reforms are moving "too far, too fast."

Without getting too deeply immersed in national psychoanalysis, let me say that we need to remind ourselves of some basic truisms.

We cannot turn back the clock, or even stop its hands. No person, no society, and no nation has ever succeeded in standing pat for very long. Every person in this room knows of the great, perhaps almost fatal, mistake we made in the 1950's of assuming we would always far exceed the Russians in technological prowess. And we have learned in recent months how wrong those of us were who assumed, against all available evidence, an inexhaustible supply of cheap fossil fuel.

As Wernher von Braun testified before my Committee last Fall, and I quote, "World leadership and technological leadership are inseparable. A third-rate technological nation is a third-rate power, politically, economically and socially . . . Whether we like it or not, ours is a technological civilization. If we lose our national resolve to keep our position on the pinnacle of technology, the historical role of the United States can only go downhill."

I fully agree. Change is, after all, inevitable. And only those who move ahead of the bow wave of change will avoid being submerged in history.

Now to my second point. We must get to work to improve our ways and means of anticipating problems that science and technology can solve.

Here comes the plug I warned you about, so listen closely. In case I forget to mention it later, the number of the bill is S. 2495. It was introduced by Senator Magnuson, with Senator Tunney and me as cosponsors. My good friend Tiger Teague has introduced it in the House as H.R. 10807.

As I said, the Federal Government does an inadequate job of identifying in advance and moving to meet critical domestic problems.

However severe you may feel the energy crisis is today or will be in the years ahead, I believe you will agree with me that we should not be in our current status of considering hastily a plethora of emergency measures to cope with it.

It's not that no one saw what was coming. Even a casual review of the literature will surface numerous examples of warnings five, ten, even thirty years ago. In a peak of frustration in 1969, one industry association asked "Is anybody listening?"

Yes, the warning signals were clear, but there was no single Federal organization—

no centralized early warning system—to galvanize us into timely action. As David Rose suggests in this month's Scientific American, our present energy difficulties "were largely caused not by ignorance but by irresponsibility." I suggest that it is our responsibility now to better prepare for the next crisis.

For the energy crisis will not be our last crisis. In reality, the term "energy crisis" is a catchall phrase for many shortages and problems we face. Already we are being warned of a materials crisis looming on the horizon. And water, always short in my home state, threatens soon to become in short supply in other areas.

Just as we must work harder to sort out and predict these problems, we need to do a better job of planning the utilization of our vast national scientific and technological resources.

The ups and downs, the stops and starts, that have plagued Federal research and development efforts ever since we embarked on Federal support for R. & D. have created a continuing state of chaos and uncertainty. Facilities are built and closed, scientists and engineers are trained, employed and laid off, all with little apparent foresight.

I needn't remind you that a few short years ago we were simultaneously rushing headlong toward an energy crisis and laying off engineers and scientists by the thousands.

It is time for us to bring these two shortcomings—poor planning and poor use of resources—into focus together, to examine them, and to do something about them.

That's what S. 2495 is all about. The two versions of the bill we have sent to numerous organizations, including AIAA, for comment, have this primary thrust.

We want to establish within the Executive Branch of the Government an improved mechanism, an improved climate, and improved funding for making projections of critical domestic problems which may be susceptible to scientific and technological solutions in whole or in part. And we want to bring into that process careful consideration of the projected availability of the necessary scientific and technological resources to apply to those problems before they become of crisis proportion.

And that brings us to my final point.

We seem, so far as NASA is concerned, to be developing a national blind spot. There she sits, like the proverbial girl next door, while we roam around town looking for someone to work on technological problems.

No one here or abroad has developed a greater capability than NASA and its partners in industry and universities for defining problems, devising solutions, and demonstrating those solutions.

But we have a curious penchant to ignore this proven resource. This is not to say that NASA should be thrown into the fray every time a problem emerges.

There are many problems ahead that NASA is ill-equipped to solve. But where we need a systematic approach to a complex problem with high technological content, why should we studiously avoid our strongest asset?

Let me emphasize one point. We are not in any way suggesting that NASA lacks a mission in aeronautics and space. Support for that mission, as I have said, should *not* be diminished—it should be enlarged. What we are suggesting in S. 2495 is that NASA and its partners should *also* be authorized to tackle other missions, upon assignment by the President and approval by the Congress.

NASA is not, as some gossips suggest, an agency in search of a mission. There are missions in search of a NASA.

To summarize, we should devise an institutional arrangement, with adequate funding, to contemplate our collective futures and identify the likely problems that science and technology can alleviate. At the same time, this organization should be projecting, over the coming ten years, what our scientific and technological resource shortages and overcapabilities will be, and how we should be moving to strengthen and apply them.

Overly idealistic? Perhaps. But worth the try? That it surely is.

Ladies and gentlemen, distinguished friends all, you have been great in hearing me. I thank you for inviting me here tonight, and I look forward with you to the challenging times ahead.

THE SHORTAGE OF REINFORCING STEEL BARS

Mr. BEALL. Mr. President, I rise today to express my deep concern over growing indications that nonresidential construction activity in the coming months will be severely curtailed because of a lack of fabricated steel products, particularly reinforcing steel bars. If allowed to continue, this situation could have disastrous effects on our economy, and I call upon the Cost of Living Council to take whatever action is necessary to diffuse this economically explosive situation.

Although several shapes of construction steel are affected by the current shortage, possibly the most critical situation exists in the area of reinforcing bars. These items are in greatest demand by construction companies since they are a key factor in nonresidential construction. In a recent survey made by the industry, it is projected that should current conditions continue, there will be 600,000 fewer tons of reinforcing steel produced in 1974 than was produced in 1973. Based upon an $80 billion heavy construction industry, this will mean that the reduction of 600,000 tons of reinforcing steel would shut down approximately $10 billion worth of construction projects in 1974. It is estimated that this slowdown will affect 260,000 construction workers in the United States, thus substantially contributing to the growing unemployment roles.

Faced with those statistics, one can reasonably ask, "How did this latest shortage occur?" There are several reasons for the current shortage in construction metals.

First, the world demand for finished steel products is at its highest level in history. The American Iron and Steel Institute has estimated that the world production of steel for 1972 was 690 million tons and estimates go as high as 735 million tons for 1973. Additionally, the world demand for finished steel products is not coming from just one area of the world but from throughout the globe, and thus competing with uses of steel products in the United States for limited resources.

Second, no new major steel facilities have been built in the United States in the past 10 years. Although the steel industry has made large capital expenditures to improve the existing facilities as a means of becoming more efficient, new construction has virtually ceased. One key factor in this lack of expansion has been the fact that for the past 10 years foreign steel imports have been increasing to a point where they account for 16 percent of all steel products consumed in the United States in 1972. This increase approximates the normal growth of consumption in the United States; thus, the steel industry could not justify construction of major additional facilities. Additionally, the rate of return in the steel industry has been low, and thus new capital has not been attracted in sufficient amounts to build a larger capacity.

However, the key factor in the current shortage has been the dislocations in supply caused by Federal price control policies. Traditionally, the price and profit level of reinforcing steel in relationship to other steel products has been low, thus providing little incentive for domestic steel mills to produce this item, particularly at a time of high demand. Additionally, the recent price increases for ferrous scrap has created a situation where reinforcing bar prices are frozen at an unrealistically low level in relation to scrap metal. Thus, domestic mills see no incentive to produce reinforcing bars for consumption in this country.

However, the international market presents a completely different situation. Due to the devaluation of the dollar, the reevaluation of some foreign currencies and the boom in world demand for finished steel products, United States mills are now able to be competitive in exporting finished steel products. At the present time, for most finished steel products, the world market price is higher than the domestic market, due to the cost of living regulations. As an example, trade sources indicate that a number of domestic sales are currently being made at a base price of approximatedy $150 per ton. However, foreign buyers are offering to purchase reinforcing steel at a base price approaching $255 a ton or higher. Thus, it is obvious that unless Federal price controls are relaxed so that the domestic prices are allowed to come closer to the world price, domestically produced steel in critical demand in this country will flow instead into the higher price of the world market, thus making the shortages of finished steel products even more acute.

Statistics point out the tremendous outflow of steel products. In 1972 this Nation's export of domestically produced finished steel products equaled 2,873,000 tons. It is estimated, however, that the export of finished steel products for 1973 will reach a level of 3,750,000 tons. This represents an increase of 20 percent in our export of domestically produced finished steel products in 1 year.

The Cost of Living Council regulations have greatly distorted the historical balance between the price structure of various finished products in this country and in the world market. Therefore, I call upon the Cost of Living Council to take significant steps to relax price ceilings on reinforcing bars and other small steel shapes, and allow the price of this steel product to seek its own level, based on normal competitive conditions. This action will surely increase the supply domestically, and may even lower the current price of reinforcing steel, due to the competitive nature of the industry. I am convinced that we must move away from price controls on these critically important materials. Our economy and the jobs of thousands of Americans are depending upon the adequate supplies of construction materials, and for

arbitrary Government policies to aggravate an already serious situation would be intolerable.

I also ask, Mr. President, that the article entitled "Builders Warn: No Rebars, No Building," and the article "Booming Oil Fields Run Out of Pipe," both from the Business Week of December 8, 1973, be printed in the RECORD at the conclusion of my remarks.

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

BUILDERS WARN: NO REBARS, NO BUILDING

The energy crisis may put oil drillers at the head of the line for steel products, but pushing for a spot right behind them is the construction industry. From nearly every corner of the country, construction men predict dire results if the steel industry does not increase production of building steel, especially the type used to reinforce concrete. "Every project with any steel in it is seriously affected," says Earle Beattie of the Associated General Contractors of California.

As with pipe casing for oil wells, some of the products in greatest demand by construction companies are those that are least profitable for the steel companies to produce—and thus have been cut back. Heading the list are concrete reinforcers—bars, tie-wire, and wire mesh. For a time, imports kept the price of so-called "rebars" (reinforcing bars) and the like down. Now, imports have not only trailed off, but U.S. steel companies have sought to take advantage of rising prices abroad by exporting more of the construction steel they produce.

The crux of it all is that steel companies have taken their government-allowed price increases in more profitable lines. This has pressed the users of other steel products so hard that many of them have been lobbying in Washington for higher steel prices. Several major steel companies have already asked the Cost of Living Council for increases averaging 6.5%, on about half of all steel shipments. The price boosts would take effect on Jan. 1 and would include many construction products. Says Robert Burwell, general partner of Seattle's Ace Tank Co.: "A high price and getting steel is a lot better than a low price and not getting it."

OTHER SHORTAGES

There are growing shortages of other construction products besides rebars, including plate, castings, forgings, structural steel, and pipe. Richard M. Hollar, a procurement manager at Fluor Corp., says he is having problems getting steel for two big oil construction projects.

The Dunbar Co. in Cleveland handles industrial commercial, and institutional construction. Its vice-president, James W. Robinson, says: "The real delays will be on jobs we are now bidding." William Acton, vice-president of Sun Shipbuilding & Drydock Co. in Chester, Pa., complains that mills are concentrating on more profitable lines "rather than supplying us." But he adds, "I can't blame them."

The imbalance between demand and supply has produced black markets in parts of the country. In some places buyers are paying twice the domestic price of $170 a ton for rebars. One way this is done, confides a West Coast distributor, is that "rebars sold to dealers for export just don't quite make it into the export market."

Steel executives are especially sensitive on the subject of exports. One export-import company allows that it was part of a deal involving a West Coast steel mill that had committed the entire 1974 output of its small rolling mill to Japan. When the manager of the mill was asked to confirm the report, he refused and snapped: "Where did you get that information?" At some places on the Coast, however, the situation is reversed. Reliance Steel & Aluminum Co. says it is relying almost entirely on Japanese steel these days. The explanation is that mills back East "aren't shipping anything to the West Coast." Added to this, a major source, Kaiser Steel Corp.'s Southern California mill, has withdrawn cold-rolled steel from the local market. The reason: Kaiser must supply its own tube and drum-producing subsidiaries.

FORECAST

The Concrete Reinforcing Steel Institute in Chicago will roll out figures to back its gloomy predictions of what will happen if rebars continue scarce. Robert T. Stafford, executive vice-president of the institute, estimates that 1974 shipments of rebars will be 600,000 tons less than in 1973. Relating that figure to forecasts of nonresidential construction, he predicts that $10-billion of that construction may be "affected next year by postponement, delay, or cancellation."

Raymond C. Heun, executive director of the New York Concrete Construction Institute, has appealed for more government restrictions on exports of scrap iron and steel. Steel mills have been complaining not only because of scrap shortages but also because scrap prices have doubled in the last year. As things now stand, Heun estimates that many projects in the New York area are receiving only about 25% to 50% of their rebar requirements. Even in Florida, where construction seems to boom eternal, there is little optimism about the future, says J. Harley Delph, president of Dade Steel Co.: "On structural steel, we're 60 days behind normal delivery schedules. But the biggest problem is reinforcement rods. If we don't find some shortly, the construction industry could be in real trouble."

BOOMING OIL FIELDS RUN OUT OF PIPE

Thanks to price increases for new oil and gas, the most dramatic turnaround in U.S. oil and gas drilling history is developing, with long-term prospects for easing the nation's dependence on Middle East sources. Virtually every rig available is working right now. But suddenly a severe shortage of drilling pipe and well casing has appeared that drillers say could quickly turn the boom into a bust.

Fearful of missing the chance to capitalize on the higher prices, oilmen are pleading with federal officials to looser price controls on tubular steel. They blame controls for causing the shortage by making tubing unattractive for steel companies to produce.

The shortage is so bad that a brisk black market is developing for oil tubing, and pipe rustling is on the rise. "Finding a string of well casing is like finding gold," says James P. Murphy, president of Houston's Inexco Oil Co.

SURPRISED

Steel companies were apparently caught off guard by the sudden demand. Since last August, when prices on newly found domestic oil were decontrolled, the number of drilling rigs in operation has jumped 15% to last week's level of 1,409, the highest in eight years. And in the last two months, the demand for oil tubular goods nearly doubled as oilmen tried to take advantage of the skyrocketing prices—nearly $7 ber bbl., close to double the level a year ago.

The nation's steel mills have increased shipments of oil country tubular goods 26% from the second to the third quarter, but they have not kept pace with the demand. And this has hurt many individual oil companies, which have been forced to cancel plans to drill wells for lack of pipe. This, in turn, has made them sacrifice a commitment for a drilling contractor's rig, which then goes to another oil company with a sufficient supply of tubing.

Oilmen are now warning that by the end of the month a real crunch will be felt in pipe supplies, and some drilling rigs now in operation will be forced to shut down. If the shortage continues, they say, the industry will have to scrub as much as 25% of the wells planned for next year. "We finally have the price incentive to drill, but we can't get the materials, and it makes me sick," laments Midland (Tex.) oilman Thomas Brown. If the shortage continues, he says, he will have to cut back his drilling program for next year from a planned 60 wells to 35. He predicts that a quarter of the nation's rigs now operating could grind to a halt. Adds Houston oilman George Mitchell: "If tubular goods stay this tight, we'll be lucky to drill 50 of the 100 wells we've planned for next year."

The pipe shortage developed in an industry that has been characterized by oversupply for the last decade. Until now, the major producers of oil tubular goods, including U.S. Steel, Youngstown Sheet & Tube, and Armco, went out of their way to lure oil company business. They even provided free inventory service by maintaining so-called "down river" stocks at some 35 yards around the country. Oilmen did not have to order well tubing ahead of their needs since it was available from these inventories on a 24-hour notice. But last month, these stockpiles vanished, and lead times have quickly stretched to five months. Unwilling to wait that long, some oil companies are buying used well casing at black market prices as much as 80% above the controlled price of new tubing.

DEMANDS

Oilmen complain bitterly that prices on tubular goods are being held to less profitable levels than other types of steel, such as sheet steel, and thus encouraging production of sheet steel at the expense of less profitable tubular. They are now demanding that the government permit an increase in the price of tubular steel to make its production more attractive. "Tubular steel prices are being held down to less profitable levels than other steel products at the very moment when things need to go in the other direction," says James E. Barnes, vice-president for purchasing at Continental Oil Co.

In at least one case, Phase IV controls are keeping oil tubular goods already produced off the market. L. B. Foster Co., a supplier of oil well casing, nearly doubled its monthly sales last October, and the sudden spurt in revenues pushed the company to its Phase IV profit margin limit for 1973. It abruptly cut all sales for the last two months to avoid violating Phase IV regulations. It now finds itself sitting on 2-million ft. of well casing—enough for more than 350 wells—at its warehouse, while oilmen are pleading to buy it. "I'm more exhausted explaining to everyone why we can't sell it than I would be if I tried to sell it," moans Richard A. Anderson, a Foster vice-president.

IMPORTS OFF

Another reason for the shortage is the fact that in just the last couple of months, imports of oil tubular goods have all but dried up as foreign suppliers shift their products to Indonesia, China, and Europe, where they can get better prices. At the same time, U.S. exports of pipe are running nearly double last year's levels, partly because pipe in foreign markets is priced at least 20% above U.S. controlled prices. Ironically, about 15% of the exports are going to Arab countries, a fact that disturbs many oilmen. Says Murphy of Inexco: "Exporting tubing to countries cutting us off from oil is completely ridiculous."

Meanwhile, to combat the rapid rise in pipe rustling, many oilmen are putting their pipe in the field under armed guard or moving it into fenced-in warehouse yards. And sheriffs's departments in West Texas are cracking down, too. The sheriff in Odessa,

for example, will soon take delivery of a helicopter to spot pipe rustlers from the air. Says Sheriff Elwood Hill: "When drilling pipe gets scarce in this part of the country, you can expect the thieves to start moving in, and we're getting ready to move in on them."

SEVENTY-FIFTH ANNIVERSARY OF THE VETERANS OF FOREIGN WARS

Mr. EAGLETON. Mr. President, I rise to speak in commemoration of the 75th anniversary of the Veterans of Foreign Wars. While all of us in this body are familiar with the work of the VFW, I am especially proud of the fact that the National Headquarters of the VFW is located in Kansas City, Mo. This headquarters oversees the many programs of the VFW and serves as a focal point for their coordination.

The VFW is the oldest major veterans organization in America, having been originally formed by veterans of the Spanish-American War in 1899. The national membership, which has experienced 20 consecutive years of growth, is now 1.8 million men with an additional 500,000 women in the Ladies Auxiliary. There are almost 10,000 VFW posts throughout the Nation. My home State of Missouri has 40,000 members in 266 posts.

To many of us the VFW conjures the image of patriotic parades on Veterans' Day or the sale of Buddy Poppies. But beyond these highly visible activities, the VFW performs a wide variety of community services which benefit not only veterans, but all citizens.

Realizing that the leadership role of tomorrow will be borne by the youth of today, the VFW places special emphasis on youth. The five major youth programs are "Sons of the VFW," scouting, youth bowling, junior rifle and youth baseball. These programs are intended to instruct young people in participatory democracy. Approximately 7,500 Missouri youngsters currently participate in these activities.

Public safety is another major concern of the VFW. "Drive to Survive" and "Lite-a-Bike" are two of the best known safety projects. "Drive to Survive," a course of instruction for adults, has taught many good drivers to be better drivers—2,000 Missourians have taken advantage of this course. The nationally recognized "Lite-a-Bike" project is designed to assist in saving the lives of and preventing injury to the bicycling youth of America. Since its inception in 1963, millions of bicycles have been made safer by the addition of reflective tape made available through the program.

Educational assistance is also of great interest to the VFW. The widely acclaimed "Voice of Democracy" scholarship program for high school students has benefited hundreds of young people across the country by providing scholarship money to permit them to further their education. More importantly, it has encouraged thousands more to learn for themselves about their rights and responsibilities as American citizens. In Missouri over 5,000 young people have participated in this year's contest.

These are but a few of the very worthwhile programs sponsored by the VFW. In recognition of that organization's many achievements, the U.S. Postal Service has chosen the VFW commemorative stamp as 1 of only 20 to be issued this year. The first day of issue will be March 11, 1974.

Mr. President, I salute the VFW on the occasion of its 75th anniversary. I am confident that the VFW will continue to be a very positive influence in American life and will continue to provide a wide range of public service programs. By working for the betterment of our communities and our citizens, the VFW is living up to its obligation "To honor the dead by helping the living." There can be no nobler purpose.

ENERGY: GET THE FACTS

Mr. HARRY F. BYRD, JR. Mr. President, the efforts by committees of the Congress and by the Federal Energy Office to obtain facts about petroleum prices, profits and supplies are essential as a basis for intelligent legislative and administrative action.

It is astonishing that the Government lacks independently verifiable statistics to provide a foundation for energy policy.

This is not to say that a whole new battery of taxes, or extensive Government regulation, will necessarily provide an equitable solution for the energy dilemma. It is my hope that market forces will provide most of the solution, but Government action must be considered where serious inequities or dangerous shortages would otherwise result.

One area in which I think Government action probably will be appropriate is the reduction or elimination of certain credits against U.S. taxes for sums paid by the oil companies to foreign governments. In view of the dramatic increase in charges which the oil-producing nations designate as taxation, I am concerned about the extent to which such charges should be allowed as credits against U.S. tax on other income.

I think it is important, too, for the Government to look carefully at the petroleum export situation. I recognize that trade patterns are complicated, but we cannot allow U.S. exports to result in any substantial net loss of scarce domestic energy resources.

In every area, the Government must establish the facts. Unless this is done, the national energy program will not have—or deserve—the confidence of the people.

Today, the people are asking a lot of questions—and rightly so. They want to know how the energy problem was allowed to become so critical, and what is going to be done about it.

How did the energy crisis come about?

I think the basic explanation is quite simple.

Today the United States has a trillion-dollar economy. That means that the gross national product—the sum of all our goods and services—is valued at more than a thousand billion dollars a year.

We first reached a trillion-dollar economy in 1971.

Just 10 years earlier—in 1961—the gross national product was a half-trillion dollars.

Think what that means: it took 185 years of American history to reach the half-trillion-dollar level, but it took only 10 years to get the other half-trillion.

What has happened to our energy resources during these years of phenomenal growth? Naturally, they have been seriously depleted.

Let us be frank about this rapid depletion of national energy resources: neither Washington nor the private sector has been very farsighted about this situation. There has been a lot of wishful thinking about the extent and availability of resources, and not much planning or action.

It is not that we were without prophetic voices of warning. Back in 1959—14 years ago—Senator JENNINGS RANDOLPH, of West Virginia, introduced a resolution to establish a joint committee on a national fuels policy. And there have been numerous, more recent warnings of problems lying ahead in the energy field.

But action was long in coming. I gave early support to construction of the Alaska pipeline, and I find it astonishing that as late as last July this legislation—so important to development of domestic resources—passed the Senate by just one vote.

Nothing will be accomplished, however, by looking backward. We must take constructive action.

In the short run, the emphasis must be on conservation and allocation of resources.

Everyone regrets the necessity for the conservation and allocation programs. Long experience with government programs of this kind indicates that despite the best efforts of all concerned, the regulations may not be fair to everyone.

One of the most important provisions that must be included in any energy program is protection against undue economic damage or dislocation. It is absolutely essential that we keep American workers on the job and American goods on the market.

Moreover, those administering energy programs must guard against any tendency to impose unfair burdens upon any single sector of the economy.

Travel is a good example. There is bound to be some reduction in travel, but it is important to remember that a man or woman out of work in the travel industry is just as much unemployed as a factory worker who is laid off.

In framing our energy strategy, we must take a hard look at environmental constraints. I favor easing of automobile emission standards, for the time being, to give an opportunity for development of better technology as well as to conserve fuel in the short run.

I also support temporary easing of stringent sulfur emission standards in the burning of coal and a close examination of other standards that may hamper the struggle to conserve energy resources.

None of this represents an abandonment of the goal of cleaner water and air. It is simply a recognition that technology has not yet caught up with the demand for pollution control equipment and

measures that will improve the environment without imposing unacceptable penalties in energy consumption.

Another point which I feel must be kept in mind in dealing with the energy crisis is the need for government to set an example. Wasteful consumption of energy by the Government, in these difficult times, cannot be tolerated.

I might note that I joined in sponsoring legislation to require a reduction in fuel consumption by the Department of Defense, the biggest user in the Government, and that I voted in favor of a provision to ban shipments of critically short petroleum supplies to Southeast Asia.

Because of the embargo imposed by the Arab Nations on shipments of oil to the United States, the energy situation affects—and is affected by—developments in the field of foreign policy and diplomacy.

The situation in the Middle East is explosive. I believe it is imperative that the United States proceed with caution in this situation, and I have made my views on this score known to the State Department.

The best interests of the United States will be served by a lasting settlement, and I think that our representatives should cooperate with the parties in working toward that end.

It has been suggested in some quarters that the United States should embargo all shipments of goods, or nearly all shipments, to the Arab countries. I see the appeal of such a recommendation; striking back is a natural thing to do. But I do not believe it would be effective. The Arabs would be able to obtain nearly everything we might deny them from other sources, especially from the Soviet Union.

The United States, I feel, should use its leverage as an exporting nation in dealing with other countries—especially, I might say, with the Soviet Union—but I do not believe, in the case of exports to the Arabs, that the United States has sufficient leverage to accomplish the objective. Such a boycott could, in fact, be harmful rather than helpful.

Of all the actions we have taken and will be taking in the near future, I think the most important are the ones aimed at achieving self-sufficiency in energy, or at least the greatest possible degree of independence of unreliable foreign countries.

I list among such actions the approval of the Alaska pipeline.

Another important step toward energy independence was the Senate's approval of legislation to foster research and development in the energy field.

In many respects, coal may prove to be the key to the future. It is our most abundant fuel, and I think it is vital that we move ahead with efforts to mine it and burn it in ways that are safer and cleaner than those now available. I hope there will be major efforts in the field of coal liquefaction and coal gasification.

In the long run, I think one of the most attractive possibilities is solar energy. I understand that it is not yet practical for large-scale usage, but I believe that a maximum effort should be made to develop ways to harness and store the power of the sun. Alone among energy sources, it is limitless and without adverse environmental effects.

Nuclear energy is being thoroughly explored. It may well be that nuclear power will "bridge the gap," so to speak, between our reliance on fossil fuels and the energy sources of the future—such as solar and geothermal energy.

I think we must insist, however, that major efforts be devoted to making nuclear energy safe—and that includes dealing realistically with the problem of radioactive wastes. The larger the scale on which we are obliged to use nuclear energy, the greater the problems that will be associated with its use.

A whole host of other possible resources—from oil in shale and tar sands all the way to harnessing the power of the tides—must be given consideration and study.

We will find the answers to our energy problems only if we explore every avenue.

A GERMANENESS RULE

Mr. BENTSEN. Mr. President, I am pleased to join with the distinguished senior Senator from Rhode Island, Senator PASTORE, as a joint sponsor of Senate Resolution 257 which would establish a new Senate rule for germaneness of amendments.

The Senator from Rhode Island and I discussed this amendment during the closing weeks of the first session of the 93d Congress when nongermane amendments were often delaying the consideration of important legislative initiatives. The Senator from Rhode Island, as we all know, has been concerned with the question of germaneness for some time. The Senate rule for debate during the first 3 hours of legislative business bears his name and he has given the Senate consistent leadership on matters of procedure and debate.

I am honored, therefore, to jointly sponsor with the senior Senator from Rhode Island Senate Resolution 257 which would allow the Senate to prohibit nongermane amendments by a two-thirds vote. The resolution would not restrict any Senators right to debate a motion but would merely allow a two-thirds majority of the Senate to prohibit amendments that are not germane to the pending business.

Too often, Mr. President, we in the Senate find ourselves embroiled in issues to quote Shakespeare, " full of sound and fury and signifying nothing." We heatedly debate nongermane amendments, delaying the Senate for days, and then find these amendments summarily dismissed in conference because of the rules and attitude of the other body concerning nongermane amendments. Perhaps there will be times when the Senate will want to debate a nongermane amendment simply to expose an issue or to stimulate interest in a particular problem and this rule will not prevent those debates from taking place.

But when the overwhelming majority of Senators feels that an issue should be dealt with quickly—nongermane amendments could be prohibited and the pending business could be given the Senate's full, undivided attention.

The motion to restrict nongermane amendments could be offered at any time during the consideration of a bill. The motion would not be debatable and could not be offered more than once to a particular bill or resolution. If two-thirds of the Senate were to agree, then all amendments would have to be germane according to the decision of the Chair.

I believe this is a fair proposal but I would be happy to consider any other suggestions for dealing with this issue that Senators might have to offer. I hope that the Rules Committee will hold hearings on this proposal and that some device can be found that will speed up our consideration of important measures and make the legislative process more efficient.

THE DANGER IN CALLING "WOLF"

Mr. PROXMIRE. Mr. President, in the past year we have had the term "national security" invoked so liberally that there is a real question about its meaning. Just what is a question of "national security"? Investigating the tax returns of Americans for political purposes? Ordering the break-in of the psychiatric offices of a former Government employee? The refusal to release requested information necessary for a proper investigation of the Watergate affair? As a justification for withholding data from the Armed Services Committees? To protect the investigation into the systematic spying by high Pentagon officials on the President's national security adviser? Where does it stop? When did it start?

The danger in the continued cry of "national security" is the same as boy who called "wolf." Someday the time will come when there is a real national security question at hand and no one will believe the warning signals. Misuse breeds skepticism and that sometimes leads to contempt.

Mr. President, a recent editorial in Aviation Week and Space Technology puts the problem directly. As Mr. Hotz writes, secrecy breeds corruption as well as poor policy and national disaster when carried to extremes. I recommend this editorial for thoughtful reading.

Mr. President, I ask unanimous consent that the editorial be printed in the RECORD.

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

THE FALSE SECURITY BLANKET

Virtually every criminal and malodorous act that was committed during the sordid period now loosely known as Watergate was justified by President Richard M. Nixon and his aides on the grounds of protecting "national security." The use of the false security blanket as an alibi for acts otherwise unacceptable to humanity was certainly not invented by the Watergate conspirators. It was used to justify every atrocity in the Third Reich of Adolf Hitler down to genocide. It is still a standard justification for the police terror and labor prison camps in Soviet Russia. It is also one of the deadly viruses that have been sapping the traditional values of the American system of government for the past 20 years.

There are of course many legitimate areas of national security that require maximum secrecy, but these are seldom the areas involved in the most flagrant exercise of extra-legal power by political leaders. The unfolding of the details of the Watergate affair has

revealed exactly what aims these applications of executive force really had, in contrast to the label of national security publicly used for their justification.

We had been dealing with these false security blankets long before Watergate, and our experience invariably showed there was seldom any genuine national security involved. The false security blanket was generally used to conceal policies that were either illegal, corrupt or so patently wrong they could not stand the pressure of public debate. The evidence laid on the public record by the Watergate investigations now confirms the phoniness of the national security issue as routinely peddled by the executive branch of the government.

Was there in any of the Watergate "national security" cases anything that really involved the security of this nation? The record reveals nothing.

The U.S. bombing of Cambodia was one of the worst-kept Administration secrets and the subject of the most elaborate official deception and most vigorous pursuit of "leaks" to the public prints. The Viet Cong and Hanoi troops knew they were being bombed. U.S. insignia on the attack aircraft clearly identified the source. Hanoi, China and the USSR knew we were bombing the Viet Cong supply bases in Cambodia. Only the U.S. Congress and the American people were kept in the dark.

The U.S. position and proposal in the Strategic Arms Limitation Talks (SALT) with the Soviet Union was another major area where the Nixon Administration's "plumbers" unit battled desperately and illegally to hound newsmen who were reporting the story. The inept performance of U.S. diplomats is a sad tale that still has not been fully told to the American people. Disdainful of any technical knowledge of military hardware, these diplomats bargained away a major strategic U.S. technical superiority in missile defense technology and allowed enough loopholes in terminology for the Soviets to exploit their offensive missile technology from inferiority to superiority. It would be far better for the security of this nation if both the U.S. negotiators and the American people understood more about "pop up" cold-launch missile techniques, MIRV warheads and the real status of missile defense technology instead of the secret police technology being developed by the White House staff.

The most ludicrous effort of all was the Pentagon Papers leak by Daniel Ellsberg which, except for its context in the rest of Watergate, would be a fit subject for an old-time Keystone Cops two-reel slap-stick. The Pentagon Papers were pretty stale bread for any espionage agent—more grist for a post-graduate thesis than a Soviet planner. They gave the American public only a peep-show version of how it had been dragged into a bloody, costly and senseless war without even the vaguest idea of its purpose.

The latest case of the Pentagon spying on the National Security Council to find out the real national policy is pure opera bouffe. It speaks volumes of how super secrecy has clogged the functions of this government when the two organizations most concerned with national security have to spy on each other to find out what is really going on.

This problem of the sleazy use of "national security" to justify any action or policy that cannot stand the light of public scrutiny is far more serious than the current political plight of Richard Nixon's presidency. It is a cancerous rot that will erode the very foundations of democratic government if not given a strong antidote of frank public discussion of the major issues and policies on which the real security of this nation rests.

The events set in motion by Watergate have certainly proved the adage that secrecy breeds corruption. That is bad enough for the American system of government. But it is equally true and even worse that secrecy breeds poor policy and national disaster when carried to the extremes of the Nixon Administration and its two Democrat predecessors. The Bay of Pigs and the Southeast Asia fiasco could only hatch in the darkness of government secrecy. Neither could have survived even the preliminaries of public scrutiny.

If it is to survive the next century, the American government and its elected officials must operate with considerably more candor and intelligence with the American people than they have displayed during the past decade. The American people will respond to any genuine challenge with the full measure of their energy and devotion. But they are weary of being conned by self-seeking politicians and are now equally skeptical of phony crises and patent medicine doses of political soothing syrup.

REMUNERATION PAID TO GRAND JURORS

Mr. NELSON. Mr. President, recent reports in newspapers and periodicals have exposed yet another miscarriage of justice related to the Watergate scandals: The very meager remuneration of $20 per day paid to those individuals sitting on the Watergate grand juries and making critical decisions in the resolution of the controversies embroiled in the Watergate affairs.

The injustice of this remuneration is easy to grasp. Government employees who sit as grand jurors receive the full salary or wages they would have normally earned for those days on the grand jury. Most other individuals—especially those paid on an hourly or daily basis by private employers—do not enjoy the same good fortune.

For these people, the $20 daily payment is their only income when they serve as grand jurors. A short term as a grand juror may not work a hardship on most of these people. But when—as in the case of one of the Watergate grand juries—the term as grand juror lasts for 19 months, the financial sacrifices endured by these people is considerable.

Indeed, within the last 2 weeks the foreman of one of the Watergate grand juries quit, because his insurance business "was going down the drain" and his $20 per day compensation could not make up the loss. Two other grand jurors have quit their regular jobs, because it was impossible to fulfill their public responsibilities and also earn a living.

Congress should not tolerate this situation. The Watergate grand jurors have played and will continue to play a critical role in the resolution of the Watergate crimes. This role is mandated by the fifth amendment to the Constitution which provides, in pertinent part, that—

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; . . .

It is thus the constitutional responsibility of a grand jury to determine whether probable cause exists to believe that a crime has been committed. In making that determination, the grand jury must consider all the available evidence; it must weigh that evidence and judge whether, on balance, a particular individual has in fact probably committed a crime.

The significance of the grand jury's role in our judicial system should not be underestimated. The grand jury insures that a group of ordinary citizens will investigate serious crimes and decide which ones shall be prosecuted. Every individual suspected of committing a serious crime is thereby assured that the initial and critical judgment of whether to prosecute shall be made by his fellow citizens. As William Safire recently observed in his New York Times column:

The genius and the glory of the jury system is that it puts the fate of the accused in the hands of "peers"—that is, people who are as unfamiliar with courtrooms as any defendant, and can readily put themselves in the shoes of the persons on the stand.

The importance of the grand jury's role has also been attested to by numerous legal scholars and judges. In a 1933 case, for instance. Federal District Court Judge Kilpatrick observed:

The inquisitorial power of the grand jury is the most valuable function which it possesses today and, far more than any supposed protection which it gives to the accused, justifies its survival as an institution. As an engine of discovery against organized and far-reaching crime, it has no counter-part. Policy emphatically forbids that there should be any curtailment of it except in the clearest cases. *In re Grand Jury Proceedings*, 4 F. Supp. 283, 284 (D.C.E.D. Pa. 1933).

Judge Kilpatrick's views were endorsed by Professor Orfield:

The grand jury serves two great functions. One is to bring to trial persons accused of crime upon just grounds. The other is to protect persons against unfounded or malicious prosecutions by insuring that no criminal proceeding will be undertaken without a disinterested determination of probable guilt. The inquisitorial function has been called the more important. Orfield, *The Federal Grand Jury*, 22 F.R.D. 343, 394.

Nowhere has the importance of the grand jury been more evident in recent years than in the investigations of crimes arising out of the Watergate scandals. Three grand juries have spent many, many months—one of the juries as long as 19 months—investigating those crimes. Already they have returned 12 indictments—and received 11 convictions. Reports indicate the grand juries' work is far from complete.

It is a travesty of justice to think that these grand jurors can perform one of the great duties and privileges of citizenship only at considerable personal financial sacrifice. Already one grand juror has resigned because the personal costs of fulfilling that responsibility have been too great. If more jurors quit, it could greatly impede the grand juries' work and delay the completion of their tasks. For the new replacements would have to review much of the vast amount of evidence already submitted so that future investigations could account for all the relevent information.

It is time to correct this situation—not only for the Watergate grand juries, but also for other Federal grand juries who fulfill one of the critical functions in our judicial system. Accordingly I in-

tend to propose corrective legislation in the very near future.

Mr. President, I ask unanimous consent to have William Safire's excellent column on the injustices done to grand juries printed in the RECORD.

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

ABOUT CLEANING LADIES

(By William Safire)

WASHINGTON, January 20.—A cleaning lady comes into my office every evening, empties the wastbasket, wipes out an ashtray, makes a pass at some dust with a rag and is gone.

We nod at each other with some civility, and say "Happy New Year" at the appropriate time, but I am not moved to inquire into her life, and her interest in my work extends only to hoping I do not make too much of a mess.

The reason why cleaning ladies might well occupy our thoughts now is a published report that two of them have had to quit their regular jobs in order to continue as members of the original Watergate grand jury. Julia L. White, mother of eleven children, quit because "to work on jury duty in the day and then at night as a janitor was too tiring."

Who can blame Mrs. White, or her unnamed fellow juror, for finally putting a stop to two workdays in one? The wonder is that other cleaning ladies (more properly called cleaning women, janitresses, or officekeepers) continue to serve on Watergate grand juries while holding on to their tiring jobs at night.

Think about that. Right here at the Washington bureau of The New York Times, which is filled with reporters probing for every scrap of information being unearthed before the grand juries by the office of the special prosecutor, it could be that a bone-weary, work-ethical woman passes among us unperceived, with a headful of headline-making information that nobody even asks her about.

The cleaning ladies and other patriotic citizens who serve on the grand juries have problems endemic to non-celebrities. The foreman of one of the juries, insurance man Julian Murphy, has just quit jury service because "my business was going down the drain" and the $20 a day paid to jurors hardly compensated for that.

The foreman of another Watergate grand jury, an economist at the Library of Congress named Vladimir Pregeli, can stay on because Government employes get full pay while serving on juries. But he points out that his fellow jurors who work for private companies—such as the cleaning women—are going through economic hardship, and he is trying to get Judge Sirica to put through a raise to $25 a day.

In the Watergate courtrooms, a Federal judge gets $40,000 a year; prosecutors average $22,000 a year; top defense counsels get $100 an hour. The only two classes of people hurt financially in the Watergate affair are the targets of the prosecution—some of whom will soon be called defendants—and the jurors.

The financial squeeze hurts: The prospect of no earnings and high legal costs is a form of coercion that causes some targets to plead guilty while richer targets can fight. The prosecution, on the other hand, spares no expense for investigation or litigation; the process of justice pinches pennies only when it comes to paying jurors.

In a strange way, that is as it should be: As long as targets of investigation are put at an economic disadvantage, jurors should share that hardship. The genius and the glory of the jury system is that it puts the fate of the accused in the hands of "peers"—that is, people who are as unfamiliar with courtrooms as any defendant, and can readily put themselves in the shoes of the person on the stand.

"The horrible thing about all legal officials," wrote G. K. Chesterton, ". . . is not that they are wicked (some of them are good), not that they are stupid (several of them are quite intelligent); it is simply that they have got used to it.

"Strictly they do not see the prisoner in the dock; all they see is the usual man in the usual place. They do not see the awful court of judgment; they only see their own workshop . . . Our civilization has decided, and very justly decided, that determining the guilt or innocence of men is a thing too important to be trusted to trained men."

Enter the cleaning lady. In the grand jury room, where there is no defense, she will usually go along with the prosecutors in voting for an indictment, for which only a majority of the 23 grand jurors is needed.

But at a trial, where there is a vigorous defense, she will make it much harder for the prosecution and a unanimous vote from the twelve-person petit jury is required to convict.

What is marvelous, inspiring and humbling about all this is the necessity, in each stage of the judicial process, for all the majesty and pomp and power of government, with its fallen angels and rising stars, to come before the cleaning lady for her judgment.

Next time we are moved to complain about the powerlessness of the individual in a monolithic society, or to denigrate Fourth of July speeches about democracy's trust in the people, we might consider the respect that present and former officials must pay to ordinary citizens thrust into judgment seats.

The cleaning ladies of this cleansing process are not worried about national traumas or darkly interpreted moods; they are tired and their backs hurt, but in their ultimate good sense is the hope and salvation of an amazing system.

ADMIRAL MOORER'S EXPLANATION OF RADFORD INCIDENT

Mr. SYMINGTON. Mr. President, in connection with the so-called military spying incident, I ask unanimous consent that an interview with Adm. Thomas Moorer, Chairman of the Joint Chiefs of Staff, on the Today Show of January 18 be printed in the RECORD.

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

ADM. THOMAS MOORER INTERVIEWED ON NBC TODAY PROGRAM

FRANK MCGEE. For the past week there have been disturbing reports that high military officials, including Admiral Thomas Moorer, Chairman of the Joint Chiefs of Staff, were involved in spying on the White House and on Henry Kissinger in particular. The reports were said to be based on an investigation conducted two years ago by what was called the White House "Plumbers" and the reports alleged that the Joint Chiefs were upset because Kissinger had cut them off from highly secret diplomatic information and still, according to the reports, military liaison aides at the White House went ahead and funneled unauthorized documents to the Pentagon.

Admiral Moorer issued a statement calling the charges "ludicrous" but until today he has not appeared in person to comment on the charges. This morning he's in our Washington studios with NBC News Pentagon Correspondent John Cochran.

JOHN COCHRAN. Good morning. Admiral, it's good to have you back with us.

Admiral MOORER. Thank you, John. I welcome this opportunity to be here because, as Frank just said, during the past week there's been an absolute flood of speculations, insinuations, allegations and frankly, John, I am disturbed and I am certainly mystified as to what the motive is, with respect to these people who don't see fit to use their own names. They talk in terms of informed sources, former officials and things of this kind.

I have a personal concern and I have an institutional responsibility here, and so I want to emphasize that the mere thought that the Joint Chiefs of Staff were cut off from sources of information and then as a result set about to establish a system of acquiring this information in an unauthorized way, is as I said "ludicrous," it's "ridiculous" and it's a lie.

Mr. COCHRAN. But, Admiral, at the same time the Pentagon has admitted publicly that perhaps military liaison aides at the White House in 1971 committed acts which were improper; that these aides or an aide, it's not clear how many people were involved, were overzealous in carrying out their duties. Now, at any time, did any documents come across your desk which were obtained by clandestine means from the National Security Council at the White House?

Admiral MOORER. This was some time ago, John, but as I recall, Admiral Welander delivered to me . . .

Mr. COCHRAN. Admiral Welander being the military liaison aide . . .

Admiral MOORER. Yes, delivered to me some working papers and noted that his Yeoman had retained these in his clerical duties. Now it was readily apparent that I'd already received messages, memoranda and in some cases talked to Dr. Kissinger and the NSC staff about these matters. Since I was familiar with these matters, I simply did not follow through as to the precise origin of these papers.

Mr. COCHRAN. What matters are we talking about, Admiral?

Admiral MOORER. Well, these dealt with the military situation in Vietnam, Cambodia, etc. Consequently, in retrospect, particularly in light of what's happened already, I should have perhaps been more alert and followed through on the exact manner in which these papers were acquired. Now at that particular time there was a very free flow of information to my desk. My problem was not to find information; my problem was to deal with the excessive amount of information I had.

Subsequently, when I learned of the full import of this matter, I directed Admiral Welander to return any such papers to the NSC staff. More importantly, John, I want to assure the American people that I have never issued any instructions, or gave any orders, either directly or implied, to anyone to provide to me unauthorized information.

Mr. COCHRAN. Admiral, how did you become aware that the information which came to you; these documents which were put on your desk, that they were obtained through methods which were less than proper?

Admiral MOORER. Well, only that they were just a collection of "roughs" and carbon copies and things of that kind.

Mr. COCHRAN. How was this information obtained? You talk about the liaison aides at the White House getting this information for you; how do they get this information if they got it through clandestine methods?

Admiral MOORER. I don't think you'd call them clandestine methods; this young man was just engaged in . . .

Mr. COCHRAN. You're speaking of the Navy enlisted man at the White House?

Admiral MOORER. Yes. Typing many, many documents and he just assembled the file of the documents he typed.

Mr. COCHRAN. Now there was an investigation at the White House, apparently in 1971

about news leaks. Is this how this whole matter came to your attention that you got these documents which were obtained through whatever methods, improper, if that's the correct word?

Admiral MOORER. Well, if you're referring——

Mr. COCHRAN. The "Plumbers?"

Admiral MOORER. No, you're referring to the time in December when there was a series of articles in the Anderson column which quoted——

Mr. COCHRAN. Jack Anderson?

Admiral MOORER. Yes, which quoted verbatim official documents and some of the discussions that have gone on in the decisionmaking process at the highest levels. It was a followup to that that resulted in uncovering the indication that the source was from this individual. You're quite right, that was uncovered by Admiral Welander, who reported this to the NSC staff; he reported to me and I referred it to the Secretary of Defense.

Mr. MCGEE. Admiral Moorer, these documents that were collected and sent to you were collected by a young man who has been identified by other sources, not yourself, as a Yeoman First Class Charles E. Radford. Are you in any position to shed any light on what his motive might have been; why he would have done this if you already had the information?

Admiral MOORER. No, I can't understand why he would do such a thing although, as has been said by others, he was overzealous. But the point I want to make is that this information was essentially useless and it was more or less buried in large quantities of other information on the same subject, and so when I saw it, I just more or less dismissed it because it was no use to me.

Mr. MCGEE. Admiral, it's a related question, but it gets into another area somewhat; it is said to be this particular activity and operation that President Nixon had in mind when he so often said that the activities of the "Plumbers unit" could not be investigated without touching on matters of high national security and that this is what he had in mind. Yet, if as you say, it was papers, it was an act done by a young man, perhaps overzealous, did not give you any information you didn't already have, what made it of such sensitive national security nature that it could not be investigated?

Admiral MOORER. Frank, I can't comment on that because I have only a limited amount of information involved in this thing. I will say that it should be quite clear to everyone that the publication of the details of development of policy by the decision-making process of the Government is certainly a national security matter because our Government has no flexibility and certainly other nations will be very concerned about communicating with us if they can pick up the paper the next morning and see in great detail what their position has been during an exploratory phase of development of policy.

Mr. MCGEE. I concede that point, sir; the thing that puzzles me is why, if it was so important earlier, it is now being dismissed as just an incident involving a low-level clerk. I won't press the matter.

Mr. COCHRAN. Admiral, we're just about out of time. I thank you for coming in and being with us.

We're talking with the Chairman of the Joint Chiefs of Staff, Admiral Thomas Moorer, and he's denied rather vigorously that he was ever involved in spying on the White House. There had been published reports that high Pentagon officials, including the Admiral, were engaged in espionage activities trying to get information that Henry Kissinger, the President's National Security Advisor, was cutting off from the Joint Chiefs of Staff. Admiral, you say you were getting all the information you needed from Mr. Kissinger?

Admiral MOORER. That is correct; let me carry that a little further. Dr. Kissinger permitted the Chairman of the Joint Chiefs of Staff to participate in the decisions and in all of the activities of the National Security Council machinery, I think more than any other man in his position. I never at any time felt that I was restricted in terms of prying information. As a matter of fact, I could pick up the telephone any time I want to and talk to Henry Kissinger night or day. In addition to that, frequently he called me into his office for further discussions and then the cases where we had large-scale operations, for instance the Cambodian cross-border operations; the mining of Haiphong; the bombing of Hanoi last Christmas, the President himself very actively participated in the planning and the timing and all the details associated with such operations. I was into all of this up to my ears. So I never felt at any time that I had any problem getting information.

I'd like to touch on another point. It's been suggested that the Joint Chiefs of Staff were opposed to the President's initiatives with respect to Russia and China. Well, that's nonsense. The Joint Chiefs of Staff applaud the action taken by the President to open communications with these two large nations.

Mr. COCHRAN. Admiral, some of these charges specifically relate to the fact that the Joint Chiefs of Staff supposedly were unhappy with the arms negotiations with the Russians, feeling that the White House, Mr. Kissinger were going to "sell us out" in dealing with the Russians; that we would become a secondary power in regard to the Soviet Union and that any agreement reached with the Soviets would hurt the United States. Were the Joint Chiefs indeed concerned?

Admiral MOORER. That's not correct either, John. The Joint Chiefs of Staff certainly do not agree in detail with all of the proposals and options established, but in that case we presented to the top decision-makers, through the Secretary of Defense, a very clear-cut position paper. Let us say; we're not virgins with respect to having recommendatons turned down, as witness the beginning of the Vietnam War. But the Chiefs had a full opportunity to present their positions and by and large the position in the interim agreement was approved by the Chiefs with the assurances that we were going to move ahead with our special programs such as the Trident and the B–52's. So there was none of this conflict and this radical disagreement that people are talking about. As I said, I don't know what the motive is here.

Mr. COCHRAN. Admiral, we just have about thirty seconds, but the White House in replying to these charges that you were involved in spying, gave sort of a qualified vote of confidence in you, they said they couldn't talk about the entire matter because of national security consideration, but it said reports about you were incorrect in large degree. Are you satisfied with what the White House has said in clearing your name?

Admiral MOORER. Let me first say that I don't like this word spying; about 45 years in the Service, that's a little far-fetched.

Mr. COCHRAN. Are you satisfied with what the White House has said?

Admiral MOORER. I think that the confidence that the President has in me is complete.

Mr. COCHRAN. OK. It was good to have you with us.

GAO ASKED TO REVIEW INTELLIGENCE OVERSIGHT AUTHORITY

Mr. PROXMIRE. Mr. President, on January 25, I took what I hope to be the first vital step in at long last bringing the CIA and other intelligence agencies under genuine congressional control.

At that time I sent a letter to Elmer Staats, the Comptroller General of the United States asking the GAO to review intensively all statutory authority in order to establish what powers it has to review, audit, and otherwise examine the programs of the various intelligence agencies. I also asked the GAO to outline the precise oversight authority of Congress with regard to the same agencies.

CONGRESSIONAL CONTROL LACKING

A Member of Congress is extremely limited in what he can do to keep the intelligence community in check. There are too few resources at his disposal. Therefore, it is critical that a highly competent organization, reporting to Congress, be brought into the picture. The General Accounting Office is the right organization for that job. The intelligence agencies have operated beyond congressional control for many years.

For too long the backdoor informal arrangements between selected Members of the Congress and the intelligence community have prevented any effective control. Records are not kept. Congressional staff is almost nonexistent and those involved are inexperienced in intelligence matters, and are denied full access to information.

The well-publicized failures of the intelligence community lie at the doorstep of a blind and deliberately deaf Congress. Promised hearings by both the Senate and House Armed Services oversight subcommittees have not materialized. We can no longer blame the executive branch. It is the fault of a reticent Congress.

I propose that the oversight committees be held responsible for the failures of the intelligence community. When our foreign policy is embarrassed, as in the recent case of the CIA Thai letter, the oversight committees should be held accountable for the agencies under their jurisdiction.

This session, I intend to ask the floor manager of every appropriations bill before the Senate if there are intelligence community funds hidden in his bill. I am also asking the chairman of the Senate Appropriations Committee to make public the total amount spent on intelligence each year. Both Defense Secretary Schlesinger and CIA Director Colby have stated that this would not endanger national security.

In addition I intend to introduce riders to appropriate legislative and appropriations bills until the secret charter of the CIA is made clear, budget data is released, and the oversight function acquires teeth.

Even in an open society certain intelligence matters must be protected and I will honor that commitment. However, the Congress and the intelligence community must begin to honor its commitment to an open society by making available the rudimentary information necesary for Congress to properly fulfill its role.

Mr. President, I ask unanimous consent that my letter to the GAO be printed in the RECORD.

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

JANUARY 24, 1974.

Hon. ELMER STAATS,
Comptroller General of the United States, General Accounting Office, Washington, D.C.

DEAR MR. STAATS: For some time I have been concerned that Congress has not fulfilled its responsibility with regard to reviewing and controlling the operations of the intelligence community. Obviously new tools are necessary to put teeth into the oversight function. Some corrections can be made by legislation. But other productive avenues seem to be closed due to lack of relevant information.

Would you intensively review all existing statutory authority to determine what powers the GAO has to review, audit or otherwise examine the programs and operations of the various intelligence agencies? I would be interested in knowing what success the GAO has met with obtaining information from and about the intelligence community, what staff support the GAO could provide to the Oversight Committees, and what problems the GAO can foresee with regard to Congressional requests for investigations in the intelligence field?

I consider the following agencies and departments as part of the intelligence community: Central Intelligence Agency, Defense Intelligence Agency, National Security Agency, intelligence components of the Army, Navy, Air Force, FBI, Department of the Treasury, the Atomic Energy Commission, and the Bureau of Intelligence and Reports of the Department of State.

Would you also provide a legal opinion of the precise oversight authority of Congress with regard to these intelligence agencies? What powers of control are vested in Congress? What did Congress intend when it legislated the National Security Act of 1947 and the CIA Act of 1949 with regard to oversight functions?

Will the GAO also provide an opinion as to the legality of the National Security Council issuing classified directives to the intelligence community based on the 1947 or 1949 Acts, if these directives deal with subjects not considered in the original legislation. For example, is it legal for the National Security Council to direct the intelligence community in part or whole, to engage in covert activities when nothing in the 1947 Act mentions covert operations?

Please assess the wording of Section 102(d)(4) and (5) of the 1947 National Security Act to determine if this is a totally open ended provision. What responsibility does the National Security Council have to make available to Congress all directives issued under Section 102(d)(4) or (5)?

My staff will be available to assist in clarifying any of these requests.

Sincerely,

WILLIAM PROXMIRE,
U. S. Senator.

THE PRESIDENT AND HEALTH CARE

Mr. McINTYRE. Mr. President, last night we heard Mr. Nixon's state of the Union message and I rise today to comment on a particular section of that message.

Whatever reservations I have about other sections, and I have some, will be spelled out in coming days. For now, I just want to say I was cheered by the President's call for national health care legislation and by the evidence to date that his new health care proposal is a marked improvement over its predecessor.

Though we do not have the detailed proposal before us as yet, what we have already read and heard about it leads me to believe that the administration bill will recognize many of the principles already set down in my own National Health Care Act (S. 1100).

My National Health Care Act would utilize the knowledge and talent of the private sector in bringing about health care reforms.

It would not impose a large and costly Federal bureaucracy on what is and should remain a pluralistic health care system.

It would, however, improve upon that system by the careful application of public authorities and resources.

It would, for instance, set Federal standards for the benefits provided by private health insurers, including comprehensive protection against the costs of catastrophic illness.

It would insist upon benefits for the poor equal to those who are not and it would pay for that coverage with public funds.

At the same time it would retain such private sector cost saving devices as deductibles and coinsurance to discourage overutilization, while applying additional cost and quality control measures to physician fees and hospital charges.

The President's health care proposal would seem to contain similar provisions while discarding several discouraging features of the former proposal; namely, a double standard of benefits that discriminated against the single poor and the childless poor, and left a large section of the populace unprotected.

I welcome these changes, just as I welcome the fact that renewed White House attention to national health care insurance may restore it to the priority it deserves.

What remains to be seen is how well the new Nixon proposal squares against what I consider the strongest feature of my National Health Care Act; namely, its provisions for strengthening the health care delivery system through Government's underwriting of incentives for health care study and for an equitable redistribution of health care personnel, Federal funding of more low-cost ambulatory care centers, and far more emphasis on preventive care.

It is this feature, in combination with those I listed earlier, that make the National Health Care Act a truly comprehensive national health care bill.

And I want to point out, Mr. President, if ever a challenge deserved a comprehensive response it is health care, for an issue of such multifaceted complexity, such far-reaching ramifications, can never be resolved by piecemeal action. Improving the benefit structure alone will not do the job. Providing catastrophic cost protection alone will not do the job. Broadening coverage alone will not do the job. Indeed, such a fractionated course may well result in an aggravation rather than a cure, for it would overburden the existing system and build further inflationary pressures.

I welcome the apparent fact that the administration proposal is more comprehensive than fractionated, Mr. President, but I intended to take to this floor again whenever that proposal is introduced as legislation. At that time I intend to make a point by point comparison with my National Health Care Act, and I will do it in full confidence that mine is the better bill.

But for now I will only say that I am happy to see the administration adopt a comprehensive approach, happy to see it recognize and correct the failings of its first proposal, and happy that the President's message has pushed the issue of national health care insurance to the forefront of our attention.

PROPANE PRICES: A REAL PROBLEM FOR RURAL MISSOURIANS

Mr. SYMINGTON. Mr. President, in recent weeks, we have received some 60 letters, particularly from rural constituents, expressing concern about significant increases in the price of propane.

As in most States, many rural Missourians depend heavily on propane in their daily lives. Natural gas lines, providing fuel for home heating and cooking at regulated prices to urban residents, are seldom available to rural Americans. Therefore, not only do they rely on propane in their agricultural operations, but often for heating and cooking as well.

Allocation regulations are now in effect to help assure that the available supplies of propane and other fuels are equitably distributed; however, from the letters I have received, it seems all too clear that allocation regulations are not enough. If people cannot afford to pay for the propane, for all practical purposes it is not available to them.

This situation is particularly serious for retired persons on fixed incomes and small farm operators with marginal incomes.

Our colleague, the Honorable WILLIAM J. RANDALL, of Missouri, has scheduled a hearing on the increases in propane prices before his House Subcommittee on Legal and Monetary Affairs on February 4, and on price increases on other petroleum products on February 5 and 6.

In that the price of propane has created an unbearable price squeeze for many Americans who can ill afford the added costs, it is clear that further consideration should be given to this problem as we continue to work on the energy situation. I ask unanimous consent that representative letters from Missourians be included in the RECORD.

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

REA, MO.,
January 8, 1974.

DEAR SENATOR STUART SYMINGTON: I'm writing to you about the propane gas and the energy crisis. In September they raised the propane gas to 24 cents a gallon. In November, 26.9. In December, 29.9. In January, 32.9 and it was 16 cents a gallon. They have raised it 16 cents in 4 months. And they said they were going to raise it again. I don't know what a person is going to do living on a pension check. I think something should be done to control the prices. And stop these places from trying to make a profit. It is going to be after a while where you can't afford to heat your homes or buy gas for your

cars. Isn't there a price control? It sure is hurting poor people and people like us living on pension. Hope you read my letter and write back.

I thank you.

———— ————.

PARKVILLE, MO.,
January 14, 1974.

DEAR SENATOR SYMINGTON: The enclosed article charges that there has been an inequitable increase (percentage-wise) in the price of our L. P. gas. Is this true, and, if so, what can be done about it?

The percent increase of our propane bill January 7, 1974, over January 13, 1973, was 225% per gallon. The increase in our farm-used gasoline is slightly less than 100%.

Although we are senior citizens, we are proud to "Dial-Down," drive less and walk more or do anything else for the good of our country. So, if you say the price of propane is "in line" we will feel better about it.

Respectfully yours,
Mr. and Mrs. GEORGE E. RIFE.

Enclosure.

[From the Caldwell (Kan.) Messenger, January 7, 1974]

INCREASING PRICE OF PROPANE GREAT CONCERN TO CONSUMERS

The rapidly increasing price of propane has been a point of great concern to all of the Kansas consumers of L. P. gas.

Ken Johnson, Executive Secretary of the Kansas L. P. Gas Association, pointed out in a letter sent to all L. P. gas dealer members this week that the increases are largely due to a practice allowed by the Cost of Living Council on the pass-through provision for the increased cost of crude oil.

Producers and refiners are allowed to pass on increased costs of both production and importation of petroleum products. However, much of the recent increase in the wholesale price of L. P. gas (propane) has not been attributable in increased costs of LP-gas. The suppliers, being allowed to distribute the increased costs on any product in any proportion or ratio they desire, have passed a very substantial part of these increases into LP-gas.

"In fact, this unfair and inequitable practice has caused some suppliers to raise the wholesale price of propane as much as 300% in the past year while some other petroleum products have increased less than 15%," Johnson stated.

"Further," Johnson pointed out, "only 34% of our propane supply comes from crude oil including imports and domestic production. The remaining supply comes from natural gas plants. So actually, only a very small percentage of the increased costs should be charged against propane."

Kansas LP-Gas Association has stressed that the retail dealer serving the consumer is allowed under Phase 4 to simply pass on the increased price of product and all other expense he must absorb. In reality, his profit margin has been severely cut. The retail dealers, in fact, are leading the fight to get this unfair loading of propane prices stopped.

It is hoped that consumers will help by writing to their U.S. Senators or Congressmen in an effort to get increased petroleum costs on a fair and equitable basis.

HIGH RIDGE, MO.,
January 15, 1974.

Hon. STUART SYMINGTON,
U.S. Senate,
Senate Office Building,
Washington, D.C.

DEAR SENATOR SYMINGTON: I am appealing to you to direct your immediate efforts and attention to determining the reason for the exorbitant propane fuel increases I am experiencing this winter. The letter which follows details the reasons for my extreme anxiety and concern regarding this matter.

Please refer also, to the article on page 2B of the January 13, Sunday edition of the *Saint Louis Post Dispatch* as regards price comparisons.

Sincerely,
DEL HINDLE.

SIEVEKING, INC.,
St. Louis, Mo.

DEAR MRS. SIEVEKING: This afternoon I entered my home in good spirits. The sun was shining, the temperature was in the 40's and all seemed right with the world. My mood took an abrupt reversal, however, when my wife presented me with the bill for today's delivery of propane gas from your company. The price was an unbelievable 37.3 cents per gallon. In February of last year, just 11 months ago, your charge was 18.1 cents per gallon. This is an increase of 106% in less than a year.

I am a teacher in the Rockwood School District and the sole wage earner for my family of three. Last year the teachers in my district received a salary increase of 4.2% over the previous year. This means my fuel bill increased by 25 times as much as my salary.

I have managed to stretch my dollars fairly well in the past so my wife could be in the home with our children. I'm not sure we can continue much longer under a burden like this. What are we to do?

A most troubled customer,
DEL HINDLE.

[From the St. Louis Post-Dispatch, January 13, 1974]

PROPANE COSTS IN AREA UP 83 PERCENT IN A YEAR

Missourians who use propane gas are paying about 83 per cent more for that fuel than they did a year ago.

A check of area dealers shows an average price of 32 cents a gallon, an increase of 14.5 cents. The average price per gallon last year was 17.5 cents.

That means $480 would be required to buy the 1500 gallons needed to heat a standard-size house this winter, compared with $262 last year.

Prices varied from 29.4 cents a gallon quoted by Geldbach Petroleum Co., Inc., to 36.3 cents charged by Sieveking, Inc., Standard Oil is selling propane for 30.2 cents a gallon.

Propane as a home-heating fuel is used mostly in rural areas and on the fringes of the metropolitan area.

Representative Gene Taylor (Rep.), Sarcoxie, has asked Federal Energy Administrator William E. Simon to investigate "alleged overpricing of propane, butane and other liquified petroleum gases."

He said, "I have many letters in my files from individuals who are paying as much as 10 cents per gallon more than their neighbors who are buying the same product from a different dealer. How do you explain that?"

Dealers say that they had been allocated about 60 to 70 per cent of what they had received a year ago.

Dealers here said that their suppliers were charging more, and that they had had to pay more to have the fuel transported from southern refineries.

They predicted that prices would continue to rise.

AMENDMENT OF GENERAL EDUCATION PROVISIONS ACT

Mr. DOMENICI. Mr. President, I rise today to speak of an issue of utmost importance to the Nation's public schools.

Earlier this week, I became a cosponsor of S. 2890, a bill to amend the General Education Provisions Act to allow school districts to carry over into the 1974–75 school year unused education funds appropriated for fiscal year 1974. This bill would also allow school districts to similarly carry over into fiscal year 1975 any of the impounded fiscal year 1973 Office of Education funds which were released this past December.

Since 1970, school districts have been able to carry over from one fiscal year to the next unused Office of Education program funds as a result of a provision in section 414 of the General Education Provisions Act. However, as of July 1, 1973, this section 414 carryover provision—often referred to as the Tydings amendment—has expired.

It is difficult to overstate the importance of this section 414 carryover provision for sound fiscal management at the local school district level. Many curriculum, financial, and other school management decisions for the regular school year must be made months before there is an appropriation for Federal education programs. As a result, a number of school districts now regularly plan to expend a portion of their Federal program money either in the summer session or during the school session after the end of the fiscal year in which the money was appropriated.

If the section 414 carryover provision is not amended and extended as proposed under S. 2890, it would mean that school districts, which are only now finding out exactly how much of the December Labor-HEW fiscal year 1974 appropriations they are to receive, would have to expend all of their appropriated funds before June 30 or have the balance revert to the Treasury. And, in effect, many school districts which had made cautious and careful spending estimates last spring would be penalized for their prudence.

At the present time, most school districts are already in the final stages of planning next year's school budget. These districts want and deserve to know whether the fiscal year 1974 and recently released fiscal year 1973 education funds will be available after June 30.

Thus, it is my hope that the Senate will both consider and approve S. 2890 in the very near future.

SENATOR RANDOLPH COMMENTS ON PRESIDENT'S STATE OF THE UNION MESSAGE

Mr. RANDOLPH. Mr. President, the 10-point program that the President enunciated last night as embodying his program for 1974 covers many areas of concern. His recommendations touch on the lives of all Americans and would have an effect on all aspects of our national life.

There is, however, very little that is new in the goals which he described in broad terms in his address to the Congress. There can be little argument with the program in general, but specifics will bear close scrutiny by the Congress and the American people.

Each of the areas listed by the President has been subjected to congressional

review and action in recent years. I have been personally involved in developing legislation on several subjects addressed by the President. This is why I know that the President's program recommends little that is new. The Committee on Public Works, which I chair, has jurisdiction—either solely or shared with other committees—over several areas of concern to the President.

Energy, economic development and transportation are problems on which we have been working with goals similar to those proclaimed by the President. Often our efforts have been carried out against the opposition of the administration.

The coming of an energy shortage has been apparent for years, but we are only now beginning to mobilize our resources to cope with it realistically. The Committee on Public Works developed legislation in 1965 to begin what the President calls returning government to the people. The Appalachian and economic development programs began that process and have been successful. In the field of transportation, our efforts over the past 2 years were devoted in large part to writing a new, landmark highway law which provides flexibility in the meeting of our country's transportation needs.

The work is not complete in these vital areas. My interpretation of the President's message, at least at this time, is that he is exhibiting a new willingness to join us in a realistic effort to make further advances in areas where the Congress has sometimes had to make a solitary effort.

His proposals mean little if they are enacted but the funds to carry them out are impounded by the administration. Programs for improved water pollution control, transportation, housing, health care, education and other urgent needs are inadequate if the money to implement them is not forthcoming.

The President continues to impound funds in almost all of these areas.

Only a few weeks ago, nearly half of the money provided for building sewage treatment plants next year was withheld from distribution.

More is needed than words. There must be a demonstrated desire to follow through with the commitment of resources necessary to bring the programs to reality.

I hope that we can reach each goal that the President has declared in his program. I share his concerns and am willing to work for realistic solutions to the many problems we face.

CONSTRUCTIVE ACTION BY ADMINISTRATION AND CONGRESS NEEDED IN CHILD EDUCATION

Mr. RANDOLPH. Mr. President, I read with intense interest the President's message on the education of children transmitted to the Congress on Thursday, January 24.

It is gratifying that the President cited education of the handicapped, even though it was not specifically mentioned as one of the priorities or basic principles of constructive action. The focus on this vital need is important. I am disappointed, however, that the only plan of assistance for education of the handicapped is administrative consolidation of present programs. As Senators know, existing programs would be extended by S. 896, which I was privileged to introduce with the cosponsorship of all members of the Subcommittee on the Handicapped. This measure was passed unanimously by the Senate on June 25, 1973. Presently, it is pending in the House Education and Labor Committee.

It is of concern to me and others that the education message did not outline authorization for new programs. I am hopeful that legislation which the President has promised in his message will contain additional initiatives for education of the handicapped. Our subcommittee would welcome the opportunity to participate in any constructive endeavor to expand aid for services to the handicapped children and youth of America.

BYRD INTERVIEWED ON PBS SHOW

Mr. ROBERT C. BYRD. Mr. President, on Monday, January 28, I was the guest on "Washington Straight Talk," a 30-minute production of the National Public Affairs Center for Television. The program, carried on the Public Broadcasting Service network, is produced by Lincoln Furber. Paul Duke, who is in the process of moving to PBS from NBC, conducted the interview.

I ask unanimous consent that the transcript of the program be printed in the RECORD.

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

WASHINGTON STRAIGHT TALK

(ROBERT C. BYRD)

GUEST. Robert C. Byrd.

INTERVIEWER. Paul Duke.

PRODUCER. Lincoln Furber.

PAUL DUKE. Senator, since Congress came back last week, there's been a notable increase in talk about the President's resignation or impeachment.

Do you believe Mr. Nixon can now survive?

Senator ROBERT BYRD. It's going to be difficult, but I think he can.

DUKE. Why do you say it's going to be difficult?

Senator BYRD. Well, because the pressures for resignation are growing; the pressures for impeachment are increasing, in some quarters at least. And the courts are moving; grand juries are acting; possible indictments are in the wings. So I think it'll be difficult.

But as yet there is no clear, irrefutable evidence of direct presidential involvement. This is why I say his survival is possible.

Then, too, the man himself I think is determined to try to stick it out. He has said he will not resign. And in a meeting with the President last week, I, along with other congressional leaders were present, discussing the energy crisis. He didn't look like a man who is about ready to resign, and he didn't talk like a man who is ready to resign.

DUKE. More and more Democrats, though, are suggesting that the President should resign. We've had Congressman Mills in the House, one of the most powerful political figures in that chamber. The Democratic Majority Leader in the House, Mr. O'Neill, now saying the President should quit for the good of the country.

Do you think he should resign?

Senator BYRD. Let me say first that I don't think the President is going to bow to any pressure from Democrats that he resign. If he resigns, it will be on the basis of public opinion and the pressure from leaders within his own party.

Now do I think he should resign? Let me approach that in this way. I wish that the President would cooperate in getting at the facts. And I wish that once those facts are clearly revealed, if they ever are, that the President would be exonerated. And thus far it hasn't looked too good. There's been too much ducking and weaving and diversion and excuses. The so-called Operation Candor was a dud And now we hear that there are going to be offensives from the White House, counteroffensives. What the country needs is not a counteroffensive. All the people want is the truth.

I think that most of the truth certainly will ultimately come out. And I would hope that, if the President can show in some way thta he is clear of direct involvement in any crimes, he would not resign. I would also hope that the evidence would not substantiate impeachment. But if the evidence does substantiate impeachment, and if the House does recommend impeachment, then I would hope that the President would resign rather than subject the country to the travail of a Senate trial, which would further polarize the country, paralyze government, especially in the executive and legislative branches, severely impair public morale, and have a bad effect upon our country at home and abroad.

DUKE. Are you saying, Senator Byrd, that it is now up to the President to prove that he is innocent?

Senator BYRD. Well, in our legal system, of course, any person is innocent until he is proven guilty. But unfortunately, this does not seem to be the case with public officials. In the court of public opinion, almost any public official has to prove himself innocent or else the opinion of the people, as reflected in the polls, is going to be against him. Unfortunately, that appears to be the case.

DUKE. You have suggested that the President discuss Watergate in his State of the Union message. Do you also urge Mr. Nixon to appear voluntarily before a federal grand jury to testify before the Senate Watergate Committee or to testify before the House Judiciary Committee?

Senator BYRD. I think the time for appearing before the Watergate Committee has long passed, if there ever was a time when the President should have appeared before that committee. That committee, as you know, was created for the purpose of securing information on which to base legislation to prevent future excesses like Watergate.

As to appearance before a grand jury, yes, I think he or his representatives should appear before a grand jury, if requested to do so. But I don't think it's necessary that he do so voluntarily.

I think that the President ought to cooperate with the courts, with the grand juries, with the Special Prosecutor and with the House Judiciary Committee in their several lines of inquiry. This is the least I think that the American people can expect. They have a right to expect this. And under our constitutional system, the President, any public official, should cooperate to the fullest extent in any inquiry that deals with the possible commission of crimes.

DUKE. Senator . . .

Senator BYRD. By the way, let me say this, too, with reference to his State of the Union Message to which you referred. I don't think that the State of the Union can be addressed without also dealing with the state of the Presidency. I don't know whether the President will address himself to this matter in his State of the Union Message or not. But it would seem to me that this would be a forum in which he has never addressed himself to

this question. And he might very well help himself by doing so.

DUKE. Well, referring to the state of the presidency, Senator, isn't there a steady erosion of the President's backing now? And isn't there a real question as to whether he can ever regain the confidence of the American people? We have three hundred corporation executives who have said that confidence cannot be regained under Mr. Nixon. We have the conservative columnist James Kilpatrick who now says that friends of Mr. Nixon must face the prospect that he is, indeed, a crook. Doesn't this really put the country in the position of having a President who will never be trusted again, even if he does remain in office?

Senator BYRD. I think that's right. There's no question but that his influence has been greatly eroded. I doubt that he can ever regain the confidence of the American people. I think it has passed that point. The credibility of the President has suffered; but not only the credibility of the President has suffered. The credibility of all government has suffered. Not only is there a growing lack of trust in the President, but this lack of trust extends itself also to the Congress and to the press, and to other areas of our governmental structure and our society.

There was a time when I think the President could have regained and recouped his lost ground. I think that he certainly is due high marks with regard to many of his actions in the five years that he has been in office—and only recently. I think he is to be given great credit for the progress that was made in the Middle East toward a workable peace. I don't think that all of the credit should be given to Mr. Kissinger. Of course, he played center stage and is due a great deal of credit. But there's no question but that he acted with the knowledge that the President was backing him up. And so I think Mr. Nixon is due considerable credit in that regard.

He will have the opportunities to address the country giving his State of the Union Message. He will continue to give messages to Congress, the budget message and so on. He will have an opportunity to speak on trade and various other international questions. And so he has many options and forums. I don't think he's to be counted out. But I, at the same time, don't feel that he can ever regain the trust of the people and re-establish his high credibility, which was reflected in the mandate that was given him in the last election, and at least the high credibility that ought to be associated with any President.

DUKE. Well, does this make impeachment more of a realistic possibility now?

Senator BYRD. I think it's more of a realistic possibility, yes. But as I said quite some weeks ago, I think that if either impeachment or resignation should occur, resignation would probably be more likely to occur than would impeachment. There's no ground swell for impeachment. We see this reflected in the polls. I see it reflected in my mail. There's probably one out of every four persons, in the United States who would favor impeachment. But there's an uneasiness on the part of the people regarding impeachment because of the paralysis in government that they would expect to flow from it.

DUKE. You say one out of every four persons now would support impeachment. And polls show that only about one out of every eight House members support impeachment. Does this indicate to you that the people are ahead of the politicians on this?

Senator BYRD. I think that this would be the most sensitive political vote ever cast by any member of the House, if it comes to a vote on impeachment. I don't envy any member of the House, because there's no way to win on this vote. Either way a member goes, he creates for himself an unforgiving segment of his constituency. And if I might be a bit facetious, I think I can make a point, however, in saying that the luckiest member of the House on the day on which an impeachment vote occurs would be the fellow who is over at Bethesda Hospital having just undergone a tonsillectomy, and a hemorrhoidectomy and is on his way back to the operating room for the recovery of two kidney stones.

Now, many of the members of the House have been elected by very slight margins, one percent, one-half of one percent, two percent, three percent, five percent. And one can see these margins being eroded by a vote on impeachment, whatever way it goes. This is not to say that the member will follow public opinion. But I think that even without the strong support of public opinion, it will be difficult for members to vote for impeachment.

DUKE. You're a lawyer, Senator, and lawyers differ on whether the President . . .

Senator BYRD. May I add one . . .

DUKE. Sure.

Senator BYRD. May I interrupt you?

There's a certain mathematics in this equation too. There are about a hundred and ninety Republicans in the House. And there would only need to be, if all members were present and voting, an additional twenty-eight to thirty Democrats in support of the Republicans, if the Republicans held firm, against impeachment of the President.

And so this, it appears to me, would indicate that the votes, at the moment at least, are not there for impeachment. In the Senate, the mathematics is even more binding where two-thirds of the Senate would be required to convict the President. In the Senate, there are forty-two Republicans. Only thirty-four members of the Senate would be required to acquit the President. And I would assume that while this would be a matter that, if it comes to the Senate—and ought to be thoroughly disentangled from partisan considerations—and there would be a proclivity on the part of Republicans, unless the evidence were clear and irrefutable, to support the President. Some of them might be expected to leave him. But in their stead I feel that there would be some Democrats who would be against conviction of the President, unless the evidence were so clear and irrefutable as to be so convincing that they would feel that he was unquestionably guilty.

So I think the arithmetic is against—certainly against conviction now.

DUKE. But this is not to say that the votes may not be there at some future date . . .

Senator BYRD. This is not to say . . .

DUKE. . . . two months, three months, or six months?

Senator BYRD. That's true. We don't know what blockbusters may be ahead. And we don't know what clear and irrefutable evidence may be discovered or brought to bear in such a trial, if it ever occurs.

DUKE. I was going to ask you about the fact that lawyers do disagree as to whether the President can be indicted. Do you feel he can be indicted?

Senator BYRD. I think he can be indicted. There are those who feel, as you've indicated, that indictment and trial and punishment cannot precede an impeachment. I don't believe this. I think one phrase or the other had to come first in the Constitution. And I think the mere fact that the phrase that deals with indictment and punishment in a court of law—the fact that that comes second is no indication that it has to follow rather than precede impeachment. I don't think that the constitutional forebears meant to confine redress to impeachment first and then indictment, because if that were the case, then high officials could commit rather heinous crimes with impunity. And considering the natural reluctance of legislative bodies to impeach. I think this would throw a blanket over and around public officials and protect them from indictment and punishment in a court of law.

So I don't go along with the idea that indictment cannot occur until the President is impeached.

DUKE. Vice President Ford made a very controversial speech some days ago in which he suggested that a small band of radicals is responsible for the talk of the President resigning or being impeached. Do you think that the Vice President damaged himself with that speech?

Senator BYRD. I think he did, at least temporarily. Based on our hearings on the confirmation of Mr. Ford, in which I participated as a member of the Rules Committee, and based on my own acquaintance with Mr. Ford over a long period of time—I served in the House with him before I went to the Senate—I've had a great deal of confidence in Mr. Ford, in his integrity and in his ability to be his own man. But the speech shook me a little bit, as it did a lot of people.

I expect the Vice President to defend the President, especially in connection with the President's policies. But we're not talking about presidential policies here. We're talking about his possible commission of serious crimes. And I would like to see the President [sic] be his own man——

DUKE. You mean the Vice President.

Senator BYRD. ——the Vice President be his own man and reflect a more independent and detached viewpoint in connection with any discussion about Watergate and related affairs.

DUKE. I'd like to discuss now, a democratic problem, Senator. It's no secret to you, I'm sure, that many Democrats in the Senate are concerned about a problem which they discuss privately which relates to Senator Kennedy. Senator Kennedy is the leading prospect for the Democratic Presidential nomination in 1976. And yet, there is concern that, would Senator Kennedy—to some extent you would have a problem of moral credibility just as you do with Mr. Nixon growing out of the Chappaquiddick incident. In the light of this, do you feel that maybe Senator Kennedy shouldn't be the Democratic nominee in 1976?

Senator BYRD. I wouldn't want to go that far. I think Senator Kennedy has a problem. I'm sure he's aware of it. And he would have to deal with that problem. I think that Senator Kennedy will be a very major factor, in the 1976 election. He may be a critical factor.

DUKE. You can see that the Chappaquiddick would be a major issue if he were the democratic nominee.

Senator BYRD. I wouldn't want to comment on that.

DUKE. In this atmosphere of moral crisis and credibility many people have been looking to Congress, Senator, to provide more leadership. And yet, there's a certain feeling of disappointment about Congress. A feeling that Congress has not faced up to the country's basic problems. It has done nothing about tax reform, campaign reform, welfare reform.

Should the people still have faith in Congress?

Senator BYRD. I think that Watergate has hurt all government at all levels—all public officials. It has hurt both political parties. And Congress has certainly come in for its share.

Two or three things ought to be said about what you just stated. One is, you said that Congress had done nothing about campaign reform, about tax reform. The Senate passed a campaign reform bill. The Senate passed a pension reform bill. The House has held hearings on tax reform. And this is the second session of the Ninety-third Congress. And I believe that before this session is through, one will see action by the House on campaign reform—I would hope so—on

pension reform, and possibly by the House and the Senate on tax reform.

Now what can be done to help the—to improve the faith of the people in their Congress? For one thing, the Congress is at a disadvantage when it comes to projecting itself and what it's doing. I think the press ought to—and I'm talking about all areas of the media—should attempt to show more about what Congress is doing and talk about what's good that is going on and not just about what is bad. And I don't say this to cast any reflection on the media, because much credit is due the media for the exposures that have been made and for keeping all branches of government on their toes.

But there can be a better job in projecting the image of the Congress. For example, Congress in the last session, I think—and may I say, especially the Senate—I say especially the Senate because perhaps I know a little more about what's going on there—moved with strong and firm and positive steps toward reclaiming control of the purse and toward re-establishing an equality with the executive branch in our structure of checks and balances.

For example, the War Powers Bill was passed over the President's veto. Bombing in Indochina was brought to a halt because of congressional action. Impoundments by the President were challenged by the Congress by statutes and in the courts, with members of Congress joining in suits. And the courts, by and large, have upheld the Congress and have taken the position that such impoundments were illegal. The exorbitant claims of executive privilege were challenged by legislation and in the courts. And the President's appointments of various officials were closely scrutinized, and, in soem instances, those nominations were withdrawn.

So I think Congress took strong steps to reassert itself and to regain some of the authority that, although not lost, had been temporarily surrendered. And I think that the Congress is going to continue to do this. I believe the people have every right to trust their elected representatives in Congress, by and large.

DUKE. Well, let me move on to a more practical issue which concerns every American, namely the rising cost of oil and gas. What's Congress going to do about that?

Senator BYRD. Congress has already acted, but there remains much to be done. The Alaska Pipeline Bill was passed. The National Emergency Energy Act was passed by both houses, but the differences have not yet been resolved. But I would expect action in this regard very soon.

Congress for years has been—at least some of us in Congress for years—I myself going back to my terms in the House of Representatives, from 1953 through 1958—have been pointing to a time when there might be an energy crisis. And we've been talking from the housetops about the dangers of depending upon foreign resources of energy which are interruptable. And for years on the Appropriations Committee, I have been seeking to increase appropriations for coal research. We've finally gotten the appropriations for the Office of Coal Research up to a point now where they ought to have been perhaps five years ago.

There've been hearings going on in the appropriate committees dealing with energy matters long before the President's message came up. As a matter of fact, the President's message in many areas gave support for the first time to measures that have been moving along in Congress.

But we're living in a time when both the executive and legislative need to work together and cooperate in dealing with this very serious crisis. And I think Congress will do its part.

DUKE. But specifically, Senator, would you favor something like a ceiling to prevent gas prices, say, from going to seventy-five cents or a dollar?

Senator BYRD. At the moment, this question of deregulation of natural gas is a question that has at least two sides. There are those who say that if its deregulated, then people will have gas. There are those who say if it is not deregulated, the price will be cheap, but people won't have gas.

There may be some middle ground, because I think there has to be the incentive for further exploration for resources. There has to be a fair profit made. At the same time, the people have to be protected.

So I think I would take the middle ground. I might even—I might even be opposed to deregulation of gas. I want to study this more closely.

DUKE. One last question. What would you like to be remembered for?

Senator BYRD. Oh, I don't—I haven't had any thoughts along those lines. I don't think I'll be remembered. I often try to view it in this way. If something happens to me today, if I should be killed in an airplane crash or something, ten days from now the Governor of West Virginia would appoint a new Senator and they'd soon forget about Robert Byrd.

We live in such a mad rush and so many things happen—events overtake one another—that not many of us are going to be remembered for much. Hopefully, our grandchildren can remember us. That'll be about it, I guess. I just strive to do the best I can and to perform my duty to the utmost of my ability. I intend to do that. And I think that's about it.

DUKE. Thank you, Senator Byrd.

LESS HAZARDOUS CIGARETTES

Mr. MOSS. Mr. President, tomorrow, the American Public Health Association and I will petition the Consumer Product Safety Commission to set a maximum level of tar in cigarettes of 21 milligrams. After considerable consultation, it is our judgment that there is adequate authority for the CPSC to utilize the Federal Hazardous Substances Act to set such a limit. Furthermore, we are convinced that the evidence supports this effort and would result in the public smoking cigarettes with less hazard. There are many cigarettes on the market today which are already below the proposed maximum level.

It is important to note that in no way do we feel that cigarettes would be devoid of health hazards with the 21-milligram tar limit. The only safe cigarette is an unsmoked cigarette.

I would also like to note for my colleagues the excellent work which our counsel has done in preparing the petition and memorandum. This work was performed by the Institute for Public Interest Representation at Georgetown University Law Center. The attorneys and students, led by Victor Kramer, director of the institute have prepared an outstanding brief.

Mr. President, I ask unanimous consent that the petition and memorandum in support of the petition to the Consumer Product Safety Commission be printed in the RECORD.

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

[The United States of America Before the Consumer Product Safety Commission]

PETITION OF AMERICAN PUBLIC HEALTH ASSOCIATION AND SENATOR FRANK E. MOSS FOR THE PROMULGATION OF A RULE BANNING FROM SALE IN INTERSTATE COMMERCE HIGH TAR-YIELD CIGARETTES

PETITION

This Petition (together with the accompanying Memorandum in support thereof) requests this Commission to promulgate a rule which bans from sale in interstate commerce cigarettes yielding more than 21 milligrams of tar pursuant to a finding classifying those cigarettes as "banned hazardous substance" as that term is defined in Section 2(q)(1)(B) of the Federal Hazardous Substances Act (15 U.S.C. § 1261).

I. The petitioners

1. The American Public Health Association (APHA) is a nonprofit Massachusetts corporation founded in 1872 with its headquarters at 1015 18th Street, N.W., Washington, D.C. 20036. Including its state affiliate organizations, the Association has over 50,000 members. APHA has been concerned and involved in issues concerning smoking and health for a score of years and in February 1964 served as one of the four founding agencies of The National Interagency Council on Smoking and Health. This group, which now includes over thirty national health organizations, has dedicated itself to implementing the recommendations of the Surgeon General's Report on Smoking and Health. During the last twenty years, APHA has provided leadership in activities related to the hazards of smoking. Presently, APHA has a smoking and health project which is seeking to alert people within health professions to their role as exemplars and is working to decrease both the number of smokers and the hazardous contents of cigarettes.

2. Honorable Frank E. Moss—Senator from the State of Utah—is presently serving his third term in the United States Senate after having been first elected in 1958. Senator Moss serves as a member of the Senate Commerce Committee and as Chairman of the Consumer Subcommittee thereof. Senator Moss has consistently demonstrated an interest in protecting the public from a variety of health hazards including those which are the consequences of the inhalation of cigarette smoke. Senator Moss was a sponsor of the Child Health and Toy Safety Act of 1969, the Poison Prevention and Packaging Act of 1970 and the Consumer Product Safety Act of 1972. Senator Moss authored the 1970 amendment to the Federal Cigarette Labeling and Advertising Act of 1965 which blamed broadcast advertising of little cigars.

II. The facts

3. The Surgeon General and the Congress of the United States have determined that cigarette smoking is dangerous to health. Cigarette smoking plays a major role in deaths resulting from many diseases, the most important of which are ischemic heart disease, lung cancer, chronic bronchitis, and emphysema. Cigarette smoking also causes disability from other chest and heart diseases.

4. Two constituents of cigarette smoke which are the predominant contributors to the hazards of smoking are tar and nicotine. Tar is a generic term for the particulate matter of cigarette smoke. Nicotine is a part of the "total tar", but the term tar in common parlance and used herein refers to the par-

ticulate matter which remains after the removal of nicotine and moisture.

5. The dangers of tar to the human body are twofold. Tar contains substances which are known to produce cancer in various parts of the body. The accumulation of tar in the human lung over an extended period of time impairs the filtering capacity of the bronchial cilia and thereby precipitates a host of respiratory complications.

6. Nicotine is generally believed to be a major contributor to cardiovascular disease. It increases adrenalin levels in the blood which cause a thickening and hardening of the arterial walls; consequently, the flow of blood through the arteries is restricted. This condition is commonly known as arteriosclerosis. Finally, because nicotine is part of the "total tar" in cigerette smoke, it too may contain carcinogenic subtances.

7. The hazards of developing cancer and heart and respiratory diseases as a consequence of the ingestion of tar and nicotine into the body are extensively documented. Presently, the most widely shared medical opinion is that there is a dose-response relationship between the ingestion of cigarette smoke and the incidence of disease. Accordingly the greater the dose of tar and nicotine received by the smoker, the more substantial is the risk of disease.

8. Individuals differ in their susceptibility to the diseases to which cigarette smoke contributes, and their exposure to other factors which may cause these diseases. The degree of exposure to tar and nicotine is the most critical factor in the development of tobacco-related diseases, and in view of the fact that there is no known level at which the ingestion of these substances is harmless, any individual who habitually smokes cigarettes containing high concentration of tar and nicotine increases his risk of disease.

III. Reasons for granting petition

9. Section 2 of the Federal Hazardous Substances Act provides in pertinent part as follows:

"(f) The term 'hazahrous substance' means:

1. (A) Any sustance or mixture of substances which (1) is toxic. . . ."

* * * * *

"(g) The term 'toxic' shall apply to any substance (other than a radioactive substance) which has the capacity to produce personal injury or illness to man through ingestion, inhalation, or absorption through any body surface."

* * * * *

"(q) (1) The term 'banned hazardous substance' means . . . (B) any hazardous substance intended, or packaged in a form suitable, for use in the household, which the Secretary by regulation classifies as a 'banned hazardous substance' on the basis of a finding that, notwithstanding such cautionary labeling as is or may be required under this Act for that substance, the degree or nature of the hazard involved in the presence or use of such substance in households is such that the objective of the protection of the public health and safety can be adequately served only by keeping such substance, when so intended or packaged, out of the channels of interstate commerce

10. Section 4 of the aforesaid Act provides in pertinent part as follows:

"Sec. 4. The following acts and the causing thereof are hereby prohibited:

(a) The introduction or delivery for introduction into interstate commerce of any . . . banned hazardous substance."

11. The Surgeon General has found that the inhalation of cigarette smoke has substantial capacity to produce cancer, heart disease, and respiratory problems. Accordingly, those substances in cigarette smoke which are known to have the capacity to produce disease are toxic substances as defined in Section 2(g) of the Act, and therefore are hazardous substances under Section 2(f).

12. Because of the toxicity of the smoke which is the necessary by-product in the consumption of cigarettes, cigarettes *per se* are a hazardous substance intended for, or packaged in a form suitable for use in the household. A regulation of the Food and Drug Administration (21 C.F.R. § 191.1(c)) provides that such substances are:

"any hazardous substance, whether or not packaged that under any customary or reasonably foreseeable condition of purchase, storage, or use may be brought into or around a house, apartment, or other place where people dwell. . . . The test shall be whether under any reasonably foreseeable condition of purchase, storage, or use the article may be found in or around a dwelling."

Cigarettes are sold in small packages which may easily be taken from the place of purchase to the household, and cigarettes are customarily consumed in vast numbers of American homes.

13. Pursuant to the Federal Cigarette Labeling and Advertising Act of 1965 as amended in 1970, all cigarette packages bear this statement: "Warning: The Surgeon General Has Determined That Cigarette Smoking Is Dangerous To Your Health." Despite this cautionary labeling both the incidence of lung cancer and sales of cigarettes have increased since 1965. Because scientific evidence of the health hazards of nicotine is not as conclusive as is that of tar, and because a decrease in tar yield necessarily effects a decrease in nicotine, Petitioners propose a regulation of tar yield only. A ban on the sale in interstate commerce of cigarettes especially high in tar would be effective in reducing the incidence of the health hazards posed by the smoking of such cigarettes.

14. Current medical evidence supports the conclusion that the greater amount of tar inhaled, the greater the health hazard. This Commission has no statutory power to proscribe the use of cigarettes after their sale to the smoker. The only alternative is the elimination of as much of the inherent risk in cigarette smoking as is feasible before the product reaches the smoker.

15. In the September 18, 1973 issue of the Federal Register, the Federal Trade Commission published the results of its analysis of the tar and nicotine content of 130 varieties of domestic cigarettes. Approximately 100 of the varieties tested yielded less than 22 milligrams of tar, while 27 varieties yielded between 22 and 23 milligrams of tar. Cigarettes yielding more than 21 milligrams of tar constitute approximately 20% of the varieties and 15% of the number of domestic cigarettes which presently enter interstate commerce.

16. Petitioners propose that this Commission adopt a rule providing for a maximum of 21 milligrams of tar yield as the limit to be allowed in any cigarette sold in interstate commerce. This limit will remove the most dangerous varieties of cigarettes from the market.

17. Presently, there is substantial laboratory evidence of the validity and the feasibility of a variety of techniques for complying with the rule herein proposed. Among these are: (1) the development and incorporation in the cigarette of more effective filters; (2) the use of selected tobacco strains and reconstituted tobaccos; and (3) the enhancement of the cigarette combustion process.

18. Petitioners suggest that the ultimate removal from the market of cigarettes yielding more than 21 milligrams of tar be accomplished by permitting manufacturers gradually to reduce the tar yield over a period of time. Consequently, this Commission's decision to ban the sale in interstate commerce of such cigarettes will be effected in a manner by which the smoker may avoid experiencing a sudden and marked difference in the quality of the smoke. This approach should maximize acceptance by the smoker and hence facilitate the contemplated health benefit to those directly affected by the proposed rule.

19. This Commission is authorized to impose the classification of "banned hazardous substance" when cautionary labeling is inadequate to protect the public from the harmful effects of a particular substance. Because the cautionary labeling of cigarette packages which has been required since 1965 has not reduced the magnitude of the health hazard resulting from the inhalation of cigarette smoke, this Commission, should ban—in accordance with Petitioners' request herein—the sale in interstate commerce of those varieties of cigarettes which yield the largest amounts of tar.

PRAYER

The Surgeon General and the Congress of the United States having determined that cigarette smoking is dangerous to health because of its substantial contribution to the incidence of cancer, respiratory ailments, and heart disease, and

There being unequivocal medical evidence of a direct correlation between the amount of tar yielded by a cigarette and the smoker's risk of being stricken by cancer or respiratory disease, or both,

Petitioners pray that the Commission expeditiously investigate the facts alleged herein and, if substantiated, promptly thereafter promulgate a regulation—

(1) declaring that cigarettes yielding more than 21 milligrams of tar are a banned hazardous substance because the tar that is inhaled in conjunction with smoking of such cigarettes is a toxic substance causing substantial danger to the health of the smoker; and

(2) prohibiting the introduction in interstate commerce of those cigarettes exceeding maximum allowable tar yield limits in accordance with a schedule which would provide for the gradual reduction in the tar yield of cigarettes affected by the aforesaid regulation in order to attain industrywide compliance with the 21 milligram limit at the expiration of 18 months.

Respectfully submitted.

INSTITUTE FOR PUBLIC INTEREST REPRESENTATION.
VICTOR H. KRAMER,
RICHARD B. WOLF,
WILLIAM E. HILL,
JOEL PLATT,
RILEY TEMPLE,
Counsel for Petitioners.

FEBRUARY 1, 1974.

[The United States of America Before the Consumer Product Safety Commission]

PETITION OF AMERICAN PUBLIC HEALTH ASSOCIATION AND SENATOR FRANK E. MOSS FOR THE PROMULGATION OF A RULE BANNING FROM SALE IN INTERSTATE COMMERCE HIGH TAR-YIELD CIGARETTES

MEMORANDUM IN SUPPORT OF PETITION OF AMERICAN PUBLIC HEALTH ASSOCIATION AND SENATOR FRANK E. MOSS FOR THE PROMULGATION OF A RULE BANNING FROM SALE IN INTERSTATE COMMERCE HIGH TAR-YIELD CIGARETTES

Preliminary statement

The Petition of American Public Health Association and Senator Frank E. Moss seeks to ban the sale in interstate commerce of cigarettes yielding more than 21 milligrams of tar for the purpose of protecting the health of the smoking public against some of the health hazards of the high tar-yield cigarettes which are presently marketed.

The balance of this memorandum (1) reviews the scientific evidence that the cigarette smoker's risk of disease increases correspondingly with an increase in the amount of tar which his cigarette yields, (2) sets forth the evidence establishing that cautionary labeling has not protected against the health hazards of smoking, and (3) reviews the statutory authority of this Commission to promulgate the rule proposed herein.

I. THE HEALTH HAZARDS IN CIGARETTE SMOKING

A. Tar and nicotine are the major contributors to the dangers of cigarette smoking

The Surgeon General and the United States Congress have determined that cigarette smoking is dangerous to health. There is strong evidence that cigarette smoking plays a major role in the development of ischemic heart disease, lung cancer (and possibly cancer in other parts of the body), bronchitis and emphysema, and that it causes disability from heart and chest diseases, and death and disability from several other conditions.[1]

The Public Health Service has identified and evaluated the substances in cigarette smoke which contribute to the health hazards of cigarette smoking, and categorized and ranked the substances into three groups. The first group consisted of those substances which were found to create the greatest hazards to the health of the smoker. Tar and nicotine were among the three substances in this group.[2]

Tar is the generic term for the particulate matter which remains after the removal of the nicotine and moisture in cigarette smoke.[3] The particulate matter which is collected from cigarette smoke before the removal of nicotine, but after the removal of moisture, is called the "total tar." [4] Therefore, nicotine is a part of the "total tar" of cigarette smoke despite the fact that the term tar, as frequently used (and as used hereafter) excludes nicotine.

Tar is believed to contain the carcinogenic (cancer-producing) substances present in cigarette smoke. Scientists have found that after repeatedly placing a dilute solution of tar on the skin of mice, 60 percent of those mice will develop skin cancer within one year.[5] Similarly, after placing a 1 to 1,000 dilution of benzpyrene (a hydrocarbon present in tar) in paraffin pellets and implanting those pellets in the cheeks of hamsters for twenty-five weeks, 90 percent of those hamsters developed cancer of the mouth.[6] Furthermore, as tar accumulates in the lung, it reduces the filtering capacity of the bronchial cilia, thus increasing the smoker's susceptibility to the development of a host of respiratory diseases.[7]

Unlike the scientific evidence to support the relationship between tar and the development of smoking-related diseases, the evidence as to the disease-producing characteristics of nicotine, while significant, is not conclusive. The opinion that there is a relationship between nicotine and cardiovascular disease is based upon findings that its presence in the human body increases the level of adrenalin in the bloodstream, and this leads to a thickening and hardening of the arterial walls (arteriosclerosis). Furthermore, the increased adrenalin level resulting from the ingestion of nicotine into the blood is thought to induce irregular heartbeats in an already damaged heart.[8]

Insofar as nicotine is a part of the "total tar" present in cigarette smoke, it is suspected that it too may contain some carcinogenic substances. But, independent of such suspicions, scientists have found that nicotine in the lung, liver and other tissues, is chemically converted to a substance known as cotinine. When fed to rats, cotinine results in a high incidence of cancer.[9]

Rather than attempt to regulate both tar and nicotine, the Petition seeks the establishment of a limit only on the tar-yield of cigarette smoke. The rule which Petitioners seek will nevertheless protect the smoking public to some extent against the suspected dangers of nicotine because a reduction in the tar yield of cigarette smoke also reduces the nicotine as a part of the "total tar." [10]

B. A cigarette smoker's risk of disease increases correspondingly with an increase in the amount of tar which the cigarette yields

Even the smallest concentrations of tar and nicotine are known to be detrimental to the smoker's health. Consequently, there is no level at which the inhalation of either substance is without risk. Due to the evidence that tar and nicotine are deleterious substances *per se*, the more widely shared scientific opinion is that there is a dose-response relationship between tar and nicotine and the development of diseases; that is, the greater the dosage of tar and nicotine yielded by the cigarette, the more likely a disease response.[11] The converse of this statement is also true: the lower the dosage of tar and nicotine, the lower the risk of disease.[12]

In 1954, 90 percent of the cigarettes marketed contained 30 to 45 milligrams of tar per cigarette; in 1960, only 15 percent were above 35 milligrams; in 1967, none were over 30 milligrams and the majority were below 25 milligrams. Now, in 1973, the vast majority (approximately 85 percent) are below 22 milligrams.[13] These reductions were apparently the result of market forces acting on the tobacco industry.

Recently, Dr. Ernest Wynder, a distinguished biochemist in cancer research and President of the American Health Foundation, observed that if market forces had not compelled manufacturers to reduce tar and nicotine in cigarettes, there would be a 70 per 100,000 lung cancer rate among smokers in the United States, instead of the current 40 per 100,000 lung cancer rate.[14]

According to Dr. Daniel Horn, Director of the National Clearinghouse for Smoking and Health, there has been a reduction in lung cancer rates in the United States white male population below age 40. Dr. Horn noted that this reduction is attributable to less exposure to total doses of tar and nicotine because of an overall reduction of those substances in cigarette smoke, and because the older males have continued to smoke those varieties of cigarettes which yield the highest concentrations of tar and nicotine.[15]

A study conducted by Dr Wynder and others concerning the incidence of lung cancer among females cites previous studies which compare lung cancer risk for long-term filter smokers to non-filter smokers. The Wynder study states:

Since most of the currently available cigarette filters do not selectively remove carcinogenic substances from cigarette smoke, *the reduced risk for filter smokers is probably related to the lower tar content of filter cigarettes.*[16] (Emphasis added.)

In another study conducted by Dr. Wynder and others entitled, "The Epidemiology of Lung Cancer: Recent Trends," a study by Dr. Cuyler Hammond of the American Cancer Society is cited as further evidence of the reduced risk of disease resulting from low tar dosage. The Wynder study states:

The Hammond study on ex-smokers aged 50–69 years who had smoked 20 or more cigarettes daily, shows that after ten years of not smoking, the individuals have a death rate from lung cancer similar to that of non-smokers. After five to nine years, when Hammond's study shows a decline of 50 percent among ex-smokers, *a similar change as found for filter smokers . . . can be expected if smokers change to a lower tar cigarette.*[17] (Emphasis added.)

Thus, there is strong scientific evidence to support the dose-response theory of the development of smoking-related diseases.

Although the results of the research reviewed above substantiate the dose-response theory, they do not warrant the conclusion that the reduction in cigarettes of tar and nicotine levels which has occurred thus far has decreased the incidence of lung cancer. In fact, the incidence of lung cancer is increasing in the United States.

In a recent publication, the American Cancer Society sets forth statistics concerning "Trends in Age-Adjusted Cancer Death Rates Per 100,000 Population 1952–54 to 1967–69." The lung cancer rate for U.S. males per 100,000 was 22.7 for the period 1952–54, and 44.5 for the period 1967–69. The lung cancer rate for U.S. females per 100,000 was 4.0 for the period 1952–54, and 8.1 for the period 1967–69. The percent change for the incidence of lung cancer in each sex group respectively was +96 and +103. The Society's explanatory comments, which appear in juxtaposition to these statistics, state that there was a "steady increase in both sexes due to cigarette smoking." [18] These statistics justify the conclusion that, despite the fact that tar and nicotine levels in cigarettes are lower than in past decades, smoking remains extremely hazardous to health.

II. CAUTIONARY LABELING OF CIGARETTES HAS NOT ADEQUATELY PROTECTED THE PUBLIC HEALTH

The Federal Cigarette Labeling and Advertising Act of 1965 (15 U.S.C. § 1331, *et seq.*), provides that all cigarette packages must be labeled: "Warning: The Surgeon General Has Determined That Cigarette Smoking Is Dangerous To Your Health."

Despite such cautionary labeling, per capita consumption of cigarettes in the United States by persons 18 years of age or older has remained at a high level during the past 10 years as shown by the following table: [19]

TABLE 2.—*Per capita consumption U.S. residents and overseas military personnel 18 years of age and older*

Year:	Units
1963	4286
1964	4143
1965	4196
1966	4197
1967	4175
1968	4145
1969	3986
1970	3969
1971	3982
1972	4018

Total cigarettes sold have increased in all but two of the past 10 years as shown by the following table: [20]

TABLE 1.—*Total cigarettes sold (billions)*

Year:	Total sales
1963	516.5
1964	505.0
1965	521.1
1966	529.9
1967	535.8
1968	540.3
1969	527.9
1970	534.2
1971	547.2
1972	561.7

Either more Americans are smoking cigarettes or cigarette smokers have increased the number of cigarettes they are smoking or both. When these facts are added to the statistics appearing on page 8 concerning the incidence of lung cancer, the conclusion becomes inescapable that cautionary labeling is not working adequately to protect the health of cigarette smokers. Therefore, some other remedy than cautionary labeling must be found. One such remedy is that proposed in our Petition—banning the sale of cigarettes especially high in tar.[21]

Footnotes at end of article.

III. THE REMEDY PROPOSED IN THE PETITION IS WORKABLE AND WARRANTED

According to all available evidence, there appears to be no scientifically determined threshold level at which tar inhalation presents no risk of disease.[22] But, in view of the dose-response relationship demonstrated above, pp. 5–8, a reduction in the disease-producing properties of the product, especially tar, is clearly warranted.

The establishment by regulation of an upper limit on the tar-yield of cigarette smoke would allow cigarette manufacturers to exercise independent judgment and ingenuity in adjusting their products to comply with the rule proposed by Petitioners. There are available a variety of techniques which may be employed to reduce the amount of tar in cigarette smoke. Among these are (1) use of homogenized tobaccos and stems which yield less tar,[23] (2) selective filtration,[24] (3) increasing butt length through use of longer filters or overwrap,[25] and (4) enhancement of the cigarette combustion process.[26]

Petitioners recommend that cigarette manufacturers be given a period of 18 months within which to bring their products into compliance with the proposed rule. The delay of 18 months is advisable in order to give the cigarette industry a period of time in which to determine the best means, taking into account the interests of the smoker and the manufacturers, to reduce tar concentration in those varieties of cigarettes which will be affected by the rule.

Our proposal is analogous in some respects to the action of the Commissioner of Food and Drugs in banning surface coating materials containing more than 5.06% of lead. See 21 C.F.R. § 191.9(a)(6) and 37 Fed. Reg. 5231 (1972). There, as here, it was found that "cautionary labeling" did not "effectively eliminate" the "health hazard." There, as here, the preponderance of medical opinion supports a regulation limiting the amount of the "hazardous substances" in the product. There, as here, the regulation does not ban all of the hazardous substance from the product but limits it to a level which will "provide a margin of safety."[27] On the other hand, it must be noted that unlike lead in surface coating material, there is no minimum level below which tar in cigarettes does not constitute a health hazard.

IV. THE CONSUMER PRODUCT SAFETY COMMISSION HAS THE AUTHORITY UNDER THE FEDERAL HAZARDOUS SUBSTANCES ACT TO BAN THE SALE OF HIGH TAR-YIELD CIGARETTES

A. The Federal Hazardous Substances Act, as amended, authorizes banning of high tar-yield cigarettes

The Consumer Product Safety Commission (hereinafter the Commission or CPSC), as the agency charged with the administration and enforcement of the Federal Hazardous Substances Act (FHSA) (15 U.S.C. § 1261, *et seq.*), is empowered to promulgate a regulation which bans the sale in interstate commerce of high tar-yield cigarettes. The Commission's authority to administer the FHSA, as originally enacted, remains unqualified by provisions of the Consumer Product Safety Act (hereinafter CPSA) (15 U.S.C. § 2051, *et seq.*). Enacted in 1972, the CPSA provided for the creation of the Commission, empowered it to set minimum safety standards for "consumer products" (15 U.S.C. § 2056) and to ban consumer products for which no adequate standards could be developed (15 U.S.C. § 2057). The Consumer Product Safety Act provides in Section 3(a) (15 U.S.C. § 2052 (a)) in pertinent part as follows:

Sec. 3. (a) For purposes of this Act:

(1) The term "consumer product" . . . does not include—

* * * * *

(B) tobacco and tobacco products.

In addition, the Consumer Product Safety Act provides in Section 30(a) (15 U.S.C. §2079 (a)) in pertinent part as follows:

Sec. 30. (a) The functions of the Secretary of Health, Education, and Welfare under the Federal Hazardous Substances Act (15 U.S.C. 1261 *et seq.*) and the Poison Prevention Packaging Act of 1970 are transferred to the Commission. . . .

Thus, this Commission was directed, without any qualification whatsoever, to administer the Federal Hazardous Substances Act. The exclusion of tobacco products from "consumer product[s]" was specifically limited to the purposes of the Consumer Product Safety Act; the limitation does not apply to the Federal Hazardous Substances Act. The definition of "consumer product" in the CPSA simply has no relationship to this Commission's power and duty to classify high tar yield cigarettes as a "banned hazardous substance" within the meaning of the Federal Hazardous Substances Act. To state the matter differently: the legal question presented by this Petition is precisely the same as if this Petition had been presented to the Secretary of Health, Education, and Welfare in 1966.

Subsection 2(q) of the FHSA reads in relevant part as follows:

The term "banned hazardous substance" means . . . (B) any hazardous substance intended or packaged in a form suitable for use in the household, which the Secretary by regulation classifies as a "banned hazardous substance" on the basis of a finding that, notwithstanding such cautionary labeling as is or may be required [under the Act] for that substance, the degree or nature of the hazard involved in the presence or use of such substance in households is such that the objective of the protection of the public health and safety can be adequately served only by keeping such substance, when so intended or packaged, out of the channels of interstate commerce. . . . 15 U.S.C. § 1261 2(q)(1).

Subsection 4(a) of the FHSA in relevant part reads as follows:

The following acts and the causing thereof are hereby prohibited: (a) the introduction or delivery for introduction into interstate commerce of any . . . banned hazardous substance. 15 U.S.C. § 1263.

The term "hazardous substance" is defined in subsection 2(f) of the Act as "any substance or mixture of substances which is . . . toxic. . . ." And the term toxic as defined in subsection 2(g) of the Act is applicable "to any substance . . . which has the capacity to produce . . . injury or illness to man through . . . inhalation. . . ." 15 U.S.C. § 1261.

B. The Federal Hazardous Substances Act clearly and unanimously includes cigarettes and tar

The words of the Federal Hazardous Substances Act cover cigarettes yielding the most hazardous concentrations of tar as a substance which the Commission may ban. Such cigarettes are suitable for use in the household, they produce illness to man when inhaled, and cautionary labeling has not adequately protected the public health. We have found nothing in the legislative history which suggests, let alone demonstrates, that Congress intended that cigarettes yielding the highest concentrations of tar not be included within the coverage of the Federal Hazardous Substances Act.

As noted *supra*, subsection 2(f) of the FHSA provides that toxic substances are hazardous, and 2(g) carefully defines toxic substances as those which have the capacity to produce injury or illness through inhalation. As defined, this term is subject to no more than one reasonable interpretation, and the meaning of the words is neither obscure nor doubtful. A careful study of the characteristics of cigarettes, as demonstrated by the scientific literature (*see* part I of this memorandum), indicates that cigarette tar clearly comes within the language of the FHSA quoted above on pages 14–15.

There is a superficial plausibility in arguing that the term toxic substances, as commonly used, does not embrace tobacco products, because the term "toxic" is commonly equated with "poisonous"—a term with which cigarettes are not generally associated. This argument fails to recognize that the word, "toxic," as used in the Federal Hazardous Substances Act, is a term of art; as such, it applies to all substances that fulfill the elements of its carefully limited definition. Whether or not that definition enlarges or narrows the term's common meaning is of no consequence. Thus, the more defensible conclusion is that the statutory definition of a "hazardous substance" includes the tar in cigarette smoke.

Next, it might be argued that the phrase, "suitable for use in the household" excludes cigarettes. The term "household" generally refers to a dwelling or place of abode; the term "suitable" means that something is appropriate or of such a nature that its use is reasonable. As distributed and used in the United States, cigarettes are substances "suitable for use in the household" because they are sold in small packages which may easily be taken from the place of purchase and brought into the household, and because they are customarily consumed in vast numbers of American homes.

Even assuming that the phrase is susceptible to several interpretations, Petitioners submit that the most reasonable interpretation would include cigarettes. This conclusion is supported by guidelines formulated by the Food and Drug Administration and subsequently adopted by the Consumer Product Safety Commission (15 U.S.C. § 2051, *et seq.*). Clarifying the meaning of the phrase, relevant portions of those guidelines provide:

Any hazardous substance, whether or not packaged, that under any customary or reasonably foreseeable condition of purchase, storage, or use may be brought into or around a house, apartment, or other place where people dwell. . . . The test shall be whether under any reasonably foreseeable condition of purchase, storage, or use the article may be found in or around a dwelling. 21 C.F.R. § 191.1(c).

When the Commissioner of Food and Drugs banned any paint or similar surface-coating material in which the lead content exceeded .06 percent, lead was the component in the products which presented the health hazard. Analogously, Petitioners here request that cigarettes yielding more than 21 milligrams of tar be classified as a "banned hazardous substance." This request is based on the fact that, under customary and reasonably foreseeable conditions, such cigarettes will be brought into the home and will yield, when smoked, toxic concentrations of tar.[28]

C. Because the statute is unambiguous, the legislative history is irrelevant and, in any event, does not demonstrate a congressional intent to exclude cigarettes from the FHSA

It is an axiom in our law that where a statute is clear the words of the Act are controlling. Adopting this view in *Fisher Flouring Mills Co. v. United States*, 270 F. 2d 27, 28 (9th Cir. 1958), the court stated:

[t]he Supreme Court has not abandoned the axiom that the legislative will must be ascertained from the text of the statute if the words are clear and plain and the whole enactment is internally cohesive.

Similarly, in *Diamond A Cattle Co. v. Commissioner of Internal Revenue*, 233 F. 2d 739, 742 (10th Cir. 1956), the court wrote:

When Congress passes an act in language that is clear and unambiguous, and construed and read in itself can mean but one

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Footnotes at end of article.

thing, the act must be judged by what Congress did and not by what it intended to do.

Indeed, our Circuit has recently held in *National Petroleum Refiners Association v. F.T.C.*, 482 F. 2d 672, 693 (D.C. Cir. 1973), that "[a]mbiguous legislative history cannot change the express legislative intent." The classic statement of the rule appears in *Flora v. United States*, 357 U.S. 63, 65 (1958):

In matters of statutory construction the duty of this Court is to give effect to the intent of Congress, and in doing so our first reference is, of course, to the literal meaning of the words employed.

D. The fact that HEW failed to apply the FHSA to cigarettes is not persuasive that the act does not apply to cigarettes

As noted above, the Food and Drug Administration had responsibility for enforcing the Federal Hazardous Substances Act prior to the transfer of that responsibility to this Commission. The Food and Drug Administration never applied either the original Federal Hazardous Substances Labeling Act or the subsequently enacted Federal Hazardous Substances Act to cigarettes. The agency recognized, however, that a reasonable argument could be made for concluding that cigarettes are hazardous substances as defined in those Acts.[20]

The fact that the Food and Drug Administration had failed to enforce the FHSA to its fullest extent does not circumscribe this Commission's authority. Petitioners' contention here was endorsed by the Supreme Court when it stated:

The fact that powers long have been unexercised well may call for close scrutiny as to whether they exist; but if granted, they are not lost by being allowed to lie dormant, any more than nonexistent powers can be prescripted by an unchallenged exercise. We know that unquestioned powers are sometimes unexercised from lack of funds, motives of expediency, or the competition of more immediately important concerns. We find no basis for holding that any power ever granted to the Trade Commission has been forfeited by nonuser [sic]. *United States v. Morton Salt Co.*, 388 U.S. 632, 647–48 (1950).

CONCLUSION

Cautionary labeling of cigarette packages which has been required since 1966 (15 U.S.C. § 1331, et seq.), has reduced neither cigarette sales nor the incidence of lung cancer. Therefore, Petitioners request that this Commission classify as a "banned hazardous substance" those varieties of cigarettes yielding more than 21 milligrams of tar. We have shown above (pp. 2–8) that cigarettes yielding more than 21 milligrams of tar present a special hazard to health. As noted above (pp. 12–13) this Commission is authorized by Section 30(a) of the Consumer Product Safety Act to promulgate the regulation Petitioners seek. That section transferred the functions of the Secretary of Health, Education and Welfare under the Federal Hazardous Substances Act to this Commission. Consequently, the exclusion of "tobacco and tobacco products" from the definition of "consumer product" for the purposes of the Consumer Product Safety Act does not render this Commission impotent to exercise its independent authority under the Federal Hazardous Substances Act to ban high tar-yield cigarettes.

It is clear that the tar in cigarette smoke causes illness as a result of inhalation and that the greater the amount of tar inhaled, the greater the smoker's risk of disease. Due to their disease-producing capacity, cigarettes yielding high concentrations of tar are, we submit, "hazardous substance[s]" within the meaning of the Federal Hazardous Substances Act. Finally, in view of the fact that cautionary labeling has not reduced the health hazards of smoking high tar-yield cigarettes, this Commission is warranted in imposing the classification of "banned hazardous substance" on those varieties of cigarettes which yield more than 21 milligrams of tar.

Respectfully submitted.

INSTITUTE FOR PUBLIC INTEREST REPRESENTATION,
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FEBRUARY 1, 1974.

FOOTNOTES

[1] Fletcher, *et al.*, Limitation of Smoking: A Report by Consultants, WHO Chronicle 1 (Vol. 24, No. 8, 1970).

[2] U.S. Department of Health, Education and Welfare, The Health Consequences of Smoking: A Report by the Surgeon General: 1972, at 142, 143. The other substance listed in the first group is carbon monoxide.

[3] Hearings on S. 1454 before the Consumer Subcommittee of the Senate Commerce Committee, 92d Coug., 2d Sess., ser. 82, at 22 (1972) (hereinafter cited as 1972 Hearings).

[4] H. Diehl, Tobacco and Your Health: The Smoking Controversy 43 (1969); Hearings Reviewing Progress Made Toward the Development and Marketing of a Less Hazardous Cigarette Before the Consumer Subcommittee of the Senate Commerce Committee, 90th Cong., 1st Sess., ser. 52, at 172 (1967) (hereinafter cited as 1967 Hearings).

[5] Diehl, *supra* not 4, at 44.

[6] *Id.*

[7] *Id.* at 45.

[8] 1972 Hearings, *supra* note 3, at 176.

[9] 1967 Hearings, *supra* note 4, at 169.

[10] 1972 Hearings, *supra* note 3, at 30, 32.

[11] Ad Hoc Committee on Smoking and Health, Minutes of March 25, 1973, at 5.

[12] U.S. Department of HEW, *supra* note 2, at 143–43; 1972 Hearings, *supra* note 3, at 176, 181, 183–185.

[13] Ad Hoc Committee on Smoking and Health, Minutes of February 14, 1973 at 3.

[14] Ad Hoc Committee on Smoking and Health, *supra* note 12, at 2.

[15] *Id.* at 3.

[16] Wynder, *et al.*, Lung Cancer in Women: Present and Future Trends, Journal of the National Cancer Institute 400 (Vol. 51, No. 2, August 1973).

[17] Wynder, *et al.*, The Epidemiology of Lung Cancer, J.A.M.A. 2226 (Vol. 213, No. 13, September 28, 1970).

[18] "'74 Cancer Facts & Figures," p. 11 (American Cancer Society).

[19] Federal Trade Commission, Statistical Supp. to Federal Trade Commission Report to Congress Pursuant to the Public Health Cigarette Smoking Act, December 31, 1972 (August 1973), Table 2.

[20] Reference cited in the preceding footnote.

[21] Several persons, organizations, and governmental units have advocated or have been concerned with the development of a less hazardous cigarette. Among these are: Dr. Ernest Wynder and colleagues (*See* Less Harmful Ways of Smoking, British Medical Journal, Vol. 2 (1950) at 739); The Ad Hoc Committee on Smoking and Health (held meetings in 1973 to discuss the reduction of hazardous substances in cigarettes); The World Health Organization (World Health Organization Chronicle, Vol. 24, No. 8, at 22, recommendation 10); The Public Health Service (1972 Report of the Surgeon General on the Health Consequences of Smoking, at 144); and the Consumer Subcommittee of the United States Senate Commerce Committee (held hearings in 1967, reviewing progress made toward the development of a less hazardous cigarette; and in 1972 held hearings to establish acceptable levels of tar and nicotine).

[22] 1967 Hearings, *supra* note 4, at 35; Ad Hoc Committee on Smoking and Health, *supra* note 12, at 4, 6.

[23] Wynder, *supra* note 17, at 2227.

[24] 1967 Hearings, *supra* note 4, at 23.

[25] *Id.* at 25.

[26] Wynder, *supra* note 17, at 2227. There is reason to believe that by decreasing tar and nicotine, the health hazards of carbon monoxide may be decreased. U.S. Dept. of HEW, *supra* note 2, at 142–43; in 1972 Hearings, *supra* note 3, at 31–32, Dr. Daniel Horn stated: ". . . there is a very close correspondence between the level of tar, the level of nicotine and the level of carbon monoxide. . . . I would assume that it is possible to bring all three of them down by changing the combustion characteristics toward more complete combustion."

[27] All of the quotations are taken from 37 Fed. Reg. 5230 (1972).

[28] It should be noted, however, that unlike lead in surface coating materials, there is no minimum level below which tar in cigarettes does not constitute a health hazard.

[29] This appears in a letter from the Secretary of HEW printed in the Senate Commerce Committee Hearings on S. 559 and S. 547, 89th Cong., 1st Sess. p. 24 (1965).

THE HIGH COST OF FARM PRODUCTION

Mr. McGOVERN. Mr. President, less than a year ago the Congress passed and the President signed into law a farm program which, it was generally agreed, was a reasonable approach to meeting our twin goals of abundant food supply at reasonable prices and a fair return to America's farmers.

Unfortunately, the forward rush of inflation has wiped out much of the new farm program's ability to meet the second half of that goal—a fair return to our farmers. And without the second part, the first—abundant food supply at reasonable prices—is in grave danger.

The cost of production index, compiled monthly by the Department of Agriculture, increased 10 percent during 1973. In simpler words, it cost 19 percent more for a farmer to produce his commodities on December 15, 1973, than it did on December 15, 1972.

The central feature of the new farm program is a system of established prices developed in the Senate Committee on Agriculture and Forestry. The farm program provides that, if the market price falls below the price established in the law, the Government will provide a deficiency payment to make up the difference. The law's established prices are $2.05 a bushel for wheat, $1.38 a bushel for corn, and 39 cents a pound for cotton.

Preliminary evidence demonstrates how the rapid increase in production costs has made these established price levels woefully inadequate. South Dakota State University at Brookings, S. Dak., has recently completed a study of production costs and projected yields for South Dakota farms, and it makes clear that farmers in many areas of my State could not make a living on the established prices in the 1973 farm act.

Recently, along with several colleagues, I introduced legislation which would increase the established prices in the farm act and provide for annual adjustment to reflect any changes in the cost of production.

The South Dakota State University

study, I submit, underscores the urgency of the need for legislation such as I have introduced. That study indicates that the cost of production of wheat runs up to $2.25 a bushel, and the cost of production of corn is as high as $1.51 a bushel. I am certain that cotton production costs have increased in the same proportion.

Mr. President, I ask unanimous consent that a summary of the South Dakota State University study, with tables showing projected 1974 production costs of corn and spring wheat in six areas of South Dakota, be printed in the RECORD.

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

PROJECTED CROP YIELDS AND EXPECTED 1974 PRODUCTION COSTS FOR SIX AREAS OF SOUTH DAKOTA

(Information included in this preliminary draft was prepared by Dr. Wallace G. Aanderud, Extension Economist, Economics Department, and Dr. Lyle A. Derscheid, Extension Agronomist, Plant Science Department, South Dakota State University, Brookings, South Dakota)

JANUARY 1974.

BASIS FOR ANALYSES

The budget figures in these tables represent the kind of cost structure and potential average yields for each area that most farmers should be able to attain. At the present time average reported yields for the areas are significantly below these projected yields.

Farmers with average to below current average yields will likely have lower per acre costs because they aren't applying the fertilizer, herbicides, and insecticides that are recommended based on research. Because of the fixed costs involved in land charges, machinery and labor charges, their total costs are not lowered proportionately as much as the yield. Consequently for these producers the cost of production per bushel will be significantly higher than in these budgets based on the yield and cost structure that exists for the top 25 percent of the farm operators. Depending upon how far below optimum management levels that they are operating, their cost per bushel may be 10 to 30 percent higher than shown in these tables.

This budget material will be developed into six extension publications for use by county agents in their educational programs. The final form will include a blank form so the individual farmer can calculate his own costs and compare them to the model budget that applies to the better managed farms. Some will find they are already doing as well as the model but many will be able to identify how they can improve their management.

Projected yields

These yields represent potential average yields for the areas if present technical knowledge developed through research is applied on all farms. The top 25 percent of the farmers in the areas already have proven yields at least as high as these projected yields.

Seed, fertilizer and pesticides

Costs for these inputs are based on prices as of January 1974 for the level of use that is currently recommended for typical soil productivity in the area.

Machinery repairs, fuel and lubricants

These costs were estimated on the basis of values used in "Ten Steps in Planning Your Farm or Ranch Business", Extension Circular 632 (rev.), August 1972, South Dakota State University, Brookings. The costs in Planning Step 2, page 3, and Planning Step 3, page 4, were inflated by 30 percent to reflect the expected increase in costs for 1974 compared with 1972. These new base costs were then adjusted for expected differences in costs due to the projected yield level for each area.

Interest charges

An 8 percent charge was made on the cost basis of seed, fertilizer, pesticides, repairs, fuel and lubricants. This charge should pay interest on borrowed operating funds plus a 7 to 8 percent return on the farmers own operating capital.

Crop insurance

The charge made for this cost is nominal. Some farmers may have none while others may carry enough so that their cost would be twice as high as indicated.

Overhead costs

These costs represent an allocation to each acre of overhead costs such as farm share of auto and telephone, legal fees, repairs and insurance on storage buildings, record books, farm magazines and other miscellaneous costs not directly attributed to a specific crop or livestock enterprise.

Machinery depreciation, interest, and taxes

These costs are based on a machinery investment of about $65 per acre for corn and about $45 per acre for small grain.

Labor charges

Labor charges were calculated and based on $2 per hour.

Land costs

Land costs include taxes at 1.5 percent and a capital charge of 6.5 percent on an estimated average per acre value for the land. The average value assumed per acre of cropland was as follows:

Area 1	$400
Area 2	300
Area 3	175
Area 4	275
Area 5	200
Area 6	175

PROJECTED CROP YIELDS AND EXPECTED 1974 PRODUCTION COSTS

AREA 1—MOODY, MINNEHAHA, TURNER, LINCOLN, CLAY, UNION, AND EAST YANKTON COUNTIES OF SOUTH DAKOTA

[Land cost includes taxes at 1.5 percent and a capital charge at 6.5 percent on land valued at $400 per acre]

Crop	Corn	Spring wheat
1. Projected yield	70	29
DIRECT COSTS		
2. Seed	$5.65	$6.60
3. Fertilizer	14.50	6.00
4. Pesticides	7.70	1.80
5. Machinery repairs	3.00	1.85
6. Fuel and lubricants	3.50	1.65
7. Interest	2.70	1.45
8. Crop insurance	3.00	2.50
9. Overhead	2.00	2.00
Total, direct cost	42.05	23.85
FIXED COSTS		
11. Machinery depreciation	5.80	4.00
12. Machinery interest and taxes	2.90	1.40
13. Labor	6.00	4.00
14. Land charge	32.00	32.00
15. Total, fixed costs	46.70	41.40
16. Total, costs per acre	88.45	65.25
17. Costs per bushel or ton	1.26	2.25

AREA 2—SANBORN, LAKE, MINER, DAVISON, HANSON, McCOOK, HUTCHINSON, BON HOMME, AND WEST YANKTON COUNTIES OF SOUTH DAKOTA

[Land cost includes taxes at 1.5 percent and a capital charge at 6.5 percent on land valued at $300 per acre]

Crop	Corn	Spring wheat
1. Projected yield	55	25
DIRECT COSTS		
2. Seed	$4.95	$6.60
3. Fertilizer	10.25	4.00
4. Pesticides	7.70	1.80
5. Machinery repairs	2.70	1.90
6. Fuel and lubricants	3.20	1.70
7. Interest	2.30	1.20
8. Crop insurance	2.50	2.00
9. Overhead	1.75	1.75
Total, direct cost	35.35	31.05
FIXED COSTS		
11. Machinery depreciation	5.80	4.20
12. Machinery interest and taxes	2.90	1.50
13. Labor	5.75	4.00
14. Land charge	24.00	24.00
15. Total, fixed costs	38.45	33.70
16. Total, costs per acre	71.80	54.75
17. Costs per bushel or ton	1.31	2.19

AREA 3—LYMAN, TRIPP, GREGORY, BUFFALO, BRULE, JERAULD, AURORA, DOUGLAS, CHARLES MIX COUNTIES OF SOUTH DAKOTA

Land cost includes taxes at 1.5 percent and a capital charge at 6.5 percent on land valued at $175 per acre]

Crop	Corn	Spring wheat
1. Projected yield	35	23
DIRECT COSTS		
2. Seed	$3.50	$6.60
3. Fertilizer	4.50	3.20
4. Pesticides	7.00	3.15
5. Machinery repairs	2.30	1.75
6. Fuel and lubricants	2.60	1.55
7. Interest	1.65	1.30
8. Crop insurance	1.50	1.25
9. Overhead	1.50	1.50
Total, direct cost	24.55	20.30
FIXED COSTS		
11. Machinery depreciation	5.80	4.00
12. Machinery interest and taxes	2.90	1.40
13. Labor	5.50	4.00
14. Land charge	14.00	14.00
15. Total, fixed costs	28.20	23.40
16. Total, costs per acre	52.75	43.70
17. Costs per bushel or ton	1.51	1.90

AREA 4—MARSHALL, ROBERTS, DAY, GRANT, CLARK, CODINGTON, HAMLIN, DEUEL, KINGSBURY, BROOKINGS COUNTIES OF SOUTH DAKOTA

[Land costs includes taxes at 1.5 percent and a capital charge at 6.5 percent on land valued at $275 per acre]

Crop	Corn	Spring wheat
1. Projected yield	50	28
DIRECT COSTS		
2. Seed	$4.95	$6.60
3. Fertilizer	8.80	5.50
4. Pesticides	6.50	3.95
5. Machinery repairs	2.60	2.00
6. Fuel and lubricants	3.05	1.90
7. Interest	2.05	1.60
8. Crop insurance	2.50	2.00
9. Overhead	1.75	1.75
Total, direct cost	32.20	25.30

Crop	Corn	Spring wheat
FIXED COSTS		
11. Machinery depreciation	$5.80	$4.40
12. Machinery interest and taxes	2.90	1.60
13. Labor	5.75	4.00
14. Land charge	22.00	22.00
15. Total, fixed costs	36.45	32.00
16. Total, costs per acre	68.65	57.30
17. Costs per bushel or ton	1.37	2.05

AREA 5—BROWN, SPINK, BEADLE, HAND, EAST FAULK, EAST EDMUNDS, EAST McPHERSON COUNTIES OF SOUTH DAKOTA

[Land cost includes taxes at 1.5 percent and a capital charge at 6.5 percent on land valued at $200 per acre]

Crop	Corn	Spring wheat
1. Projected yield	40	25
DIRECT COSTS		
2. Seed	$4.25	$6.60
3. Fertilizer	5.20	4.00
4. Pesticides	6.50	3.15
5. Machinery repairs	2.30	1.90
6. Fuel and lubricants	2.60	1.70
7. Interest	1.80	1.40
8. Crop insurance	2.00	1.75
9. Overhead	1.50	1.50
Total, direct cost	27.35	22.00
FIXED COSTS		
11. Machinery depreciation	5.80	4.40
12. Machinery interest and taxes	2.90	1.60
13. Labor	$5.50	$4.00
14. Land charge	16.00	16.00
15. Total, fixed costs	30.20	26.00
16. Total, costs per acre	57.55	48.00
17. Costs per bushel or ton	1.44	1.92

AREA 6—HUGHES, SULLY, POTTER, WALWORTH, CAMPBELL' HYDE, WEST FAULK, WEST EDMUNDS, WEST Mc PHERSON COUNTIES OF SOUTH DAKOTA

[Land cost includes taxes at 1.5 percent and a capital charge at 6.5 percent on land valued at $175 per acre]

Crop	Corn	Spring wheat
1. Projected yield	35	24
DIRECT COSTS		
2. Seed	$3.50	$5.50
3. Fertilizer	4.50	3.60
4. Pesticides	6.50	3.15
5. Machinery repairs	2.30	1.90
6. Fuel and lubricants	2.60	1.70
7. Interest	1.60	1.30
8. Crop insurance	1.50	1.25
9. Overhead	1.50	1.50
Total, direct cost	24.00	19.90
FIXED COSTS		
11. Machinery depreciation	5.80	4.00
12. Machinery interest and taxes	2.90	1.40
13. Labor	5.50	4.00
14. Land charge	14.00	14.00
15. Total, fixed costs	28.20	23.40
16. Total costs per acre	$52.20	$43.30
17. Costs per bushel or ton	1.49	1.80

CPSC REGULATIONS AT A GLANCE

Mr. MAGNUSON. Mr. President, the Consumer Product Safety Act is now over a year old and the Commission which it created has completed its formulative months and has begun to turn to its mandated task: to create a safe marketplace for the American consumer. During the period in which Congress was deliberating over the act, David Swit was the first to publish on a regular basis, a newsletter capsulizing the major events in the product safety field. The Product Safety Letter continues to be published and to provide a concise, but insightful summary of the quickly evolving activities in this area.

In its most recent issue, the Product Safety Letter published a chart entitled "CPSC Regulations at a Glance" which lists all pending and finalized regulations issued pursuant to laws within the jurisdiction of the Commission. Due to the usefulness of this information, Mr. President, I ask unanimous consent that the chart be printed in the RECORD.

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

CPSC REGULATIONS AT A GLANCE

This summary—which will be updated frequently as developments warrant—covers regulations issued by the Consumer Product Safety Commission (CPSC) and its predecessor agencies. All pending and finalized regulations are listed for CPSA, FFA and PPPA, and children's articles subject to HSA. Only pending and related actions are listed for other products under HSA; completed regulations on these items are included in the Code of Federal Regulations, published by the Government Printing Office.

CONSUMER PRODUCT SAFETY ACT (CPSA)

Subject	Proposed in Register	Comments due	Final order in Register	Effective date	Notes
Substantial hazard notifications; sec. 15	Aug. 3, 1973	Sept. 4, 1973			
Standards development procedures; sec. 7	Jan. 4, 1974	Feb. 4, 1974			

FLAMMABLE FABRICS ACT (FFA)

Subject	Finding of need	Proposed in Register	Comments due	Final order in Register	Effective date	Notes
Wearing apparel:						
General standard (CS-191-53)					July 1, 1954	Incorporated in legislation; amended Aug. 23, 1954.
Clarification of test method				Nov. 13, 1973	Nov. 3, 1973	
New or amended standard	Oct. 23, 1968					
Large carpets and rugs:						
Standard (DOC FF 1-70)	Dec. 3, 1968	Dec. 18, 1969		Apr. 16, 1970	Apr. 16, 1971	
Testing and record-keeping		Feb. 16, 1972		Dec. 21, 1972	Jan. 20, 1973	
Sampling plan	June 2, 1972	Mar. 7, 1973	Apr. 11, 1973			
Alternate washing: hide rugs				Feb. 10, 1972	Feb. 10, 1972	
Alternate washing: flokati		June 21, 1972		Sept. 7, 1972	Sept. 7, 1972	
Alternate washing: alumina trihydrate backings	May 19, 1972	Mar. 28, 1973				Requirements suspended pending decision.
Alternate washing: general	do	do				
Small carpets and rugs:						
Standard (DOC FF 2-70)	Dec. 3, 1968	Apr. 16, 1970		Dec. 29, 1970	Dec. 29, 1971	
Testing and record-keeping		Feb. 16, 1972		Dec. 21, 1972	Jan. 20, 1973	
Sampling plan	June 2, 1972	Mar. 7, 1973	Apr. 11, 1973			
Alternate washing (see note)	May 19, 1972	Mar. 28, 1973				Same as large carpets, except for alumina trihydrate.
0 to 6X sleepwear:						
Standard (DOC FF 3-71)	Jan. 24, 1970	Nov. 17, 1970		July 29, 1971	July 29, 1973	Labeling required July 29, 1972.
Sampling plan	Aug. 14, 1971	Apr. 18, 1972		July 21, 1972	July 21, 1972	Amended September 21, 1972.
Labeling/record-keeping	Mar. 23, 1972	Aug. 9, 1972				

CPSC REGULATIONS AT A GLANCE—Continued

This summary—which will be updated frequently as developments warrant—covers regulations issued by the Consumer Product Safety Commission (CPSC) and its predecessor agencies. All pending and finalized regulations are listed for CPSA, FFA and PPPA, and children's articles subject to HSA. Only pending and related actions are listed for other products under HSA; completed regulations on these items are included in the Code of Federal Regulations, published by the Government Printing Office.

FLAMMABLE FABRICS ACT (FFA)—Continued

Subject	Finding of need	Proposed in Register	Comments due	Final order in Register	Effective date	Notes
7 to 14 sleepwear: Standard	June 15, 1972	Mar. 12, 1973	Apr. 11, 1973			
Blankets: Standard	June 10, 1970					
Mattresses:						
Standard (DOC FF-4-72)	June 10, 1970	Sept. 9, 1971		June 7, 1972	June 22, 1973	
Amendment to standard	Feb. 8, 1973	Apr. 24, 1973		June 8, 1973	do	
Labeling/record-keeping		June 11, 1973		Nov. 30, 1973	Dec. 31, 1973	Negative labeling allowed until Dec. 22, 1973.
Sampling plans				(See note)		No. 1 published Apr. 27, 1973; No. 4, June 19, 1973; No. 2, Aug. 8, 1973; No. 9, Sept. 25, 1973; No. 5, Nov. 30, 1973.
Upholstered furniture: Standard	Nov. 29, 1972					
Advisory committee: Membership representation		Jan. 8, 1974	Feb. 7, 1974			
Fireworks: Ban (more than 2 grains pyrotechnic material and audible report)		Jan. 8, 9169		May 13, 1970	June 27, 1970	Earlier banned under Child Protection Act (Nov. 3, 1966). See also Apr. 5, 1972; May 16, 1973.
Combustibility and flammability: Definitions and test methods		Aug. 18, 1970	Sept. 17, 1970			
Petroleum distillates, toluene, xylene: 1st-aid labeling		June 8, 1971	Aug. 7, 1971			
Lead in paint: 0.5 percent limit		Nov. 2, 1971		Mar. 11, 1972	Apr. 25, 1972	Aug. 10, 1972 notice confirmed implementation as of Dec. 31, 1972. See also Dec. 5, 1972; Jan. 4, 1973; Dec. 27, 1973.
Lead in paint: 0.06 percent limit		do		See note		Originally ordered effective Dec. 31, 1973; action deferred by Aug. 10, 1972 notice. Further research pending.
Fireworks: Delete agricultural exemption from 1970 ban		Apr. 5, 1972		Feb. 20, 1973	Mar. 22, 1973	Provisions for use through Interior Department.
Fireworks: Petition for ban, by National Society for the Prevention of Blindness		do		May 16, 1973	See note	Petition denied; see also May 16, 1973.
Eye irritants test revision		Apr. 28, 1972	Sept. 25, 1972			
Packaging in food-like containers		Nov. 10, 1972	Jan. 9, 1973			May be withdrawn.
Special-purpose lead paints: Exemption from 0.5 percent limit		Dec. 5, 1972	Feb. 3, 1973			Petition from National Paint & Coatings Association.
Repurchase of banned products		Dec. 16, 1972	Feb. 14, 1973			New version of Dec. 19, 1970 proposal.
Skin irritants test revision		Dec. 19, 1972	Feb. 17, 1973			
Artists' paints: Exemption from lead limit		Jan. 4, 1973		Oct 4, 1973	Dec. 3, 1973	
Aerosol abuse warning		May 3, 1973	July 2, 1973			
Fireworks: Ban and standards		May 16, 1973	July 16, 1973			
Spray adhesives: Imminent hazard ban				Aug. 22, 1973	Aug. 22, 1973	Added item Aug. 29; correction Sept. 12, 1973.
Paint: Continuation of 0.5 percent limit				Dec. 27, 1973		Extension runs through Dec. 31, 1974

HAZARDOUS SUBSTANCES ACT (HSA)—CHILDREN'S ARTICLES

Toys, various mechanical hazards: Ban		Nov. 17, 1970		Dec. 19, 1970	Dec. 19, 1970	See also Apr. 29, 1971; Oct. 14, 1971
Baby bouncers: Standard and ban		Apr. 16, 1971		Nov. 16, 1971	Dec. 16, 1971	
Clacker balls: Ban		Apr. 27, 1971		Nov. 19, 1971	Dec. 19, 1971	
Caps and toy guns: Ban and criteria for exemption		Apr. 29, 1971		July 13, 1971	July 13, 1971	Originally included in Nov. 17, 1970 and Dec. 19, 1970 actions.
Dolls, stuffed animals: Ingestion		Oct. 14, 1971	Nov. 13, 1971			No further action likely.
Electrical toys: Standard and ban		Jan. 21, 1972		Mar. 7, 1973	Sept. 3, 1973	
Pacifiers: Standard and ban		Oct. 18, 1972	Dec. 17, 1972			
Toy test procedures		Dec. 8, 1972	Feb. 6, 1973			
Small parts in toys: Standard and ban		Jan. 22, 1973	Mar. 23, 1973			
Glass in toys: Standard and ban		Apr. 13, 1973	June 12, 1973			
Cribs: Standard and ban		do		Nov. 21, 1973	Feb. 1, 1974	Full-size cribs only; see also Dec. 4 1973.
Vacuum bottles: Standard and ban		do	June 12, 1973			
Toy identification coding		Apr. 16, 1973	June 15, 1973			
Toy chests: Standard and ban		Apr. 27, 1973	June 26, 1973			Revisions being considered.
Bicycles: Standard and ban		May 10, 1973	July 9, 1973			
Cribs: Affirmative labeling		Dec. 4, 1973	Dec. 19, 1973	Dec. 28, 1973	Feb. 1, 1974	Requirement ends Feb. 1, 1976.

POISON PREVENTION PACKAGING ACT (PPPA)

Test procedures		July 20, 1971		Nov. 20, 1971	Jan. 20, 1972	See also Dec. 16, 1972; Jan. 15, 1973.
Aspirin products		Sept 1, 1971		Feb. 16, 1972	Aug. 14, 1972	See also July 18, 1972; Sept. 13, 1972.
Liquid furniture polish		Sept. 8, 1971		Mar. 17, 1972	Sept. 13, 1972	
Methyl salicylate		Sept. 29, 1971		Mar. 25, 1972	Sept. 21, 1972	
Controlled drugs		Oct. 15, 1971		Apr. 27, 1972	Oct. 24, 1972	
Sodium/potassium hydroxide (lye): Drain, oven cleaners		Mar. 9, 1972		Oct. 13, 1972	Apr. 11, 1973	Aerosols and pastes by July 10, 1973.
Turpentine		Apr. 14, 1972		do	July 1, 1973	Extension of Apr. 11, 1973 date granted April 26.
Lighter fluid, kindling products, etc		do		Jan. 30, 1973	Oct. 27, 1973	Spout types by Jan. 30, 1974.
Methyl alcohol (methanol)		Apr. 18, 1972		Oct. 13, 1972	July 1, 1973	Extension of Apr. 11, 1973 date granted April 26.
Sulfuric acid		Apr. 20, 1972		Feb. 15, 1973	Aug. 14, 1973	
Oral prescription drugs		Apr. 27, 1972		Apr. 16, 1973	Apr. 16, 1974	See also Sept. 12, 1973.
Non-Rx drugs: Request for data		June 20, 1972	Sept. 18, 1972			
Aspirin: Effervescent exemption		July 18, 1972		Feb. 6, 1973	Feb. 6, 1973	
Aspirin and controlled drugs: Exemption for veterinary drugs		do		Apr. 11, 1973	Apr. 11, 1973	
Aspirin: Powders exemption		Sept. 13, 1972		Dec. 28, 1972	Dec. 28, 1972	
Pesticides		Sept. 14, 1972	Nov. 13, 1972			
Noncomplying packaging		Oct. 18, 1972	Dec. 17, 1972			
Testing: Informed consent		Dec. 16, 1972	Feb. 14, 1973			
Ethylene glycol (anti-freeze)		Dec. 28, 1972		Dec. 3, 1973	June 1, 1974	
Testing: Unit-packaging amendment		Jan. 15, 1973		May 15, 1973	May 15, 1973	
Paint solvents		Feb. 9, 1973	Apr. 10, 1973			
Promotional samples		do	do			May be withdrawn.
Oral Rx: Sorbitrate exemption		Sept. 12, 1973	Nov. 12, 1973			
Advisory Committee: Membership representation		Jan. 8, 1974	Feb. 7, 1974			

DOM HELDER CAMERA

Mr. KENNEDY. Mr. President, Dom Helder Camera, Archbishop of Recife, Brazil, and one of the Western Hemisphere's most respected advocates of social justice, recently addressed a symposium on human rights.

Joining him at the conference at the Rothko Chapel in Houston, Tex., were: Dr. John B. Calhoun of the National Institute of Mental Health; Dr. Joel Elkes of the Johns Hopkins Hospital; Dr. Giorgio La Pira, director of the law department at the University of Florence, Italy; and Dr. Jonas Salk, of the Salk Institute for Biological Studies, La Jolla, Calif.

The archbishop has spoken out, despite threats of retaliation and despite the clear threat of physical violence, in defense of human rights in Brazil. It was his voice more than any other which first raised a challenge to the practice of torture by the Brazilian Government. Hopefully, his determined opposition and the protests from leaders of varying political viewpoints around the world will have an effect in reducing the existence of torture in Brazil.

In his discussion, the archbishop once again reiterated his belief in nonviolence and his call for a better world.

For all of those who seem to witness the denial of liberty with silence, whether in Brazil or Chile or Greece or Uruguay or South Vietnam or Cuba, his words are a strong reprimand.

Liberty interests us only so as to defend justice as a road to peace. Liberty interests us in order to lend a voice to those without voice. With no ambition to function as a controlling force of governments or as mentors of technicians, liberty interests us so as to work for a world with no supermen, and with no sub-men; a world with no oppressors and with no oppressed; a world without racism, without war.

Despite all of the tragic violence and repression of the human spirit that the archbishop has seen, his is not a pessimistic view of the world.

Our world would fall into the cold and into death, if, one day, Utopia and dreams should leave Humanity. The great dreams and the real Utopias of today are the first rays of the dawn of tomorrow.

I ask unanimous consent that his full statement be printed in the RECORD.

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

THE RIGHTS OF MAN

THREE VITAL POINTS—FROM AMONG MANY OTHERS

A conference given by Dom Hélder Câmera, Archbishop of Olinda and Recife, in commemoration of the 25th anniversary of the Universal Declaration of the Rights of Man.

The Rothko Chapel, Houston, Texas, USA., December 8 and 9 1973.

1. A decisive crossroad

When one reads and re-reads the Universal Declaration of the Rights of Man, which the Organization of the United Nations solemnly proclaimed on December 10, 1948; when one meditates on its thirty articles, which are a synthesis of the highest and purest aspirations of the human person; and when one witnesses that we have failed to transform these articles into reality, one concludes that:

Either we reject the Declaration as one more paper among many dead letters;

Or we must render the Declaration flesh of our flesh, blood of our blood; piece of our souls.

We have no right to prepare friendly discussions on such a grave subject only to drop the issue afterwards. The ideal is that we make this morning a turning point for all of us.

It is often beyond our power to shake the structures of oppression externally. But let it be that—at least within ourselves—a change occur, an option strengthen, a conversion happen.

In an effort to help the good will of all of us, so that it not be lost in vague desires, permit that—from among many others—I focus on three vital points concerning the human person and his inalienable rights:

Development, yes; but not at an inhuman price;

Security, yes; but without resurrecting the inquisition; and

Effort for placing the moral force over the armed force.

2. Why are these three points vital?

1. Development, yes; but not at an inhuman price.

After the first industrial revolution—which extended from the discovery of the machine to the harnessing of steam—how many other industrial revolutions occurred? Was not electricity a revolution? And nuclear energy? And automation? And cybernetics? How many specific industrial revolutions can we record in modern times?

What afflicts us is to see that the price of progress—or of development, as it is called today—continue to be paid heavily by the poor: poor individuals, and poor countries, that become even poorer; and that founder in sub-human situations from which they cannot save themselves.

Let us try to verify the truth of this assertion. It is clear that we risk committing errors. But it is of value if it achieves our purposes of lending a voice—as Pastor—to those without voice.

As we approach the year 2000, is the spectacle of the world that of a growing, global development of Humanity; or does the polarization increase between a minority of rich countries and an extensive poor world, whose misery is ever more aggravated?

In 1964, the Organization of the United Nations had a beginning that awakened the enormous hope within the poor world. This was the realization—in Geneva—of the First Assembly of the United Nations on Trade and Development (the First UNCTAD: United Nations Conference on Trade and Development).

At the end of the first period of sessions, and at the side both of the First World—the Capitalistic Bloc, and of the Second World—the Socialistic Bloc, a group of seventy-seven countries was formed, which came to be called the Third World—a world of poor countries, producers of raw materials.

Three years later, the Group of Seventy-seven had a ministerial meeting in Algeria—to assess the first UNCTAD, and to prepare for the second, which was to take place (as it actually did) in New Delhi, in 1968.

In preparing for the second UNCTAD, the Third World released the Letter of Algiers, dated 1967. This leter recorded that, between 1956 and 1966, the participation of underdeveloped countries—in the total world exportations—had diminished from 27% to 19.3%.

While the value of manufactured exports of industrialized countries increased by 65 billion dollars between 1955 and 1966, the corresponding increase for undeveloped countries was only 3 billion dollars.

The acquisitive power of underdeveloped countries continues to diminish steadily, at a rate of 25 million dollars per year.

The external debt increased from 10 billion dollars in 1955 to 40 billion dollars in 1966. The rate of increase of the public debt of poor countries was 500 million dollars annually, between 1950 and 1960. From that point it reached 4 billion per year, with a tendency to increase.

The meeting at New Delhi was frustrating to the hopes of the Third World. Even so, in October of 1971, the Seventy-Seven—who had already increased to Ninety-Five, and today number Ninety-Six—promoted in Peru a preparatory meeting for the third UNCTAD in Chile. They established that the polarity between rich countries continues to intensify:

The participation of poor countries in world trade, between 1960 and 1969, decreased to 17.5%.

In the same period, the income per capita in rich countries increased by 650 dollars, while in poor countries it increased by only 40 dollars.

In the last 20 years, the flux and re-flux of foreign capital had caused for the Third World a net loss of more than 100 billion dollars, in addition to a public debt of about 70 billion dollars.

According to data of the Organization of the American States, cited in the Declaration of Lima—an official document of the Third World, as preparation for a third UNCTAD that took place in Santiago, Chile, in April 1972—Latin America, between 1960 and 1967, took in less than 4 billion dollars, and paid out 12 billion dollars.

The third UNCTAD deceived the oppressed countries as much as—if not even more than—did the two previous ones. It was impossible to effect that the poor countries participate effectively in debating and resolving the reform of the financial system and the reform of the trade system. The most they could obtain was that the existing Assembly of 10 be expanded to 20—to discuss the reform of IMF (International Monetary Fund), and of GATT (General Agreement on Tariffs and Trade). And this Assembly of 10 was expanded by the entrance of countries whose local oligarchies opted to collaborate totally with the multi-national Macro-Corporations.

The citing of absurd and revolting injustices could easily be multiplied. But it is enough here to reflect on mercantile shipping, which is indeed modern piracy. Developed countries, with their 217 million tons of mercantile fleet, cripple the poor countries, who have but 16 million and some tons of maritime transport.

In Santiago, Chile, at the end of the third UNCTAD, it was evident that to speak of a Third World was already insufficient. It was now necessary to separate a Fourth World—composed of more than two-thirds of the Third World, a world without hope, and with no prospects of uprooting itself from misery.

2. Security, yes; but without resurrecting the inquisition.

The jubilee of the Universal Declaration of Human Rights—besides occurring at the sad hour when, without exaggeration, more than two-thirds of humanity suffer oppression, witnesses an hour that exploits the just and necessary concept of national security.

The point of departure is easily understood:

If agitators and subversive arise—kidnapping, assaulting, sabotaging; the governments in whose domain these kidnappings, these assaults, these sabotages take place, consider it to be not only their right, but even their obligation to purge the terrorism, thus safeguarding national security.

Those who are imprisoned under such circumstances are not considered to be ordinary prisoners. The governments involved believe it to be their right and duty to extract from these prisoners information that might be of vital importance to the social order and to the security of the country. And such governments readily persist—even to the point of torture; nor hesitate to per-

petrate kidnappings and espionage, nor to incentivate denunciations.

There occur, then, scenes of a savagery that many would have difficulty admitting as true, and that all would imagine impossible on the ante-vigil of the Twenty-first century.

Note that these are not phenomena restricted to backward and primitive people. To cite a single, conclusive example: who does not remember that in Germany—a country of philosophers and of religious reformers, of poets and of musicians, a country of high culture—Hitlerism exposed to the world of our day the deplorable spectacle of simply inconceivable concentration camps.

We would need to unite what is of the highest and of the purest that exists on the earth, among all religions and groups of atheistic humanism, so as to obtain from the governments that—in preoccupying themselves with the national security, they not be rash, nor lose their heads, nor commit absurdities, nor end up adopting the worst methods of the lamentable days of Hitler and of Stalin.

Let us try to mobilize what there is of the worthiest among all races and all people, so as to attain that the governments not respond with terrorism to terrorism—or to what seems to them to be terrorism: but rather that they have the good sense to go to the root of the problem.

Without in any way justifying terrorism, let us remember with what frightening stupidity many non-terrorists are seized by mistake or through mere suspicion. Even, however, in relation to acts of authentic terrorism, though condemnable and barbarous, let us seek to have the intelligence to discover in them a primitive revenge against the terrorism of terrorisms: the stratified injustices, the structures of oppression—that in our century, absurdly and inconceivably maintain more than two-thirds of Humanity in subhuman conditions.

When will we understand that—if it is more than necessary to maintain an alarm before eventual consequences of an eventual nuclear war, or before the eventual consequences of an eventual bio-chemical war—it is imperative to keep in sight the very real consequences of the very actual war of misery, that kills more than do the bloodiest wars, and leaves physical, physiological, psychic, and moral scars equal to those from bio-chemical and nuclear war.

Let us try to mobilize the greatest existing moral forces of our day, so as to abolish conclusively the extorting of confessions through physical and moral torture.

How is it possible, in a century of nuclear energy and of space flights, to pretend that one believes in information obtained from one who is having his nails pulled out; from one who is suffering electric shocks in the genital organs and on the tongue; from one who, without food, during long hours, is submerged in water or hung in air; from one who suffers extreme moral disgraces; from one who witnesses the torture of loved ones?

It would at this time be a worthy commemoration of December 10, 1948, to abolish physical and moral torture, as incompatible with human dignity, and as having no place in today's world.

3. Effort for placing the moral force over the armed force.

We allude to the mobilization of moral forces. Therefore, one of the vital points in the commemoration of the jubilee of the Universal Declaration of the Rights of Man is: to reinstate moral force in its rightful place above armed force.

The dictatorships of the left and of the right tend to annul the moral forces:

They control the press, the radio, television; and they silence the intellectuals.

They suppress the political parties and parliaments, or reduce them to puppets; they do the same with the judiciary.

They manipulate the unions and cooperatives if and when they allow these to exist.

They control the schools, including the universities.

They relegate religions to the sacristy—absolutely impeding them from any attempt to denounce injustices or to promote activities of conscientization.

They fear, in a special way, conscientious groups of workers, of intellectuals, and of youth.

Let these various forces—reduced to weakness and inaction—have the courage to verify to what extent were not the errors of the past or of the present grave failures that emboldened the armed forces to penetrate and to annihilate the moral forces.

Let us take, above all, the case of religions. Do we always utilize the moral force of our sacred messages? Were we not weak and conniving before abuse and before despotism? Did we not, consciously or unconsciously, play the game of the oppressors? Were we not manipulated by those who seemed to us the safeguards of the so-called social order? Did not our own organizations let themselves be thrown out of gear?

It is urgent to mobilize what remains of the moral force in free countries, so as to help restore moral force to its rightful place above armed force. Clearly, we include within the predominance and monopoly by armed force the absolutely equal danger of economic power, which—through the multi-national Macro-Corporations—is the true dominator of the world today.

In the measure in which the moral forces are purified—above all, freed from preoccupation with prestige, and reinstated as effective servants, and poor—they will recover the inherent power to exert their prophetic mission.

Liberty interests us only so as to defend justice as a road to peace. Liberty interests us in order to lend a voice to those without voice. With no ambition to function as a controlling force of governments or as mentors of technicians, liberty interests us so as to work for a world with no supermen, and with no sub-men; a world with no oppressors and with no oppressed; a world without racism, without war.

3. Some concrete suggestions

Allow me to present now some concrete suggestions, capable of forcing us to move beyond abstractions while, at the same time, sustaining our good will and our good intentions:

(a) to be careful to avoid pessimism, which is wonderful, for the oppressors.

If we are convinced that it is impossible to do anything; that always we will have injustices on earth; that the oppression, more and more will be increasing, the only end result will be cynicism.

(b) to be careful to avoid the temptation of violence which is also welcome to the oppressors.

If, with the desire of changing the structures of oppression, we will make an option to secrecy and to the use of arms, we will be easily crushed. We must remember that the oppressors are the owners of arms and the creators of wars . . . the manufacturers of death.

(c) To be careful to demand a very active and valuable nonviolence. When we will use the only arms that the oppressors are incapable of controlling, it will be absolutely necessary to adopt and use moral liberating pressures capable of shaking effectively the structure of oppression instead of provoking its scorn and mockery.

(d) Open our eyes to a beautiful reality: there are, already, everywhere, inside all the countries, races, religions and human groups, some minorities who want, really, even at the price of great sacrifices, to help build a world that is more just and more human.

(e) To be conscious that it is not our intention and that we shall never have to justify other very different minorities: of youth, of adults, of old persons; of students, workers, scientists, technicians; of blacks, red and yellow people, morenos and whites . . . It is not our intention—we should not have to create a new political party or a new sect.

Instead we have, and we shall have, to discover some priorities in common, making possible a miracle as powerful as that of nuclear energy. For centuries, nobody had an inkling about the extraordinary force inside the atom.

It is not by chance that the image of the atom is utilized. Perhaps tomorrow, if the priorities unite, they will present a danger on the scale of nuclear energy: we know, all of us, that nuclear manipulation is a nightmare for humanity instead of a decisive instrument for the welfare of all people. It is absolutely necessary for the minorities to gather as a force of truce and love, a force which, until now, has been employed at perhaps 1% of its potential.

And last suggestion: To help the numerous minorities who are preparing within the United States for 1974 as the Year of Justice. To help these existing minorities, now working together, to establish documentation on the grave injustices, internal and external, happening in this country: to help the rising consciousness in the United States.

To all who regard these suggestions as Utopia, I leave a final word:

Our world would fall into the cold and into death, if, one day, Utopia and dreams should leave Humanity. The great dreams and the real Utopias of today are the first rays of the dawn of tomorrow.

A REASSESSMENT OF NATIONAL DEFENSE SPENDING

Mr. BENTSEN. Mr. President, the budget we are to receive next week will be the largest ever proposed for the Federal Government. It represents another benchmark in the spiraling growth of Federal spending. Nearly one-third of the new budget authority requested by the President will be for the Department of Defense, nearly $100 billion in new authority for a single Federal agency. Despite the size of that figure, however, defense spending represents a smaller percentage of our GNP today than it did 20 years ago. In 1953 the defense budget represented 14 percent of our total GNP whereas in 1974 the defense budget accounted for only 6 percent of our GNP.

I do not cite this as an argument for greater defense spending but merely to point out that all Federal spending has grown extraordinarily in recent years. My comments today will be directed toward defense spending but they could be applied in other contexts to nearly all Federal agencies.

I count myself as second to none in my support for a strong national defense. But I do not measure support for defense merely by the size of the expenditures one is willing to support. Rather it is the quality of the forces and the strengths of the deterrent that those dollars secure which is the real test and I believe that we are failing to meet that test in a number of crucial areas. It appears to me that not only are defense expenditures on the increase but also that our defense capabilities in too many areas are checked and on the wane as a result of internal defects and difficulties.

It appears, in short, that too often we are getting less defense for more dollars and that we encourage antidefense sentiment in the process.

I am not referring here to isolated errors or occasional cases of poor management. I am referring to some disturbing trends at the very heart of the basic systems by which defense personnel are utilized, weapons are procured, and the Department of Defense organizes its activities. There are disturbing signs in both the personnel and procurement practices of the Department and I would like to review some of those problems and offer some suggestions on each.

Those who seek to reduce defense spending have directed most of their attention and nearly all of their cuts at the weapon systems in the procurement section of the defense budget. In so doing they are missing the fact that people, not weapons, have accounted for the recent increases in defense spending. Defense personnel costs have grown astronomically and the manner in which these personnel are utilized appears to have changed little at all.

Perhaps some examples would be of interest:

Manpower costs have risen dramatically as a portion of the defense budget. In fiscal year 1954, manpower costs were about 38 percent of defense outlays. In fiscal year 1974, they total 57 percent of defense outlays.

Annual defense outlays have increased about $35 billion over the last 20 years. Of that amount, 93 percent went for additional pay and operating costs and only 7 percent of that increase went for increased capital investments.

Not only are we paying more in manpower costs but we are buying dramatically fewer people for the money. Defense is paying $22 billion more in 1974 than in 1964 for personnel costs and yet has over 400,000 fewer military personnel.

Retirement costs are even more disturbing. In 1974, there are over 1 million military retirees on the retirement rolls at a cost of $5 billion annually. By fiscal year 2000, there will be 2 million retirees on the rolls at a cost of $30 billion, and military retirement expenditures for that 26-year period will total over $400 billion.

Some have indicated that they believe the all-volunteer force is the source of these increased personnel costs, but I would point out that the bulk of pay raises for the lower enlisted ranks was approved in 1967 and 1971 long before the all-volunteer force became a reality. The recent pay increases for the military were long overdue and well justified. The spectacle of military enlisted men living on wages that made them eligible for food stamps could not be tolerated no matter if those men were draftees or volunteers.

The issue then is not how well military men are to be paid but rather how are well paid military men to be used.

By this, I mean that compensation is merely one of many management tools for shaping an effective personnel policy. And the Department of Defense, in my opinion, has failed to make necessary improvements in personnel policy to complement the pay increases approved by the Congress. I think it is time for some fresh thinking, on the part of the Pentagon, particularly about our entire system of promotion pay and retirement in the all-volunteer environment.

The policy of promotion within the military too often elevates some men beyond their capabilities and retards others from ever achieving their potential. I am referring to the promotion concept of "up and out" and to the rigid calendar system of awarding military promotions. By this system, a man's military career is calibrated by the calendar and is locked in on a 20-year schedule that allows him to make promotions only at the appointed time and then moves him out if he fails to make the move up. Not every soldier need move to the top in order to make a contribution, and those soldiers who have the most to contribute should be moved to the top at a rate that reflects their ability and not just their time in service.

Second, I feel that the volunteer force calls for a complete reexamination of the system for determining personnel requirements in the Department of Defense. The system used by the Department to determine its personnel requirements must be adjusted to reflect the increased cost of personnel and the increasing availability of labor-saving devices and techniques.

One of the most troubling legacies of the draft and low military pay is that defense personnel planners have come to view manpower as a cheap and plentiful commodity. The result has been inflated numbers and inefficient utilization, taking a double toll in cost and in poor retention due to lack of job satisfaction. Why, for instance, is it necessary for the armed forces to assign more than a million men and women to support duties? Why is it that with an army of 841,000 active-duty personnel, we can field only 13 divisions?

Can the country really afford a $17 billion a year civilian defense payroll which is purely for support rather than combat purposes? The answer is that the military must begin treating manpower as an expensive commodity that must be allocated carefully. Specialization must be emphasized, labor-saving devices must be pursued, and pay must be made a function not just of rank but of responsibility and performance as well.

I would suggest that our defense planners look at systems such as those recently initiated by the West German Armed Forces where rank, job duties, and human performance are all considered in determining individual pay. Also under this new system, a military man would be allowed to choose a specialty and advance through the ranks in that specialty rather than our present system of rotating a man from job to job so that he can punch the required tickets for his career advancement.

The Defense Manpower Commission which I sponsored along with Senator BAKER will be taking a hard look at some of these problems and possible solutions. I believe we need thoughtful reform in this area and I believe this Commission, working with the Defense Department and the committees of Congress, can make a real difference in how we deal with the issue of manpower within the Defense Establishment.

Personnel is only one consideration, however, and I feel a close look must be taken at procurement and other capital investments as well.

As a portion of the defense budget, investment spending—which includes construction, research and development, and procurement—has remained at about the $20 billion a year level except for the peak war years in Vietnam. The fact that the dollar amount for investment has remained static means that the actual purchasing power of our investment dollars has been seriously eroded. The meaning of this static procurement figure is that the Department of Defense is simply buying fewer numbers of increasingly expensive weapon systems.

In 1951, for example, there were about 20,000 aircraft in the Air Force's operation inventory; today, there are 10,000 and in the 1980's that number will be halved again.

The reason for this is the dramatic increases in the program unit costs of the weapons we must buy. For instance, the same money that bought 100,000 fighter aircraft in World War II, even when adjusted for inflation, would buy fewer than 1,000 F–14 fighters today. Inflation, inefficiencies, and technological advances have all combined to increase weapon prices at a time of diminishing buying power for procurement dollars. The net effect is fewer weapons, at higher prices, providing less defense capability.

In order to reverse this trend, I believe that the Department of Defense must move toward a more critical system of research and development. R. & D. expenditures must be increased, and our R. & D. effort must be rechanneled to place greater emphasis on producing cost-conscious innovations rather than budget-busting technology. Too much of our present R. & D. is geared toward advancing the state of the art instead of advancing modern weapons that we can afford.

In the procurement of weapons, we must look to more programs like the light-weight fighter program which will provide the Congress with a number of choices involving both capability and price. It epitomizes the elements of cost effectiveness, affordable technology, and program management that are essential if we are to change present defense procurement trends.

I understand the budget we are to receive Monday does include some improvements on this score. The Navy will propose a slowdown in the construction schedule of the Trident submarine from three to two a year after 1978. This is a step I urged 2 years ago and again last year when the Congress considered this new strategic submarine program. The result of this Navy decision will be a more orderly construction schedule that avoids concurrency between design and construction and which will assure the country that the future backbone of our strategic forces has been responsibly developed and procured. I am pleased by

this new Navy position, and I believe the country will be the ultimate benefactor of their decision.

The Trident debate, Mr. President, represents the kind of role that I hope Congress will continue to play on major defense issues. We must be critics, but we must be constructive critics. The Defense Department and the Congress are partners in providing for the Nation's security. A partnership, though, means mutual trust, shared responsibilities, and a free exchange of ideas and information. It means that Members of Congress must be willing to overlook their own provincial concerns when deciding defense issues. It means also that the Department of Defense must be willing to make the hard choices involving personnel and weapons costs that recognize the limits on Federal resources and the many demands on each Federal dollar.

We cannot continue with the present spiral of Federal spending based on growing deficits. Estimates today are that the defense budget, at current rates of increase, will be about $120 billion by 1980. I believe the Congress and Defense Department must begin this year to reverse the process and to examine every avenue of reform so that the Nation's defense is secure and the Nation's economy is not ruined in the process.

Our goal must be better defense, not just bigger budgets. It is our duty as stewards of both the people's money and their trust to make sure that the security of this country is never compromised. But we must also remember our obligation to hold strictly accountable those who spend the public's money no matter what the cause. I think that the Department of Defense by its own internal reforms can better allocate the public's money and better provide for the Nation's security. That should be our goal in the upcoming year and I hope that my colleagues in the Senate and our partners in the Pentagon will join that effort.

OIL SHORTAGES AND STARVATION?

Mr. KENNEDY. Mr. President, over the past two decades our Government has been committed to the concept of worldwide "freedom from hunger" and the use of our food surpluses in a "food for peace" program. During this period our Nation possessed massive grain surpluses, and the "green revolution" promised unprecedented food production in the developing nations. It was felt that such abundance would at last bring an end to the persistent problem of world hunger.

Those hopes have not materialized. The increased demands for food grains in the affluent nations, coupled with the adverse effects of weather worldwide, have served to deplete the world's food reserves for the first time in modern history.

This crisis in world food reserves is now complicated by the continuing oil shortage—for increased prices and reduced quantities of oil will severely curtail the production of nitrogen fertilizers. And without fertilizer, developing nations simply cannot maintain the levels of production achieved over the past decade, and which are still insufficient in some areas to keep pace with the increase in population.

Thus, in our concern for the inconveniences and even hardships the shortages of oil and food have caused us, we cannot fail to anticipate the tremendous suffering they may cause elsewhere. If we are to honor our commitment to "freedom from hunger" and are to help prevent the starvation of millions in Africa, India, and other areas of the world, we must soon join others in international efforts to bring cooperation rather than uncontrolled competition in the allocation of both food and oil resources.

Two recent articles state this problem graphically. The first, a report from the New Republic, reprinted in the Boston Globe, warns of the effect of the oil shortage and subsequent food deficits on the world's poor. The second, a dispatch from Walter Sullivan in the New York Times, reports the findings of experts on climate and agriculture on shortages resulting from fertilizer cutbacks. Mr. President, I ask unanimous consent that the text of these two articles be printed in the RECORD.

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

[From the Boston Globe, Jan. 29, 1974]

OIL SHORTAGE AND STARVATION FOR MILLIONS

WASHINGTON.—Fulani is a girl who lives in India, with small bones and lackluster eyes, who is only 8 but looks 12, and she is probably one of the millions who will die this summer from the food shortage growing out of the oil shortage. About mid-August America is likely to discover that there is a crisis, not merely in India, but possibly in Africa, much of the Mideast and parts of Latin America, and it will send emergency food supplies, by which time it will be too late. If a world food bank is begun it will have to be done now. There seems no sign of movement, however, by the government here.

We are so bemused by our gasoline shortage, that we can't see what's happening on Spaceship Earth. It's not hard to trace, however. Oil is a big component of nitrogen fertilizer; if oil leaps in price so does fertilizer. Japan imports oil, uses it to produce fertilizer, exports it to India. Less fertilizer, less food. Lester Brown of the Overseas Development Council, tells me that Japan has cut fertilizer production 25 percent and its exports will be reduced probably one-third. China will grab what it can. It means the Indian subcontinent of 740 million (including India, Bangladesh and Pakistan) will suffer.

That's only part of it. Food prices depend on irrigation. In Asia two million irrigation wells are often pumped by small motors, chugging along, burning oil. The price of oil rises, irrigation costs more; food costs more; people who can't pay die.

In few places are food and population more delicately balanced than in India. Bernard Weinraub cabled in the New York Times last week from New Delhi of a striking election upset by the Communist Party in the heart of Bombay that jolted Prime Minister Indira Gandhi's New Congress Party. Three years ago the Congress party polled 216,000 votes; now it's 70,185. Among the reasons: the "unprecedented 20 percent rise in the price of food in the last 12 months." Of course democracy in India is a thousand times more worth saving for the United States than the old government in South Vietnam for which we spent billions and 50,000 lives. But what will we do about it?

About a third of the world's 3.9 billion people goes to bed hungry at night. World population increases two percent a year, about 80 million people. It will double at the present rate by the end of the century. That means double the food to feed them. And there are these ominous circumstances:

For the first time America's arable land, the world's great bread basket reserve is all in use.

World grain reserves expressed in days' consumption stood at 95 days in 1961, now is down to 37, smallest in history.

Fertilizer supply is very short and the price is zooming.

Something strange is happening to the world fish catch; some feel the very oceans are overfished; for the past 21 years the total world catch increased every year to 70 million metric tons in 1970; it has dropped in the past three years to 62 million.

Brown comments, "With less fertilizer and two percent regular increase in population, this is the first year in which one can say positively, 'There will be a reduction of food production in Asia, regardless of the weather.' Never before in my memory has it been possible to say that."

Countries are divided into two tiers, the northern tier with relative low birth rate and adequate food supply, North America, Western and Eastern Europe, the Soviet Union and Japan, recently joined by Korea, Taiwan and Mainland China. The other tier are the hungry lands with relatively high birthrate—most of Africa, much of the Mideast, the Indian subcontinent and parts of Latin America. This is the crisis of the 4 F's: food, fuel, fertilizer and fertility.

"This year there is no cushion any longer," Brown says, "things are very thin with a shortfall of fertilizer. With a drought somewhere, or unfavorable weather, there would be a scramble for food unlike anything we've ever seen. And in Washington a feeling that no one's in charge.

"The issue that may well arise before this year is over," Brown says, "is whether the more affluent nations will tighten their belts to fill what will be by far the largest food deficit in Asia that we've ever seen."

Tony Dechant, president of the Farmers Union, recently denounced the lassitude in Washington: "A world grain crop like that of 1972 would doom millions to starvation."

Fortunately prospects are for a bumper crop, but with high fertilizer prices it is not certain that the hungry lands can buy it.

[From the New York Times, Jan. 26, 1974]

MONSOON SHIFT CALLED THREAT TO WORLD FOOD—PARLEY SAYS OIL CUT REDUCES FERTILIZER

(By Walter Sullivan)

Weather changes, notably a southward migration of the monsoons, combined with a sharp reduction in fertilizer production, threaten food supplies for a considerable part of the world population, according to experts on climate and agriculture who completed a two-day meeting yesterday at the Rockefeller Foundation.

The southern shift of monsoon rains is thought to account for the five-year drought in Africa that, it was reported, is causing mass migrations to the south. It is blamed, as well, for severe droughts in India and Latin America.

The curtailment in fertilizer production is a result of the oil shortage. According to Dr. Norman E. Borlaug, of the Rockefeller Foundation, often called "father of the green revolution," as many as 20 million people may die because of crop shortages in the next year. He attributed this in part to the climate changes, but primarily to the fertilizer cutbacks.

Japan, which has been the chief exporter of nitrate fertilizers, has cut its production in

half because of the fuel shortage. Since this fertilizer goes to India and other areas already affected by the climate change, the effect may be devastating, he said.

Dr. Borlaug, who won the 1970 Nobel Peace Prize for development of high-yield strains of wheat and rice in what was termed the "green revolution," did not attend the meeting, but was reached by phone at his offices in Mexico City.

An ample petroleum supply is a key to fertilizer production, both because the process demands much energy and because petroleum components, such as naphtha, are used. Dr. Borlaug commented, bitterly, that the Arab oil embargo, aimed at the industrial countries, would ultimately strike most heavily at the developing nations of Asia.

At the conference it was suggested that, while China depends heavily on Japanese fertilizer, the Japanese, for political reasons, would probably honor their obligations to China at the expense of India, Southeast Asia and Indonesia.

Japan itself has been hit by the shift of the monsoon, which in recent summers has not spread its customary rains over Hokkaido, the large northern island of the archipelago.

Monsoons are the dominant winds in regions, such as southern Asia, where they blow from the land toward the sea part of the year and in the opposite direction the remainder of the time. In India the dry monsoon blows from the northeast between April and October and the wet monsoon comes from the southwest the rest of the year, producing the rainy season.

Because of the southward shift of monsoon rains in Africa, it was reported, the Sahara is spreading its sands southward at a rate, in some areas, of 30 miles a year. The result is great social upheavals.

DROUGHT HAS WIDE IMPACT

Bernard Oury, an agricultural economist at the United Nations concerned with aid to this part of Africa, said some six million residents were seriously affected by the drought. Great numbers are migrating south with their cattle, over grazing land that is already heavily burdened.

While there was no consensus as to the cause of the climate changes—or the likelihood of their duration—it was generally agreed that current fluctuations are more extreme than any on record.

Dr. Reid Bryson, director of the Institute for Environmental Studies at the University of Wisconsin, displayed a record of climate in Iceland over the last thousand years, showing an unprecedented shift in the first half of this century.

The record showed a gradual cooling over the 10 centuries until about 1900, when there was a sharp rise in temperature, followed by an equally abrupt drop to the earlier low. The temperatures, except for those of the last few years, were derived by Berg Torsson.

He used temperature records as far back as available and, prior to that, the records of sea ice conditions in the area, which are a sensitive climate indicator.

COOLING TREND REPORTED

Dr. Kenneth Hare, a meteorologist who was formerly president of the University of British Columbia and who was chairman of the meetings, reported that for 19 consecutive months, centered in 1972, weather stations across most of Canada recorded abnormally low temperatures. Some were the lowest on record.

The head of the Soviet weather service, Dr. Yevgeny K. Federov, was quoted as saying that temperatures in central Russia, in 1972, were the lowest in several hundred years.

Dr. Bryson argued that the chilling of climate in the entire Northern Hemisphere, that began a few decades ago, had intensified the westerly flow of air in mid-latitudes and driven the monsoons southward.

The purpose of the two-day meeting was to examine present knowledge on weather and climate change, both natural and manmade, and their influence on food production and interstate conflict. Great concern was expressed at the decline in food reserves, particularly in view of climate uncertainties.

Lester R. Brown, food production specialist at the Overseas Development Council, presented figures on grain reserves of the grain-exporting countries—those capable of averting famine in other regions. In 1961, he said, they were sufficient to feed the world for 95 days. By 1971 the figure was 51 days. Now, he said, it is 29.

DECLINE HELD SERIOUS

This decline in reserves, as population and food requirements rise, is extremely serious, Dr. Borlaug said. "I hope and pray that in the next two years it will be possible to build up some reserves again," he added.

It was recognized that great climate changes occurred in the past, bringing about the rise and fall of civilizations. The Sahara has, at times, extended further south than it does today. During the ice ages it was a grassland.

But, it was noted, earlier, less deeply rooted civilizations were better able to cope with change. Today some of the tribes moving south in Africa are nomadic in any case. But for the farmers who fled the "dust bowl" of the Western Plains, the droughts of the mid Nineteen thirties were catastrophic.

Not only is an industrial civilization firmly rooted, Dr. Hare pointed out, but great migrations are also impeded by national boundaries.

It was noted that much concern was expressed in recent years that air pollution or other factors might be altering the climate in an irreversible manner.

A particularly sensitive Achilles heel of world climate, Dr. Walter O. Roberts said, is the pack ice covering the Arctic Ocean. Dr. Roberts was formerly head of the National Center for Atmospheric Research in Boulder, Colo.

MELTING THE ARCTIC PACK

From time to time it has been proposed that the Arctic ice, that on the average is only about six feet thick, could be melted—for example by spraying with coal dust in summer. Some believe that, once gone, it would not form again and world climate would be drastically altered (though in ways that are uncertain).

Reliable predictions of long-term weather or climate change could be a mixed blessing, it was pointed out. If a northern country were faced by the sure prospect of prolonged drought, it might be tempted to melt the Arctic pack, affecting all inhabited lands in drastic ways.

Hence, it was agreed, some form of international agreements are necessary to avoid conflicts. Yet, it was also proposed, the prospect that, for centuries to come, drought in one region will often be matched by plentiful rain and good crops elsewhere could bring nations closer together.

The massive grain transactions of recent years have, it was said, fostered a new spirit of "global cooperation." With the prospect of more such deals, plus the needed creation of a "world food bank," it was proposed that the one-world atmosphere could be enhanced.

MR. AND MRS. DANIEL W. RHODES

Mr. THURMOND. Mr. President, Mr. and Mrs. Daniel W. Rhodes of Charleston, S.C., recently passed a milestone that represents an enviable record of devotion. On January 12 they celebrated their 70th wedding anniversary.

Not only did they observe the date for its significance in their lives but they also repledged their vows of marriage. In reaffirming those promises they made seven decades ago, they also reaffirmed the meaning of their lives to each other.

Mr. President, when these two people were married in 1904, Orville Wright had just made that historic first flight, Theodore Roosevelt was still in his first term as President and the 20th century was truly in its infancy. Times have changed so rapidly and so decisively since that date, but amidst all the change there are values and principles which remain the same. They are the principles of devotion and honor and love. The sharing of two lives with these characteristics is, indeed, an example for everyone.

The observance of this anniversary must have been a joyful occasion, not only for Mr. and Mrs. Rhodes, but also for the large gathering of friends and family, among their 10 children, 13 grandchildren, and 29 great-grandchildren. An additional cause for celebration was the 90th birthday of Mr. Rhodes who is retired from the Postal Service. I extend my heartiest congratulations to Mr. and Mrs. Rhodes for the continuing celebration of their marriage and for the service they have rendered to others.

Mr. President, in this era of uncertainty and changing customs it is refreshing and encouraging to know of people who have lived their lives together with devotion, honor, and love. All Americans can be guided by such examples of constant value.

At the time of their anniversary celebration, an article appeared in the News and Courier of Charleston, S.C., entitled "70 Years," dated January 27, 1974. I ask unanimous consent that the article be printed in the RECORD at the conclusion of my remarks.

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

SEVENTY YEARS

Mr. and Mrs. Daniel Rhodes marked their 70th wedding anniversary Jan. 12 with a reception and the readministration of their wedding vows by the Rev. R. H. Jeter.

Various solos and an invocation by the Rev. A. R. Blake were other highlights of the celebration at the St. Philip Street Masonic Temple.

The couple was married in Charleston in 1904 and had 10 children. Rhodes, who also celebrated his 90th birthday on this occasion, was employed by the Postal Service for 28 years.

Still active in community and church affairs, the couple has 13 grandchildren and 29 great-grandchildren.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Is there further morning business? If not, morning business is closed.

LEGAL SERVICES CORPORATION ACT

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of the unfinished business, S. 2686, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 2686) to amend the Economic Opportunity Act of 1964 to provide for the transfer of the legal services program from the Office of Economic Opportunity to a Legal Services Corporation, and for other purposes.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. ROBERT C. BYRD. Mr. President, I am about to suggest the absence of a quorum, but first I should like to propound a parliamentary inquiry.

The ACTING PRESIDENT pro tempore. The Senator will state it.

Mr. ROBERT C. BYRD. When the Senate is operating under the cloture rule, is it necessary for a Senator who suggests the absence of a quorum, to take the time out of his own 1 hour allotted under the rule or to get unanimous consent for the quorum, or may he suggest the absence of a quorum without taking the time out of his own hour and without asking unanimous consent that he may be permitted to suggest the absence of a quorum without time being charged?

The ACTING PRESIDENT pro tempore. Rule XXII does not direct itself to the specific problem, except that it would permit the Chair to rule that the suggestion of the absence of a quorum is dilatory and therefore out of order. The other limitations are on debate and the requirement that amendments must be germane and be read before the Senate votes to invoke cloture.

Mr. ROBERT C. BYRD. Mr. President, I yield myself 3 minutes out of my time.

When the Senate is operating under a unanimous consent agreement——

Mr. President, may we have order in the Senate?

The ACTING PRESIDENT pro tempore. The Senate will be in order. Those conversing will please leave the Chamber.

Mr. ROBERT C. BYRD. Mr. President, I think it is important that we have some understanding of this question, because the question could arise, if not today, at some future time when the Senate is again operating under the cloture rule.

When the Senate is operating under a unanimous-consent agreement with respect to the division of controlled time, no Senator may suggest the absence of a quorum without the time coming out of somebody's allotment of time, except by unanimous consent, and except also if time has expired or has been yielded back, in which case any Senator, of course, has a right to suggest the absence of a quorum before a vote.

On the other hand, why is it—if I understand the Chair correctly—that when operating under conditions following the invoking of cloture, a Senator may suggest the absence of a quorum and is not obliged to take the time out of his time and is not obliged to ask unanimous consent that he may be allowed to suggest the absence of a quorum without the time being charged?

The ACTING PRESIDENT pro tempore. The Chair's statement was based upon the rule and, more important, the practices of the Senate under that rule.

The Chair requests the clerk to read the provision of the rule relative thereto.

The assistant legislative clerk read as follows:

Thereafter no Senator shall be entitled to speak in all more than one hour on the measure, motion, or other matter pending before the Senate, or the unfinished business, the amendments thereto, and motions affecting the same, and it shall be the duty of the Presiding Officer to keep the time of each Senator who speaks. Except by unanimous consent, no amendment shall be in order after the vote to bring the debate to a close, unless the same has been presented and read prior to that time. No dilatory motion, or dilatory amendment, or amendment not germane shall be in order. Points of order, including questions of relevancy, and appeals from the decision of the Presiding Officer, shall be decided without debate.

Mr. ROBERT C. BYRD. Would the chair direct the clerk to read again the sentence beginning "No dilatory motion"?

The PRESIDING OFFICER. Yes.

The assistant legislative clerk read as follows:

No dilitory motion, or dilatory amendment not germane shall be in order. Points of order, including questions of relevancy, and appeals from the decision of the Presiding Officer, shall be decided without debate.

Mr. ROBERT C. BYRD. Mr. President, the suggestion regarding the absence of a quorum is not a "dilatory motion," nor is it a "dilatory amendment." I am not arguing with the Chair. I am sure that the Chair must be correct, but it seems to me that we ought to be absolutely sure in the future with respect to this matter.

It seems to me that when cloture is invoked, it is invoked under a rule based upon the concept that at that point the business of the Senate should be expedited within a very narrow framework of strict rules to be strictly enforced. It would seem to me that if a Senator is allowed to suggest the absence of a quorum without charging it to his own time, then the rule and the purpose of the rule are undermined, because there could be a series of quorums; not one after the other without the transaction of business intervening, but there could be any number of quorums that would be live quorums or that would go through 99 names of the alphabet, consuming 15, 20, or 30 minutes, and thus extending the total period before action is completed on the matter which was to be expedited by the greatest bear trap rule of all for expedition—the cloture rule.

Are the precedents clear to the point that they would confute the case which I have presented in a cursory way: That a quorum during the operation of cloture ought to be required to come out of somebody's time or ought to require unanimous consent—of course, recognizing the always standing rule that any Senator is entitled to ask for a quorum just prior to a Senate vote?

The ACTING PRESIDENT pro tempore. The Chair would state that the calling of quorums solely to consume time would obviously be defeating the purpose of the rule. On the other hand, the Chair would state that the rule and practices seem to indicate that the Chair would have that right to rule a quorum out of order.

So the Chair cannot agree, under the present circumstances, with the forceful case made by the Senator from West Virginia.

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

Mr. President, I yield myself 5 additional minutes out of my hour.

Mr. President, would this not be putting the Chair in a most difficult position to declare that a Senator's suggestion that a quorum is absent is dilatory if business has been transacted following an earlier quorum? I think the Chair would find itself in an extremely difficult position if, after a rollcall vote or after the transaction of business, the Chair were to suggest that any Senator's request, or any Senator's observation with respect to the absence of a quorum, was dilatory. If the Chair should do so, would an appeal from the Chair's ruling not lie?

The ACTING PRESIDENT pro tempore. An appeal always would be in order, the Chair would state. There would be certain occasions in which a quorum call would clearly not be dilatory, such as immediately prior to a vote.

Mr. ROBERT C. BYRD. There is no question about that.

The ACTING PRESIDENT pro tempore. That is correct. The Senator is absolutely correct.

As to the Senator's suggestion as to the Chair being put in a difficult position, the Senator possibly is correct in that; on the other hand, I suppose difficult positions are a part of life.

Mr. ROBERT C. BYRD. But that is not the point here. The point involved, I say most respectfully to the Chair, is that the whole object of the cloture rule is to expedite the business of the Senate if it is being obstructed by a minority of less than a third of Senators voting. The business of the Senate is not expedited if 100 Senators may suggest quorums.

Obviously there is no quorum here at this moment, and I could suggest the absence of a quorum. Now, the Chair certainly would not rule me dilatory if I were to suggest the absence of a quorum at this time. But the object of the cloture rule being to expedite the business of the Senate, it seems to me that when the Chair rules that the suggestion with respect to the absence of a quorum is dilatory, and that is appealed, and followed by a rollcall vote on the appeal. That defeats the purpose of the cloture. Must a Senator be required to yield himself time out of his hour—and his time may have already expired—when he argues the case with respect to the appeal of the ruling of the Chair?

The ACTING PRESIDENT pro tempore. The Senator from West Virginia presents a most persuasive case and possibly has demonstrated a need for further consideration of the rule itself. But the Chair has to rule that under the precedents the Chair would have to exercise his judgment, difficult though it may be, and determine whether to rule the motion out of order as dilatory if it were evident, and under the circumstances when cloture is invoked it would occur to the Chair that various requests for quorum calls could be dilatory.

Mr. ROBERT C. BYRD. Is the Chair so ruling? This does not constitute a ruling by the Chair, does it?

The ACTING PRESIDENT pro tempore. No, this does not constitute a ruling by the Chair.

Mr. ROBERT C. BYRD. At this point I suppose the Senate is to understand, and I assume, that the precedents are preeminently, indubitably, and unquestionably clear on this point. Is the Chair willing to so state?

The ACTING PRESIDENT pro tempore. The Chair is not willing to go to that extent. The Chair would merely state that the precedents are reasonably clear.

Mr. ROBERT C. BYRD. But the Chair would not convince the Senator from West Virginia that the precedents, being reasonably clear, are reasonable in their clarity.

The ACTING PRESIDENT pro tempore. The Chair might even go so far as to agree with the Senator from West Virginia on that point.

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

I yield myself 2 additional minutes.

Mr. President, nobody seems to be unwilling to allow me to proceed at this point for 2 additional minutes.

At this point, at least, we are to understand from the Chair that although in the case of unanimous-consent agreements a Senator is required to yield himself time or to secure time from someone who controls time, or to get unanimous consent that a quorum call be had without the time being charged to either side—except in the case in which all time has expired or yielded back, and a vote is about to occur—in the case of cloture, on the other hand, which is a more binding unanimous-consent agreement, formally set forth in the rules of the Senate—in many ways, the most exacting time agreement of all—a Senator may suggest the absence of a quorum without taking time out of his own 1 hour, and without asking unanimous consent that the quorum call not be charged to any Senator's time. I suppose that is the understanding we have achieved.

The ACTING PRESIDENT pro tempore. That is the understanding we have achieved.

The Chair's memory goes back to his law school days and the maxim cessante ratione legis, cessat et ipsa lex might possibly be applicable to this situation if it were a court of law, but I assume it would not be in the Senate.

Mr. ROBERT C. BYRD. May I say the Chair's statement is a statement sui generis.

The ACTING PRESIDENT pro tempore. The Chair thanks the Senator from West Virginia.

Mr. ROBERT C. BYRD. It might just be well to have a test of this question and have the Chair rule on it during the debate today.

The ACTING PRESIDENT pro tempore. It would occur to the Chair that that might be very useful.

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

Mr. President, I suggest the absence of a quorum, and I do not ask consent that it be taken out of anybody's time. I suggest the absence of a quorum.

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

Mr. ROBERT C. BYRD. Now, Mr. President, I raise a point of order that the Senator from West Virginia cannot suggest the absence of a quorum during the operation of the cloture rule without being required to take the time for the quorum call out of his own time, or without being yielded time by some other Senator, in view of the fact that no vote at the moment is imminent. I ask for a ruling by the Chair.

The ACTING PRESIDENT pro tempore. The Chair would overrule the point of order on two grounds: First, there does not appear at the moment to be any attempt to have business transacted in the Senate; second, even though the Chair is not permitted to count a quorum, it is evident that a quorum is not present.

The Chair overrules the point of order of the Senator from West Virginia, and would again observe that there appears to be no attempt to transact business and that under those circumstances it would be very difficult to rule that the suggestion of the absence of a quorum was dilatory. Therefore, the clerk will call the roll.

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

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

Mr. ROBERT C. BYRD. Mr. President, I yielded myself 1 minute.

Under the circumstances, it is obvious that there is no quorum present, and I would not, under these circumstances, assert a challenge of the ruling from the Chair. It may be very profitable for the Senate and for the Senate precedents if, at a more propitious time today, or at a future time, this point of order were raised.

Mr. President, I yield the floor.

Mr. NELSON. Mr. President, I yield myself 1 minute.

I have listened to the questions and argument propounded by the distinguished Senator from West Virginia, and I think he is absolutely right. Cloture had a very specific purpose, and allowing quorum calls to be made would totally undermine the whole cloture provision in the rules. One need only imagine 30 Senators who decide that they will call up 1,000 amendments to a piece of legislation. It takes just 10 seconds or so to call up an amendment and then get a quorum call on that amendment. Even if it were done in the most expeditious way possible, we would be going on for thousands of hours, and such action would quickly destroy the rule.

I think the Chair should reexamine this technicality. I think it would be very valuable if the Parliamentarian would undertake to write a comprehensive statement on it for the RECORD, because if it is simply an interpretation of the rule; I think it is a mistaken interpretation. And if it is part of the rule itself, I think we ought to undertake to modify the rule, because there is no such thing as cloture if the ruling of the Chair is correct. I do not think there is any logic to this kind of technicality, because the purpose of cloture is absolutely clear, as the distinguished Senator from West Virginia pointed out.

Mr. ROBERT C. BYRD. Mr. President, I yield myself 1 minute. I thank the Senator from Wisconsin for his observations. Does the Chair wish to respond?

The ACTING PRESIDENT pro tempore. The Chair would concur with the Senator from Wisconsin that the mechanics as he presents them are absolutely correct, and the Chair would also agree that that would be a method of completely avoiding the purpose and spirit of cloture. The Chair is in the position where the Chair is bound by the precedents of the past.

Mr. NELSON. Mr. President, would the Senator yield for 10 seconds to me?

Mr. ROBERT C. BYRD. I yield.

Mr. NELSON. The distinguished Chair is a lawyer. The precedents are upset by the Supreme Court and in the United States Senate time after time during the history of the country. When they find something is so wrong, they upset the precedents. We are not bound to stick by a bad rule.

The ACTING PRESIDENT pro tempore. The Senator from Wisconsin is a very competent lawyer, and he is undoubtedly familiar with the doctrine of stare decisis.

However, the Chair will state that one of two things could happen. The Chair could rule the suggestion is dilatory, there could be an appeal from the ruling of the Chair, and the ruling of the Chair could be reversed, and therefore a clear and direct precedent could be set. Those would be two things that occur to the Chair.

Mr. NELSON. Mr. President, may I have a couple of seconds?

Mr. ROBERT C. BYRD. I yield.

Mr. NELSON. The Chair is absolutely correct, but would it not be so much better if the Chair took a rational position and left it up to the Senate to take an irrational position?

Mr. ROBERT C. BYRD. Mr. President, I yield myself a minute or two.

This Senator is thoroughly familiar with the doctrine of stare decisis, but I think it ought to be assumed that the present ruling of the Chair could be supported by the doctrine of res ipsa loquitur.

Mr. President, I yield myself 1 additional minute.

There was another thought that escaped me that I wanted to propound in support of my thesis, but, as I said, it has escaped me. Would the Chair direct the Parliamentarian to assemble the precedents on this point, if possible before the close of the day?

The ACTING PRESIDENT pro tempore. Yes. The Chair will formally direct the Parliamentarian to assemble the precedents on this point that have been discussed concerning quorum calls and cloture and also precedents involving unanimous consent for quorum calls, as soon as he is able to do so.

Mr. ROBERT C. BYRD. Mr. President, I would hope it would be as early as possible, because it may be the intention of

this Senator to ask for a ruling of the Chair and make a test of it one day. I say this because I think it is very important. I have not raised this question dilatorily or facetiously. I want to know what I am doing when I vote for and against cloture.

In my viewpoint cloture is a valuable tool to expedite the business of the Senate. At the same time, it should not be invoked lightly, especially where there is a need to protect a minority of Senators, who wish to argue their case before the country, and who need time in which to do so, hoping that they will either improve the legislation before Senate Passage, or that a bad measure will be defeated.

The ACTING PRESIDENT pro tempore. The time of the Senator has expired.

Mr. ROBERT C. BYRD. Mr. President, I yield myself 1 additional minute. I ask that the Senate be in order.

The ACTING PRESIDENT pro tempore. The Senate will be in order. Senators will please take their seats and others will please retire to the back of the Chamber.

Mr. ROBERT C. BYRD. Mr. President, I yield myself such additional time as I may require.

The ACTING PRESIDENT pro tempore. The Senator from West Virginia is recognized.

Mr. ROBERT C. BYRD. Mr. President, we have opened up an area with respect to the cloture rule which I think ought to be discussed fully and decided upon one way or the other unless the precedents are so preeminently correct and clear as to avoid the necessity of further argument.

By invoking cloture on this measure, in my judgment, we have not invoked what I thought was contemplated by cloture. I think that if a Senator wishes to invoke cloture and if he has reached that decision, he has then reached a decision to go ahead with the legislative process at the fullest possible speed. He has voted to limit each individual Senator to 1 hour—period.

A Senator may talk for an hour. He may not use his hour. He may yield any portion of that hour, if he can get unanimous consent to yield his time. If he is going to be permitted to suggest the absence of a quorum without using his own time, then why should be he required to get unanimous consent to yield 5 minutes to a colleague? The yielding of time to a colleague whose time has expired may be necessary for the edification of the Senate on a matter, but under the rule, he can only yield time by unanimous consent. Yet, according to the opinion of the Chair, a Member may put in quorum calls, after cloture is invoked, without any cost to his own time. In other words, he can conduct a subtle filibuster with quorum calls even after a filbuster has been broken by cloture.

I do not think that the rule of reason would support the ruling of the Chair. I say that most respectfully. The Chair knows that I am not talking about the Senator from Colorado. The Parliamentarian knows that I am not impugning his integrity or sincerity. He is interpreting the precedents of the Senate.

Mr. President, has there ever been a formal ruling of the Chair on this particular point?

The ACTING PRESIDENT pro tempore. The Parliamentarian would have to check that particular point. The Chair directs the Parliamentarian at the earliest possible time today to lay before the Senate the precedents on which the ruling is made so that the matter can be disposed of.

The Chair would further state that in the opinion of the present occupant of the Chair, that particular rule would indicate that the whole purpose of cloture, as articulated by the Senator from West Virginia, would be defeated by this particular rule.

Mr. ROBERT C. BYRD. Mr. President, I may be convinced otherwise after I have seen the precedents. However, I want to see the precedents. If I am not convinced by the precedents and if there has never been a clear ruling by the Chair on this point, I may want to raise the point at another time when it is not so obvious that a quorum is not present.

I simply close what I have been saying by stating that I think we ought to know what we are doing.

If a Senator votes for cloture, he ought to expect that true cloture will proceed, that a minifilibuster cannot be conducted, and that the matter before the Senate will be brought to an end as soon as each Senator utilizes his hour or such portion thereof as he may desire to use.

Surely with 100 hours available, there ought to be enough time to go around to fully accommodate the Senate with respect to all quorum calls that are necessary. However, if we are going to operate, not by the rule, but by the position that has been taken by the Chair as advised by the Parliamentarian, then there could be considerable free wheeling within the operations of the Senate even after cloture has been invoked.

Mr. BROCK. Would the Senator yield at that point?

Mr. ROBERT C. BYRD. Mr. President, I will be glad to yield to the Senator if he will use his time. I have already used a good bit of my hour. If we should return to this today, I may want to again state my case, and may not have the time remaining in which to do so.

The ACTING PRESIDENT pro tempore. The Chair is advised by the Parliamentarian that in all probability the reason that this matter has not been raised by points of order, and rulings by the Chair have not spelled out all of these specific points is that when cloture has been invoked in the past, the Senate has proceeded promptly to a vote.

Mr. BROCK. Mr. President, I think that the Senator from West Virginia stated the case of the Senate. I am not sure that I could support the ruling of the Chair, because I think that there may come a time when circumstances would require that the precedent be used in the national interest. I think that is one protection that I would like to see maintained. However, in this particular setting, I certainly myself would not support any effort to overcome the vote of the Senate or even to further extend debate by parliamentary device.

I am sympathetic with what the Senator from West Virginia is saying.

Mr. ROBERT C. BYRD. Mr. President, I yield myself 1 minute.

The Senator has said something which appeals to me when he raises the question of national security.

I do not want to see the precedents overridden without clear reason to do so. It may be that instead of having a decision by the Senate on an appeal from the ruling of the Chair, the Committee on Rules and Administration or a subcommittee of that committee should take a very thorough look into this question. For the moment, I shall desist from pursuing the matter.

Mr. HATHAWAY. Mr. President, I yield myself 1 minute.

The ACTING PRESIDENT pro tempore. The Senator from Maine is recognized for 1 minute.

Mr. HATHAWAY. I hope that the Senator from West Virginia will refrain from bringing up this question today, in view of the fact that it involves a constitutional question, as the Senator well knows. I know that the Senator would like to get an answer to the question today. However, I think that the latter suggestion the Senator from West Virginia has made, concerning the referral of the matter to the Committee on Rules and Administration, would be preferable in this particular situation.

Mr. ROBERT C. BYRD. Mr. President, I yield myself 1 minute.

What is the constitutional question the Senator refers to?

Mr. HATHAWAY. Under article I of section 5 of the Constitution, it states:

A majority of each shall constitute a quorum to do business;

I understand that is the basis upon which any Senator may request the call of a quorum while the Senate is doing business.

Mr. ROBERT C. BYRD. Mr. President, I yield myself 1 additional minute.

The able Senator is correct. However, how does the Senator square that with the incontrovertible fact that under a unanimous-consent agreement no Senator may suggest the absence of a quorum unless he asks unanimous consent to do so without the time being charged—unless all time has expired or been yielded back just before a vote? We cannot have it both ways.

Mr. HATHAWAY. I agree with the Senator. I raised that question in the Senate one previous time this year.

I do not think that under a time agreement a Senator should be prohibited from requesting a quorum call and not having it charged to anybody's time.

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

The ACTING PRESIDENT pro tempore. Who yields time?

AMENDMENT NO. 786

Mr. BROCK. Mr. President, if I might have the attention of the distinguished manager of the bill, I would like to ask him a question; and, frankly, depending upon his response, I may or may not have an amendment to offer.

I yield myself 4 minutes for the purpose of the question.

The question is why the committee found it necessary to limit the advisory council to those who have been admitted

to the bar of the State. On page 5 in the bill, reading beginning on line 17, there is a qualification for members of the advisory council which, as I understand it at least, requires that all members of these advisory councils be lawyers—which may not be the same thing as being admitted to the bar—and it seems to me that there may be other individuals in the community who could offer a great deal of advice and support to this program, to make it work.

The reason I raise the point is that I do not believe the Federal Government can continue to ram programs down the communities' throats. I do not think the program is going to work very well unless people believe they have a voice in how it is being run. It seems to me that perhaps a more broad definition might be in the interest of the program itself.

Mr. NELSON. Mr. President, I agree with the Senator. I do not think there is any compelling reason why the advisory councils should be exclusively from the bar. As a matter of fact, I do not think we got into that in any depth in the committee. I think it was simply assumed that the advisory councils would consist of lawyers since they would be dealing with legal questions.

I would have no objection personally, but I would like to know the views of the Senator from Minnesota (Mr. MONDALE), who has been deeply involved with this matter, and the Senator from New York (Mr. JAVITS). Unless another Senator has a problem with it, I would have no objection.

Mr. BROCK. I thank the Senator. I think it would affect the program constructively. I call the Senator's attention to amendment No. 786, which I intend to offer, and if the Senator prefers I will withhold offering the amendment until he has had a chance to discuss it with his colleagues, if that is acceptable to the Senator.

Amendment 786 simply requires that a majority of the advisory council—I am not even sure I would want to put any number on it——

Mr. NELSON. That the majority of the advisory council be members of the legal profession?

Mr. BROCK. That is right.

Mr. NELSON. Mr. President, I really find that a perfectly sensible proposal, and I am prepared to accept it at this time.

Mr. BROCK. Well, then, Mr. President, if I may, I call up amendment No. 786.

The ACTING PRESIDENT pro tempore. The amendment will be stated.

The assistant legislative clerk read as follows:

On page 5, line 17, after the period, insert the following: "A majority of".

Mr. BROCK. Mr. President, given the nature of the floor manager's statement, for which I am very grateful, I see no reason to debate the matter.

The ACTING PRESIDENT pro tempore. The Senator's 4 minutes have expired. The question on agreeing to the amendment of the Senator from Tennessee.

The amendment was agreed to.

The ACTING PRESIDENT pro tempore. The bill is open to further amendment. If there be no further amendment to be proposed——

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

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

The legislative clerk proceeded to call the roll.

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

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

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Berry, one of its reading clerks, announced that Mr. Moss had been appointed as a conferee at the conference on the bill (S. 2589) to declare by congressional action a nationwide energy emergency; to authorize the President to immediately undertake specific actions to conserve scarce fuels and increase supply; to invite the development of local, State, National, and international contingency plans; to assure the continuation of vital public services; and for other purposes, vice Mr. DINGELL, resigned.

LEGAL SERVICES CORPORATION ACT

The Senate continued with the consideration of the bill (S. 2686) to amend the Economic Opportunity Act of 1964 to provide for the transfer of the legal services program from the Office of Economic Opportunity to a Legal Services Corporation, and for other purposes.

AMENDMENT NO. 792

Mr. BROCK. Mr. President, I call up my amendment No. 792.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

On page 7, insert a period after the word "Corporation" in line 9 and strike "except as authorized by the Board.", in lines 9 and 10.

Mr. BROCK. Mr. President, this bill attempts to deal with situations of potential conflict of interest, and this particular section is intended to require that full-time employees not develop situations of potential conflict of interest. However, I am afraid that the clause I intend to strike negates the very effect of the proposed legislation itself. I do not see how one can say there shall be no conflict of interest and then authorize the board to approve of potential conflict of interest by a specific act.

It seems to me that it would be very much in the interest of the board itself to protect them from being pressured in this kind of situation. I do not think they would want to face that kind of vote nor be forced to make that kind of choice.

In the interest of trying to clarify the intent of the proposed legislation, my amendment simply would strike the section which authorizes the board to allow outside compensation or salary. I hope the amendment will be accepted by the managers of the bill.

I reserve the remainder of my time.

Mr. NELSON. Mr. President, will the Senator yield for a question?

Mr. BROCK. Of course.

Mr. NELSON. What kind of specific circumstance might the Senator be referring to? For example, would the Senator object if the lawyer who was being compensated by the corporation wrote an article or a book on his own time? Would he object to that? Or suppose he owned a share in a small grocery store. Or suppose he owned a farm. Or suppose he had stock. All of those things tend to produce compensation of some sort. Am I wrong about that?

Mr. BROCK. Yes; I do not think they are covered by salary or compensation for other services. If I understand the language, it is limited to services performed under a contract for a fee or on a salary basis which falls outside the range of activities of the individual's compensation.

Obviously, if the person were a farmer, he would not fall under that description. If he were a stockholder and received dividends, he would not fall under this description. He would be exempt.

What I think the committee was trying to do was to prevent a situation where there are overt conflicts of interest which put the board in a position where it frankly has to make a fine-line determination. I think, No. 1, it is dangerous; No. 2, I think it is unfair to the board itself.

I think we should fully protect the situation so that, under the circumstances, as the job proceeds, they do not get into a situation where there is a personal conflict of interest.

Mr. JAVITS. Mr. President, if the distinguished Senator from Wisconsin will yield the floor, or perhaps yield to me on my own time——

Mr. NELSON. I was merely asking the Senator questions on his time.

Mr. BROCK. I have yielded the floor.

Mr. JAVITS. I yield myself 1 minute.

The point about this amendment is that it is not an effort to lock in the officers of the corporation from getting outside compensation. It is an effort to lock in the corporation so that it cannot get officers. It becomes really an absolute straitjacket on this basis and makes a person cut and trim.

One can get dividends instead of a salary. He can get royalties or interest. There are lots of way to skin this particular cat, if he wants to. It locks him in only on this job. I think we should give the board the authority and flexibility to do whatever is necessary in a situation of this kind.

I hope that we will reject the amendment.

Mr. BROCK. Mr. President, I yield myself 1 additional minute. As the language is written, the board, if it is nominated by a Republican President, could under this language authorize employees of the corporation to draw full salary from the Republication National Committee to operate as fieldmen during a political campaign, if it so chose.

I do not think we want to get into the business of having that kind of charge leveled against this corporation, but

there is no prohibition against it, as the language reads toady. I find that ridiculous. It does not serve the corporation or the stated purpose of the legislation well.

The PRESIDING OFFICER. Who yields time?

Mr. NELSON. Mr. President, I yield myself 30 seconds.

I would like to say to the distinguished Senator from Tennessee that, of course, the Republican National Committee would not accept services of that kind because they know they would be likely to be embarrassed. Legislation cannot be drafted to prevent all conceivable contingencies. Suppose one of these officers or employees decided he wanted to work in the field of legal services and he was able and dedicated. Suppose at the same time he was on the board of directors of a corporation and there was no conflict of interest between that and the duties he was performing for legal services. Under your interpretation, he would have to step off the board; would he not?

Mr. BROCK. I do not find that in the definition here, I am not sure.

Mr. NELSON. It says "services from any other source than the corporation." If he is on the board of directors of another corporation and receiving compensation, as is the common practice, that would be for services from another source.

Mr. BROCK. The problem I have is that there is no definition. If I thought there was some spelling out of the intent perhaps I would have a different approach, but I do not see it. I think there is enormous potential for a conflict of interest that could embarass and reduce the effectiveness of the corporation. By some device I would like to see more safeguards built into this matter. I have no great pride of authorship.

Mr. NELSON. There is no doubt that the Senator is correct. No statute was ever drafted in which there were not some degree of potential abuse. We have to start with the assumption that the board appointed by the President would look closely at the statute, at the officer, or employee who receives other compensation, as well as at the type of compensation. The matter would have to be examined by the board members and they would have to promulgate rules to cover potential situations, or in some cases decide whether or not an individual conflict of interest is involved that would not be reconcilable with duties under the statute.

The PRESIDING OFFICER. Who yields time?

Mr. CRANSTON. Mr. President, will the manager of the bill yield to me for a question on my time?

Mr. NELSON. On the Senator's time.

Mr. CRANSTON. Is it not plainly the intent of this language in the bill to authorize only activities that would not be inconsistent with the purpose of the legislation generally; and also we would have in mind activities of less than a full-time or long-term nature and not permanent assignments?

Mr. NELSON. I think that is generally correct, but as a matter of fact, if an officer were a long-time member of the board of directors of some corporation and did receive compensation for it, his doing so should not be contrary to public policy so long as no conflict is included.

I do not think the Senator from Tennessee is worrying about that specific kind of example, but I do not see how we can draft it. I am sure that we might be able to tighten it up a little more, but I do not think that is necessary because we are dealing with a distinguished Presidential board that will look at the question of conflict of interest and conflict of activities. Such a board would seek to insure that any outside compensation is from an appropriate source. We must have more confidence in distinguished board members who will make these judgments.

I understand what the Senator from Tennessee is saying but I think the proposal as drafted is satisfactory, and I could not accept the amendment willingly.

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

The amendment was rejected.

Mr. BROCK. Mr. President, if I may maintain the sequence, I call up my amendment No. 794.

The PRESIDING OFFICER. The amendment will be stated.

The amendment was read as follows:

On page 7, line 25, strike the period and insert the following: "or has been associated within a period of five years.".

Mr. BROCK. Mr. President, the reason I am pursuing this conflict of interest matter is that I think it is one of the areas of the bill that both proponents and opponents can fairly well agree on. Even though my previous amendment was not agreed to, I feel the intent on both sides in this matter is to be sure that the Board, the Corporation, and the employees are as pure as Caesar's wife to the extent we can achieve that situation.

In the bill this section reads:

(c) No member of the Board may participate in any decision, action, or recommendation with respect to any matter which directly benefits such member or pertains specifically to any firm or organization with which such member is then associated.

What I would do would be to put that forward in time for a period of 5 years so that we do not entice people in the corporation to take an action which would benefit a law firm, an association, or some particular organization, on the basis that as soon as that is accomplished he is going to leave the Legal Services Corporation, join the new association, and obtain the benefits thereof. I think we fairly well established this precedent with respect to other legislation.

Mr. NELSON. Mr. President, will the Senator yield for a question?

Mr. BROCK. I yield.

Mr. NELSON. I asked the Senator from New York to yield, so that I might have the benefit of his counsel.

As I understand it, the practice in the Federal Government on matters such as this is 2 years. I see the Senator's point, but would the Senator find it acceptable to provide that he may not participate in any decisions that may affect any corporation he has been associated with for 2 years prior to the date he accepted the position as an officer of that corporation? Would the Senator accept that?

Mr. BROCK. As I understand the suggestion, his actions on the board would then project forward for the next 2 years so he would not seek employment from which he benefited; he could not seek employment with that association for the next 2 years.

Mr. NELSON. No; he could not participate as an employee in a decision affecting his previous associates.

Mr. BROCK. I am sorry. I am upside down. I thank the Senator. Two years would be fine.

I am trying to establish a time break so that we do not have motivation for a time break.

Mr. NELSON. I thank the Senator. Does the Senator from New York have an observation?

Mr. JAVITS. The analogy has been made to Federal employment. I understand it is 2 years there, so I would be prepared to agree with the Senator from Wisconsin to accept the amendment if modified.

Mr. BROCK. Mr. President, I ask unanimous consent to modify my amendment to make it 2 years instead of 5 years.

The PRESIDING OFFICER. Will the Senator send his modification to the desk?

Is there objection to the modification of the amendment?

The Chair hears none.

The clerk will state the modification.

The legislative clerk read the modification, as follows:

On line 2 of the amendment, change the word "five" to "two."

The PRESIDING OFFICER. Without objection, the amendment, as modified, is agreed to.

Who yields time?

Mr. NELSON. Mr. President, has the amendment been accepted?

The PRESIDING OFFICER. Without objection, the amendment is agreed to, as modified.

AMENDMENT NO. 795

Mr. BROCK. Mr. President, I call up my Amendment No. 795.

The PRESIDING OFFICER. The clerk will state the amendment.

The legislative clerk read the amendment, as follows:

On page 8, strike lines 5 through 10.

The language proposed to be stricken is as follows:

"(e) Except as otherwise specifically provided in this title, officers and employees of the Corporation shall not be considered officers or employees, and the Corporation shall not be considered a department, agency, or instrumentality, of, the Federal Government for the purposes of any Federal law or Executive order.

Mr. BROCK. Mr. President, this bill is, I think, a sincere effort to achieve a stated purpose, that is, provision for adequate legal counsel to those who cannot provide it for themselves; but there are a couple of parts of the bill that I simply cannot rationalize or explain or justify.

One of them falls on page 8, and I would like to read the language as the bill states it now:

Except as otherwise specifically provided in this title, officers and employees of the Corporation shall not be considered officers or employees, and the Corporation shall not be considered a department, agency, or instrumentality, of, the Federal Government, for the purposes of any Federal law or Executive order.

I cannot possibly understand the logic of that language. In effect, it seems to constitute a decision to annually take $100 million a year, put it in a little brown bag called the Legal Services Corporation, and resign from all future responsibilities to determine exactly how such funds are expended. This is incredible.

If elections are to mean anything and if we are to carry out our trust to the people and our responsibilities to them, we must be in a position to give them an accounting of the manner in which their tax dollars are used, and we must not abdicate our responsibility to work for responsible expenditures of those tax dollars.

It seems to me the effect of this language—whether it is intended or not, I do not know—is to isolate this Board from any review, any further executive review or act of the Congress, and to place them on a path which is subject to no jurisdiction of anybody elected by the people of this country of ours.

I cannot accept that. I cannot understand it. I would hope that perhaps someone could allay my fears and explain just what the purpose of the language is, because if I misread it, then, obviously, I am prepared to back down, but I cannot read it other than I have, which is that it is language which exempts the corporation from any future judgment, evaluation, review, or analysis on the part of the Congress or of the President of the United States. That is intolerable as far as I am concerned.

Mr. JAVITS. Mr. President, may I know the status of my time?

The PRESIDING OFFICER. The Chair advises that the Senator from New York has used 4½ minutes.

Mr. JAVITS. I yield myself 1½ minutes.

Mr. President, the purpose of this section is to make it truly an autonomous legal services corporation. If by Federal executive order, Executive order of the President, its decisions could be reversed, obviously it would not be an autonomous legal services corporation.

Second, if, as employees of the Federal Government with respect to the budget, they could, by use of impoundment or other budget processes, determine that the moneys were to be disbursed only as ordered by the Office of Management and Budget, it would contravene our purpose.

This is sui generis, as we lawyers say, or an original type of corporation. It is intended to have autonomy precisely because it is a legal services rendering corporation; it is not an ordinary corporation which has financial responsibilities. It has autonomy in its operations on the law level. That is why the American Bar Association gave such general support to this legislation.

So, in order to maintain the integrity of the corporation for the purposes we have intended, we have included this section. I hope the amendment will be rejected.

Mr. BROCK. Mr. President, I yield myself 2 minutes.

I must point out that the American Bar Association apparently has reversed its position of strong support for this legislation, or at least one of its committees strongly endorsed the principle of judicare. That is not this legislation.

So let us lay the argument that the American Bar Association is in favor of it to rest. That is no longer an uncontested fact. But I think more important than who supports it or who does not support it—because that does not affect my vote, and I hope never will—is the question of accountability.

Yesterday I offered an amendment, which was defeated, which would have put a 5-year limit on this bill, so that it would force the Congress, after another 5 years, to take another look, to sit back and review the program, to see whether or not it had met its designed purpose, to determine whether the poor people of this country were being served by the Legal Services Corporation.

That amendment failed.

Now we go to another section of the bill in which not only do the proponents of the legislation not want to review the legislation in 5 years, of all things, but now have it so that there is not going to be any review of it by anybody. We are going to exempt it from executive review. We are going to exempt it from congressional review. We are going to exempt it from any budget review. In other words, let us pass a bill which, in the sense that Congress must be the source of all wisdom, is perfect. Let us pass this bill and then wash our hands of the problem.

Well, we have done that too often in the past, and I cannot accept it. I cannot accept the fact that the Congress has no responsibility to the people of this country, not only the poor, but there are other people in the United States, and they pay taxes and they deserve better than a title which says, in effect, that no one shall have oversight, no one shall review, no one shall reevaluate. I think it is wrong.

Mr. JAVITS. Mr. President, I yield myself 1 minute.

We anticipated that this question of the American Bar Association would arise. I have said that the American Bar Association is working in the interest of this legislation. I have a letter from John P. Tracey, associate director from the Washington office of the American Bar Association, addressed to me, dated January 30, 1974, in which he says as follows, among other things. I will put the whole letter in the RECORD and get it Xeroxed so that anybody may read it.

The letter reads in part:

With regard to the Association's policy on S. 2686, I would merely reiterate the position reflected by Chesterfield Smith, President of the Association, in his letter to you of November 12, 1973:

"The American Bar Association has long been interested in the creation of an independent national legal services corporation and has on three occasions adopted policy positions in support of this concept. I am pleased to inform you that S. 2686, as reported, fully complies with the Association's insistence on assuring the independence of lawyers for the poor to provide professional legal services to clients. I urge that the legislation be speedily and favorably acted upon by the Senate and that any amendments seeking to restrict the independence of lawyers or the access of their clients to our processes of justice be resisted."

Sincerely,

JOHN P. TRACEY

Mr. President, I ask unanimous consent to have the letter from which I have just read printed at this point in the RECORD.

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

AMERICAN BAR ASSOCIATION,
Washington, D.C., January 30, 1974.

Hon. JACOB K. JAVITS,
Old Senate Office Building,
Washington, D.C.

DEAR SENATOR JAVITS: I am pleased to respond to the request from your office for information regarding Association policy positions with respect to alternative delivery systems for providing legal services to the poor. Your inquiry relates to S. 2686, the National Legal Services Corporation Act, currently pending before the Senate which the Association supports in principle.

The traditional support of the Association for legal services efforts has not discriminated between alternative types of delivery systems and this position remains unchanged. At the Annual Meeting in New York City in July 1971, the House of Delegates, the policy-making body of the Association, adopted a resolution noting the concern of the Association with "the proper utilization of the private practicing bar in rendering legal services to the poor" and approving action of the Board of Governors of the Association setting up a special subcommittee to examine the issue. The Board subcommittee was specifically mandated to review an American Bar Foundation study then in progress and studies conducted by groups within and without the Association and to render its report to the Board of Governors and the House of Delegates at the earliest practicable date following completion of the American Bar Foundation Study. Finally, the resolution urged that the Office of Economic Opportunity continue and expand experimentation with "various plans involving the use of the private practicing bar in rendering legal services to those unable to afford the services of an attorney, including combinations of legal aid staff lawyers and private practitioners". A copy of the 1971 Resolution is enclosed for your information.

The American Bar Foundation Study cited in the above-referenced Resolution has not yet been published and therefore has not been reviewed by the Board of Governors subcommittee. Thus, there has been no change in Association policy which would preferentially discriminate between service delivery systems.

With regard to the Association's policy on S. 2686, I would merely reiterate the position reflected by Chesterfield Smith, President of the Association, in his letter to you of November 12, 1973:

"The American Bar Association has long been interested in the creation of an independent national legal services corporation and has on three occasions adopted policy positions in support of this concept. I am pleased to inform you that S. 2686, as re-

ported, fully complies with the Association's insistence on assuring the independence of lawyers for the poor to provide professional legal services to clients. I urge that the legislation be speedily and favorably acted upon by the Senate and that any amendments seeking to restrict the independence of lawyers or the access of their clients to our processes of justice be resisted."

Sincerely,

JOHN P. TRACEY.

Enclosure.

RESOLUTION ADOPTED BY THE HOUSE OF DELEGATES, AMERICAN BAR ASSOCIATION, 94TH ANNUAL MEETING, JULY 1–7, 1971, NEW YORK, N.Y.

Whereas, The proper utilization of the private practicing bar in rendering legal services to the poor is a matter of concern to the American Bar Association and should be examined at the highest levels within the Association; and

Whereas, The American Bar Foundation and other groups and organizations are currently engaged in studies of this question,

Now Therefore Be It Resolved, That

1) The House of Delegates approves of the recommendation of the Board of Governors that a special subcommittee of the Board of Governors be appointed to examine the proper utilization of the private practicing lawyer in rendering legal services to the poor; this subcommittee among other things to review the American Bar Foundation Study and studies conducted by groups within and without the Association and to render its report to the Board of Governors and the House of Delegates at the earliest practicable date following completion of the American Bar Foundation Study, and

2) Pending report of the Board of Governors to this House, the House of Delegates urges the Office of Economic Opportunity to continue and expand experimentation with various plans involving the use of the private practicing bar in rendering legal services to those unable to afford the services of an attorney, including combinations of legal aid staff lawyers and private practitioners.

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

Mr. JAVITS. Mr. President, would the Senator use his own time?

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

The PRESIDING OFFICER. The Senator from Minnesota is recognized for 5 minutes.

Mr. MONDALE. Mr. President, the amendment offered by the Senator from Tennessee (Mr. BROCK) in my opinion would undermine if not destroy the whole concept of the Legal Services Corporation. It would fly in the face of the whole purpose behind the establishment of the measure, which is to seek to deliver legal services to the poor consistent with the standards of the Canons of Ethics of the American Bar Association.

Under the concept of the Canons of Ethics, a lawyer is supposed to owe his client but one duty, in addition to, being an officer of the court, and that is to serve the legal interests of his client.

What has happened in the traditional legal services program is that we find politicians trying to interrupt the ability of a lawyer to discharge that fundamental concept of American justice.

If a lawsuit is brought on behalf of some poor client that may have a perfectly sound constitutional and legal basis, sometimes a politician does not like it. The result of that has often been that in the exercise of this program, the politicians try not to meet the merits of the legal points and the facts, but try to undermine the right of the poor person to have his case heard in court.

For several years now we have had—and the record of both the House and Senate committees on this matter are replete with examples—politicians trying to prevent Americans who happen to be poor from asserting their just cases before the courts and tribunals of this land.

The question then was, "How on Earth can we set up a system of justice for the poor which permits them to be represented consistent with the Canons of Ethics and with fundamental and sound justice, and why should a lawyer be incapable of representing the interests of such people without fearing the possibility that he will be denied a chance to represent his client for political reasons?"

The answer to that question is, "Why do we not try to establish an independent Legal Services Corporation which is insulated as far as it possibly can be from political tampering, under the management of a responsible board of directors, selected by the President, confirmed by the Senate, and made up of the best lawyers that can be found? Then through this board, we can try to insulate the legal services program in a way that it has integrity and can responsibly serve the poor as lawyers in the way that every other interest in this country is represented."

If the pending amendment is agreed to, the whole purpose of having an independent Legal Services Corporation is destroyed. These lawyers would once again become wholly subject to the political pressures of the incumbent political power, which would frustrate the whole reason for this provision.

Let me say one other thing. We have broad public support. We have broad taxpayer support for such lawsuits today.

When a corporation decides to sue, it brings a lawsuit. Those legal fees are deducted as a normal business expense. And in effect the taxpayer pays for it.

In the case of every public body from the U.S. Government down to school districts and local municipal bodies, all of the legal fees are paid for by the taxpayers.

In none of those instances would a lawyer dream of accepting even the kind of interference that this Legal Services Corporation will have to accept.

A corporation would never agree to being limited in its range of lawsuits or in its ability to bring lawsuits by the interpretation of a Legal Services Corporation that we are now proposing to establish to govern legal services for the poor.

This does constitute some interference with the independent legal services. However, it is the best that we can come up with.

In effect what they are saying is:

There is one system of better justice for everyone else. However, if you happen to be poor, your constitutional right is restricted if some politician does not like it.

That is the whole question—whether we believe in justice and whether we believe in the Canons of Ethics and whether lawyers should be able to do for the poor what they do for everyone else.

A lawyer would never think of being denied the right of doing what he believes should be done.

This is an amendment that goes to the very heart of that question.

I might add that the original administration bill offered in 1971, section 901 (a), says that the Corporation shall not be an agency of the United States and will be, consistent with this act, subject to the District of Columbia Nonprofit Corporation Act.

This amendment goes to the very heart of the issue of independence. To adopt this amendment would be to make a mockery of all the efforts of the Congress over the last 3 or 4 years, the desires of the executive branch speaking through the President, and of the Canons of Ethics.

Mr. BROCK. Mr. President, I yield myself 1 minute.

I think the Senator from Minnesota missed his calling. He should have been in construction. He just built the biggest strawman that I have seen on the floor of the Senate in a long time. He has not addressed the point of the amendment.

Has anyone on the floor of the Senate seen an amendment that says that an instrumentality of this Government is not subject to the law of the land? Where is there such a provision? Is there any other law which says that for the purposes of any Federal law that an instrumentality of this Government is not subject to the law of the land? Even if I would accept, and I do not, the criteria that the Executive order with respect to the equal employment of others should apply to this legislation, and even if I would accept some sense of logic to the argument of that question, and I cannot, the Senator cannot show me how we can exempt this group of people from the Federal law. That is not logical, and it is not good business. And it seems to me that it is certainly not the representation that the people of this land want.

I have not heard anyone discuss that on this floor. The point is that we want to give legal services to the poor. The fact is that they have not gotten those services. We have people in the field who would much rather make a case for themselves than they would like to take a tough case.

I can point to people who feel that they were not able to get legal services because some hot shot young legal graduate wanted to take a case to the Supreme Court rather than to defend a rent case or a case for veterans' benefits, something which happened to only a few human beings.

That is the purpose of the amendment. The amendment addresses that problem.

Mr. HATHAWAY. Mr. President, I yield myself 3 minutes.

I would like to point out that the subsection which the Senator from Tennessee would like to delete from the bill does not exempt the Corporation from Federal law. It simply does not make the

Corporation an instrumentality or agency or department of the Federal Government.

Under our Elementary and Secondary Education Act, we give money to the public schools throughout this country. We do not make the public schools departments or agencies of the Federal Government; nevertheless, they are subject to the Federal law, and this corporation, of course, would be subject to the Federal law, except that it is not going to be a department or agency.

Furthermore, to answer the concern of the Senator from Tennessee about whether or not we are going to have any control, there is ample provision in the act. Section 1008, concerning records and reports, section 1009, concerning audits, and section 1013, and there may be others here that I have overlooked, all give ample control by the Federal Government over the spending of money by the corporation that we are attempting to set up.

So I do not think there is any real basis for any concern that this is going to be an instrumentality that is going to run off and spend Federal funds without any accountability whatsoever to the Federal Government.

Mr. BROCK. Mr. President, I yield myself 1 additional minute.

Do not mistake me: I do not underestimate the powers of those who drafted this incredible piece of legislation. It is a beautiful piece of work. It is devious in my opinion, it is well designed to suit its purposes.

It is fascinating. One section says that except as otherwise specifically provided the officers and employees shall not be considered officers or employees. That is an interesting statement in itself. Then it goes on and, in another statement, it says the officers and employees shall be considered officers and employees for the purposes of the following provisions; then it goes on, again, and says they are not considered officers and employees for the purposes of the Hatch Act.

So they are in and they are out and they are in and they are out, and you are weaving your way in and out through the political safeguards that have been established for protecting the American people against political abuse. It is done in a very fine and nice manner, but I am sure the American people do deserve something more from their Congress in terms of their own needs, desires, and interests.

The PRESIDING OFFICER. Who yields time?

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BROCK. 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. BROCK. I ask for the yeas and nays on the pending amendment.

The yeas and nays were ordered.

Mr. BROCK. Mr. President, I ask unanimous consent that a member of my staff, Lyle Ryter, and a member of Mr. TOWER's staff, Patricia Watkins, may have the privilege of the floor during the consideration of this measure.

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

The question is on agreeing to the amendment (No. 795) of the Senator from Tennessee. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Indiana (Mr. HARTKE), the Senator from Iowa (Mr. HUGHES), the Senator from Minnesota (Mr. HUMPHREY), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from Montana (Mr. METCALF), the Senator from Georgia (Mr. TALMADGE), and the Senator from California (Mr. TUNNEY) are necessarily absent.

I further announce that, if present and voting, the Senator from Minnesota (Mr. HUMPHREY) would vote "nay."

Mr. GRIFFIN. I announce that the Senator from Virginia (Mr. WILLIAM L. SCOTT), is absent on official business.

I further announce that the Senator from Kentucky (Mr. COOK), the Senator from Wyoming (Mr. HANSEN), and the Senator from Oregon (Mr. HATFIELD), are necessarily absent.

I further announce that, if present and voting, the Senator from Kentucky (Mr. COOK), and the Senator from Oregon (Mr. HATFIELD), would each vote "nay."

The result was announced—yeas 30, nays 58, as follows:

[No. 19 Leg.]

YEAS—30

Allen	Curtis	McClellan
Baker	Eastland	McClure
Bartlett	Ervin	Randolph
Bellmon	Fannin	Roth
Bennett	Goldwater	Sparkman
Brock	Griffin	Stennis
Buckley	Gurney	Thurmond
Byrd, Harry F., Jr.	Helms	Tower
Byrd, Robert C.	Hruska	Young
Cotton	Johnston	
	Long	

NAYS—58

Abourezk	Gravel	Nelson
Aiken	Hart	Nunn
Bayh	Haskell	Packwood
Beall	Hathaway	Pastore
Bentsen	Hollings	Pearson
Bible	Huddleston	Pell
Biden	Inouye	Percy
Brooke	Jackson	Proxmire
Burdick	Javits	Ribicoff
Cannon	Kennedy	Schweiker
Case	Magnuson	Scott, Hugh
Chiles	Mansfield	Stafford
Church	Mathias	Stevens
Clark	McGee	Stevenson
Cranston	McGovern	Symington
Dole	Metzenbaum	Taft
Domenici	Mondale	Weicker
Dominick	Montoya	Williams
Eagleton	Moss	
Fong	Muskie	

NOT VOTING—12

Cook	Hughes	Scott, William L.
Fulbright	Humphrey	Talmadge
Hansen	McIntyre	Tunney
Hartke	Metcalf	
Hatfield		

So Mr. BROCK's amendment (No. 795) was rejected.

Mr. JAVITS. Mr. President, I move to reconsider the vote by which the amendment was rejected.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. GOLDWATER. Mr. President, I yield myself as much time as I will need, and it will not be more than 10 or 12 minutes.

Mr. ROBERT C. BYRD. Mr. President, we cannot hear the Senator. May we have order?

The PRESIDING OFFICER. The Senate will be in order. Senators will take their seats.

Mr. ROBERT C. BYRD. Mr. President, I hope that we may have order in the Senate while the Senator speaks.

Mr. GOLDWATER. Mr. President, in debate on the floor on the legal services matter, I have previously pointed out the abuses that were being practiced under this system in my State of Arizona. Today, I will point out additional abuses that can happen in any State or community under a federally funded Legal Services Corporation.

One thing which the managers of the bill assure us will not happen, but which is just as plain as the Sun on a clear day, is the practice of legislative lobbying by federally paid legal services lawyers. I would point out that under S. 2686, lawyers of the Legal Services Corporation are permitted to lobby for or against legislation at any time that they are requested to testify by a legislative committee or by even a single member of any committee. In other words, any Member of Congress or of a State legislature or of a city council who wants to do so can authorize a legal services attorney to come in and testify before his legislative group by merely asking him.

Mr. President, legislative advocacy of this kind has been the trademark of past legal services programs. I have read working papers from the OEO Office of Legal Services which set out in great detail the ways in which legal services personnel are supposed to do their lobbying work. These lawyers were taught that they have the "clear right" and "certain duty" to lobby. Indeed, on October 21 and 22 of 1971, a meeting was held in Philadelphia of some 50 legal services lawyers to consider how legislative advocacy can be used most effectively as a tool for shaping their social ends. In February of 1972, the OEO sent to every legal services attorney a voluminous three-part collection of articles discussing various aspects of legislative advocacy and calling attention to the Philadelphia meeting.

In these official OEO articles, legal services lawyers were given guidance on numerous welfare statism issues which were labeled ripe for legislative agitation. Part II of these OEO policy guidelines specifically admonished legal services attorneys that:

> At a minimum, every LSP [Legal Services Program] can seek out a friendly legislator, and urge him to introduce a bill or bills for them, and provide him with back-up work needed.

The OEO attorneys were left in no

doubt as to whom they were supposed to emulate. This same part II of the OEO guidelines explained to each legal services attorney that among the forces he can bring to bear on legislators is representation of general groups of the poor, rather than of merely an individual member of the poor, especially if the attorney happens to command instant attention from the press as is the case with Ralph Nader.

In the same OEO documents, the budding legislative lobbyist-attorneys were given assurance that—

> The working press is normally liberal and sympathetic to the poor, and hostile to the "establishment."

This suggestion for manipulation of the free press was set out under a section headed "Forces You Can Bring To Bear On Legislators."

Mr. President, the above description of legislative advocacy as used by OEO is unquestionably a model for the practice of similar advocacy by attorneys of the Legal Services Corporation. Lobbying for social welfare changes has been considered to be no less than the professional responsibility of legal services attorneys, and I do not see how anyone can expect them to have changed a part of their operations which has been practiced from the inception of the legal services program. I certainly do not believe that the language of the pending bill prohibits it, and, in fact, I think the bill leaves the door wide open to it.

Mr. President, I have in a previous debate called the attention of the Senate to political abuses which were occurring in Arizona, where young attorneys, employed for legal purposes, became actively engaged in political work. Again, I would note that there is nothing in the pending bill to prohibit this from happening. It is made quite clear by S. 2686 that each legal services lawyer can engage in political activities, voter registration activities, and providing transportation to the polls for voters whenever necessary to the provision of legal advice and representation for any group or person who is the attorney's client.

In other words, it will be perfectly all right for any attorney to provide voting information and political advice to any groups of the poor whom he already represents. Even if he is not already working with the poor in some legitimate project, and thereby can engage himself in political activities with that group, it would be an easy matter for any neighborhood club to confer authority upon him to give political help by professing to solicit his legal advice about the technical procedures for qualifying to vote or retaining a valid registration.

Mr. President, it also cannot be denied that under the Legal Services Corporation bill, the Corporation is empowered to grant public funds to every species of Ralph Nader-type advocacy group so long as the recipient can arrange his books or divide his operations to indicate that he spends less than one-half of his time on the actual litigation of broad public interest issues. It would be a very easy thing for legal services offices to qualify for grants of public moneys under this standard.

Mr. President, I would remind my friends in the Senate that legal services programs have long had experience in getting around this type of rule. Referring back to the official OEO guidelines which were distributed to all legal services attorneys, one of the important areas about which lawyers were advised in this material was information on how to preserve their status as organizations to whom contributions would be tax deductible. One of the problems in legislative lobbying, which OEO openly recognized, is that the tax status of legal services groups might be questioned if they engaged in a "substantial" amount of lobbying. Accordingly, every legal services office was informed of the existence of an informal "5-percent rule" within the IRS.

But the OEO guidebook suggested that the way around this technicality was easy. All the legal services office had to do was simply to incorporate that office's programs into separate components and pay careful attention to a "clean" separation of the office's funds and activities.

If the legal services offices were clever enough to avoid the "5 percent rule," you can imagine how simple it will be for them to by-pass a "50 percent rule" and remain entitled to public moneys. I, for one, do not think the American public wants to see their tax moneys being funneled into public advocacy shops who are agitating for welfare statism programs of the kind which the average citizen opposes and which are bankrupting America.

Mr. President, I would also alert my colleagues to the fact that the Senate Committee, in reporting S. 2686, has removed several prohibitions which were included in the original House-passed bill and which would have protected the American public against some abuses which I have not yet discussed. Among the activities which the House bill banned, but which by implication the Senate bill permits, is the incitement of litigation, the bringing of court cases to achieve forced school busing for sociological and racial purposes, the bringing of court actions to obtain abortions, and the conferring of legal assistance to draft dodgers. I have never seen an adequate explanation by the managers of the bill as to why these activities are no longer specifically prohibited.

Mr. President, I believe the risk of a resumption of the abuses which I have described above is far too great to take a chance with passage of the Legal Services Corporation bill. Although the Corporation would, on the surface, be established as a new and separate organization, its concern with social welfare and poverty issues would remain the same as it existed when the legal services program was handled by OEO. I am certain the philosophy would be the same, and the activities would be the same.

If the descriptions of actual OEO guidelines which I have revealed above do not give us enough reason for worry about a federally financed, legal services system, I will ask any Senator who is not concerned to educate himself by reading a volume published by the OEO, dated March 10, 1972 on the subject of providing the Office of Legal Services with assessments of management efficiency.

This volume contains lengthy instructions on the conduct of a detailed evaluation of each of the then 97 operating legal services projects, which consisted chiefly of OEO-funded neighborhood law offices. In order to achieve a satisfactory rating in this evaluation project, the local, OEO-funded organizations were asked to prepare a self-analysis for use by the evaluators. Among the range of achievements which the legal services attorneys were expected to report was a description of all test case litigation which they had initiated. In OEO jargon, this meant that good marks would be given to legal services attorneys who had stirred up court cases against "the establishment" in untested areas.

Among the items which this OEO guide directed its evaluators to rate, and report on, was how much advocacy before Congress, State legislatures, or city councils of new legislation, or against legislation, that office had done. The evaluators were also told to measure the extent to which the legal services projects had become involved with and advocated the interest of the local poor people. One way the guide indicated that local attorneys could prove the proper involvement on their part with the poor was by showing that they had consulted with what the guide called, "reliable informed sources," such as the Black Panthers.

Among other aspects of the local, legal services operations which OEO evaluators were told to pay special attention was the extent of advice or representation given by the local attorneys during rent strikes and to welfare demonstrators, the extent to which local attorneys had challenged the suspension or expulsion of college demonstrators, and the amount of time legal services attorneys had worked with welfare organizations to insure that housing developments being built by private developers would provide rent supplement payments.

In other words, Mr. President, publicly funded legal services attorneys were expected—and will be expected—to be at the forefront of all the kinds of social welfare schemes that have ever been thought up by social dreamers. The Legal Services Corporation would not be concerned with helping the individual poor or needy person, who can be given proficient advice and services through programs run by State and local bar associations, but would focus its energies on changing society by challenging the elected representatives of the people with an overwhelming number of test cases and by lobbying in the media and before legislative bodies for statutory changes where their court cases draw a dead end. These are not the kinds of things for which the public wants its tax moneys to be used. I believe S. 2686 is a dangerous proposal and I will vote against the bill.

Mr. BEALL. Mr. President, there is one aspect of the American dream that has shaped and colored our Nation's life since the time of the founding of the Republic. This is the belief that everyone is equal before the law. Even extremists, whether of left or right, find no disagreement with those who prefer to

be described as middle America, that at the Bar of Justice all are truly equal. But what has seemed a nearly unanimous consensus on this concept of equality has not always in application resulted in realization of this fundamental principle of justice under the law.

The Legal Services Corporation bill provides new opportunity to assure all of our citizens, regardless of their economic position, of the means to achieve the American dream of equality under the law. In my own State of Maryland, I am aware of what the legal services program, begun under the Office of Economic Opportunity in 1965, has accomplished. The Legal Aid Bureau, which has been a recipient of the OEO funding, in its last year of operation answered total requests for legal assistance for over 35,000 low-income citizens. The basic common denominator of these clients is a lack of money to pay a lawyer. From that point on the problems in which the poverty lawyers provided representation are vast and varied. These are not cases which reach headlines or front pages of newspapers. But to the poor everyone of these cases is important, whether it be the family being evicted or a mother having her child taken away. Thus the poor were provided representation in difficult day-to-day problems in such areas as family law, landlord-tenant problems, problems with employment and consumer cases.

These problems are typical of the gammit of cases brought to the neighborhood law offices by the low-income community. And in every relevant area of the law a legal aid attorney was providing representation to a client who perhaps would have otherwise considered the law his enemy had he not the opportunity to present his side of the case to the courts. At no level were the poor denied representation and poverty lawyers in Maryland and across the country have carried their clients' cases when necessary to the Supreme Court of the United States. They have done this effectively and within the bounds of the code of professional responsibility in the highest traditions of the legal profession. As a result they have given meaning to the concept of equal justice under the law.

The committee's bill comes to the Senate only after careful study. I join with Senator TAFT'S views as expressed in the Senate report that the bill represents an effective compromise and a constructive balance on the various points in issue. Notable are the provisions relating to the composition, method of selection and powers of the Board of the Corporation, and the creation of a national and local advisory board which will give local bars the opportunity to evaluate the quality of legal services provided by the corporation. Equally important are the provisions in the bill which preserve necessary existence of research back-up centers for overburdened legal services attorneys, essentially similar to those now in operation. Safeguards are adopted for lobbying and political activities in recognition of the effectiveness of these tools for carrying out the mandate of the Corporation to provide legal services for the poor on one hand, and the necessity to avoid excesses by over-zealous attorneys on the other hand.

The committee's report clearly recognizes the need to protect the most essential relationship of all, the attorney-client relationship, and the committee has urged that the provisions of the bill be read consistently with that need. Finally, the bill provides for safeguards in determining client eligibility so as to assure that only those unable to afford counsel are given the advantages of free representation, while at the same time allowing for a reasonable amount of discretion with the legal services attorney.

The important consideration is to keep existing legal services programs alive and to provide stability and continuity for their operations. The record of the legal services program in Maryland, under the leadership of its executive director, Mr. Joseph A. Matera, is one of constructive accomplishments. The enactment of this legislation will enable Maryland to continue this effort.

Columnist James J. Kilpatrick, in his column "The Case for Legal Aid to the Poor," concluded:

Conservatives should back such a bill, in the full awareness that from time to time they will be irritated, harassed, and outraged by the "zeal and adrenalin." Mistakes will be made. Incidents of bad judgment can be expected. But if we truly believe in equal justice under law, we ought not to be deterred from supporting an effort to make those words in stone something more than any empty phrase.

Although far from perfect, this compromise bill is the product of much deliberation, and consideration of varying points of view. The fundamental principle of equal justice under the law remains intact. I, therefore, will support the bill and urge its enactment.

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:

THE CASE FOR LEGAL AID TO THE POOR
(By James J. Kilpatrick)

WASHINGTON.—There are times, sad to say, when American conservatives appear to constitute "the stupid party," as John Stuart Mill once labeled their British counterparts a century ago. By their failure to give active support to a continuing program of legal services for the poor, my brother conservatives are abandoning their principles and exhibiting a dull-wittedness that makes a man despair.

Of course a legal services program should be extended! Let Congress, if it pleases, scrap everything else that has been funded through the Office of Economic Opportunity. Let the administration, if it can, dismantle a hundred boondoggling, paper-shuffling programs of grants-in-aid. But in one form or another, the Neighborhood Legal Services must be maintained.

Chiseled in stone above the great white columns of the U.S. Supreme Court are four famous words: "Equal Justice under Law." No concept in our public life is nobler and no concept has been more poorly served.

The grim truth is that for all practical purposes, we still have two systems of law in this country, one for the rich, another for the poor. Every newspaperman who ever has covered the small claims and criminal courts of his city, knows this is so.

Granted, much has been done in recent years. Indigent defendants, even in serious misdemeanor cases, now have a right to counsel. Bail reform has remedied some of the most flagrant evils of the criminal justice system. Since 1965, the federally assisted legal services program has greatly benefited the poor in areas of civil litigation. Now this civil program—a program seeking to promote equal justice under law—is threatened with abandonment.

Conservatives, dedicated in principles to this elementary proposition, ought to be in the forefront of a fight to push the cause along.

But where are they? They are grumbling that in recent years the program of legal services has been abused. Doubtless this is true. It would be incredible not to discover abuses in a program involving 2,500 lawyers in 900 neighborhood law offices. As Chief Justice Burger once remarked, "this program attracts young idealistic lawyers, and sometimes they have more zeal and adrenalin than judgment and skill."

But these occasional abuses, while serious, have been few. Viewed on the whole record, the legal services program has helped to foster a sense of confidence not only in the courts, but also in what is known vaguely as "the system." In a message two years ago, urging creation of a wholly independent Legal Services Corp., President Nixon made that point: "This program can provide a most effective mechanism for settling differences and securing justice within the system and not on the streets."

Unhappily, Mr. Nixon now seems to be dragging his heels. The present $70 million program is to expire in June, and nothing is yet in sight to take its place. It would be calamitous to let the concept go. As a recent report from the General Accounting Office made clear, the great bulk of casework by the NLS lawyers involves legal problems arising from housing, domestic relations, employment and consumer grievances. A million such cases were handled last year.

The typical client is not the young revolutionary, seeking protection for the obscenities he prints in an underground paper. The typical client is an old man, barely literate, about to be evicted from his home.

What is needed—and needed promptly—is a bill to create an independent legal services corporation generously funded with authority to provide essential representation for the poor. Such a corporation should have backup facilities for research. It ought not to be denied a hand in "law reform." Neither should it be prohibited from bringing the class actions that often provide the most effective remedies at law.

Conservatives should back such a bill, in the full awareness that from time to time they will be irritated, harassed, and outraged by the "zeal and adrenalin." Mistakes will be made. Incidents of bad judgment can be expected. But if we truly believe in equal justice under law, we ought not to be deterred from supporting an effort to make those words in stone something more than an empty phrase.

MESSAGES FROM THE PRESIDENT

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

EXECUTIVE MESSAGES REFERRED

As in executive session,

The PRESIDING OFFICER (Mr. HUDDLESTON) laid before the Senate messages from the President of the United States, submitting sundry nominations, which were referred to the appropriate committees.

(The nominations received today are printed at the end of Senate proceedings.)

LEGAL SERVICES CORPORATION ACT

The Senate continued with the consideration of the bill (S. 2686) to amend the Economic Opportunity Act of 1964 to provide for the transfer of the legal services program from the Office of Economic Opportunity to a Legal Services Corporation, and for other purposes.

Mr. CURTIS. Mr. President, I call up my amendment No. 947 and ask that it be stated.

The PRESIDING OFFICER. The amendment will be read.

The assistant legislative clerk read as follows:

On page 13, line 25, it is proposed to insert the following:

(5) No class action suit, appeal, or amicus curiae action may be undertaken, directly or through others, by a legal services project staff attorney, except with the express approval of a project director in accordance with policies established by the governing body of the project, as approved by the Corporation.

Mr. CURTIS. Mr. President, I invite a careful reading of this amendment by each Senator. It is very brief. It happens that I do not favor class actions. I think they get into the political area. I think they invite all the abuses the distinguished Senator from Arizona is talking about.

However, I know that my will will not prevail. I know that I cannot take away the authority in this bill to bring class actions. I wish I could. I doubt that I have sufficient votes.

The amendment merely provides that no class action suit, appeal, or appearance as a friend of the court can be undertaken except with the express approval of a project director in accordance with policies established by the governing body of the project as approved by the Corporation.

In other words, if there are to be class actions, all we ask is an orderly way to handle them, that a uniform policy be applied throughout the country, and that responsibility be fixed. This does not deprive the Corporation of the right to appear as a friend of the court or to bring an action or to take an appeal that is of a class nature. The amendment merely provides that there must be the express approval of the project director in accordance with policies established by the governing board of the project and approved by the Corporation.

I feel that this is a reasonable provision and would strengthen the legislation. It is my hope that the managers of the bill will accept the amendment.

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

Mr. COTTON. Mr. President, I shall use 3 minutes of my time.

The problem of authorizing class actions has long been a subject of controversy. The problem of bringing a class action is one that has been a bone of contention within the Committee on Commerce with respect to many measures that have come before us.

Some of us on the committee have taken the position, and fought for it through the years, that the class actions open up a very grave danger, and that danger is largely against the consumer.

Mr. ROBERT C. BYRD. Mr. President, will the Chair clear the aisle so that I can at least see the Senator when he speaks?

The PRESIDING OFFICER. The aisles will be cleared.

The Senator from New Hampshire.

Mr. COTTON. When class actions are permitted, as they have occasionally been in some so-called consumer bills, it eventually simply means that the consumer will pay more for consumer goods that are involved, because if a corporation, a manufacturer or distributor, realizes that it is in constant danger of having some lawyer go around and get 50 or 75 or 25 signatures to bring a class action because of some alleged defect in an electric toaster or washing machine, or anything else, and whereas the defect might be in such small objects—more in the toaster class than the washing machine class—it simply means that the corporation is going to protect itself by raising the price of the article in order to absorb and take care of the harassment it expects to face on any possible alleged defect in even a very small and inexpensive device.

That is a point of view that, it seems to me, leads to an utterly impossible situation, in view of the ardent efforts of people such as the Senator from Arizona described, the eager type, the champion of the consumer. If this measure is going to open the door wider to class actions, it is going to militate against the very people it seeks to benefit. It is going to simply mean that any producer or distributor of even small, inexpensive gadgets of every nature, knowing it may be exposed to suits by groups or by classes encouraged and lined up by lawyers, will, simply to take care of the cost in advance, increase the cost of the article.

I think the amendment of the Senator from Nebraska should be helpful. It does not cure the defect in the bill. It does not cure the opening of this door. But it goes as far as it can to at least place restrictions in the bill, and I shall certainly support it.

I yield back the remainder of my time.

The PRESIDING OFFICER. Who yields time?

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

The yeas and nays were ordered.

Mr. TAFT. Mr. President, while the yeas and nays have been ordered, I looked at this amendment and, with some minor modifications, I do not feel I would be inclined to object on behalf of the minority. There is authority provided for a project director to approve. This, as the Senator from Nebraska has indicated, pins down the responsibility for certain types of class actions.

There are, however, in my opinion, a number of types of class actions that do not relate to consumer or public interest types of situations, which perhaps we ought to examine and, if we get to conference on this measure, try to work out some resolutions, with respect to not requiring the project director to approve.

I, for one, do not see why this amendment as such should not be taken to conference.

I ask the Senator from Wisconsin if he has any opinions on it at this time.

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

Mr. TAFT. I yield.

Mr. CURTIS. I would certainly propound the request to withdraw the request for a rollcall vote if the committee could accept this amendment and see what could be worked out.

The PRESIDING OFFICER. Who yields time?

Mr. HATHAWAY. Mr. President, I am opposed to this amendment. The purpose of setting up this corporation to provide legal services to the poor is to put the poor on the same basis as everyone else with respect to their legal rights. There is no inhibition on class actions or appeals or amicus curiae actions by those who can afford legal counsel. I do not see why there should be any prohibition directed against the poor.

Many of their actions—probably the greater proportion of their actions—are going to be class action suits. With their budgetary limitations, I suppose they are going to be more concerned with consumer actions than those of us who are more affluent and able to afford to purchase articles and give up any actions we might have against the purveyor of those articles because we just do not want to be bothered with litigation. But to the poor, consumer actions are extremely important, and I do not see why we should prohibit them.

Furthermore, the project director of any project, with the limited amount of moneys afforded to him, is going to have some direction over all kinds of actions within his area, and probably the purpose the Senator from Nebraska desires to bring about will be taken care of in that way, without such inhibiting language as this placed in the bill.

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

Mr. HATHAWAY. I yield.

Mr. CURTIS. The Senator is aware that this amendment does not prohibit class actions. Is he not?

Mr. HATHAWAY. I understand it has to be done with approval——

Mr. CURTIS. It says that class action shall have the approval of the project director in accordance with policies established by the governing body of the project. Without this, the decision goes to nongovernment individuals who assume no responsibility for the Government of the United States.

We are not saying what kind of policies are to be established. We are not saying the policies must include this or cannot include that. We are merely saying there should be a uniformity, there should be a chain of command. We are not requiring that the governing body approve the project. Neither are we requiring that the corporation approve the project. We say the governing body shall include policies which are approved by the corporation before the project director shall approve this action.

I think that is reasonable. I believe to do otherwise removes all persons acting under authorities of government from having any voice in the policymaking concerning these class suits.

Mr. HATHAWAY. Mr. President, let me say in answer to the Senator from Nebraska that in the first place the corporation supposedly is independent of the Government. An amendment to make it otherwise submitted by the Senator from Tennessee (Mr. BROCK) was just recently defeated.

In the second place, there is already a provision in the bill for the corporation to issue guidelines and regulations covering all kinds of legal actions.

I think that we should await the promulgation of such guidelines and regulations before we in Congress decide that in certain areas we want specific things done.

Mr. CURTIS. Mr. President, the ones in the corporation are the ones who have come to the Congress for their funds. And they are the ones that Congress can look to and expect them to do a good job in that area.

We say to them that the governing bodies should develop some policies before we proceed and that this is the manner in which it should proceed.

I believe that if I were an ardent champion of this whole area of activity, I would welcome such a procedure because it could very well save the program from some abuses and unfortunate actions which might well bring it into disrepute.

I hope that the amendment will be agreed to.

The PRESIDING OFFICER. Who yields time?

Mr. NELSON. 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. NELSON. 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. CRANSTON. Mr. President, does the Senator mean that the words "class action" apply to an appeal and to an amicus curiae action? The Senator is not talking about appeals that are not related to class actions, I assume?

Mr. CURTIS. This deals only with class actions, whether they bring a suit or take an appeal or appear as a friend of the court in a class action.

Mr. CRANSTON. I thank the Senator.

The PRESIDING OFFICER. Who yields time?

Mr. NELSON. 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. CURTIS. Mr. President, I ask unanimous consent that the order for the yeas and nays be rescinded.

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

Mr. CURTIS. Mr. President, I ask unanimous consent that I may modify my amendment.

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

Mr. CURTIS. Mr. President, the amendment as modified reads as follows:

No class action suit, class action appeal, or amicus curiae class action may be undertaken, directly or through others, by a legal services project staff attorney, except with the express approval of a project director in accordance with policies established by the governing body of the project.

The PRESIDING OFFICER. Would the Senator send the modification of his amendment to the desk?

Mr. CURTIS. I send the modification of my amendment to the desk.

I believe this meets some of the objections to the amendment that I had originally drawn.

Mr. President, I yield to the distinguished Senator from Wisconsin.

Mr. NELSON. Mr. President, I have no objection to the amendment as modified. We are willing to accept it.

The PRESIDING OFFICER. The question is on agreeing to the amendment as modified. [Putting the question.]

The amendment as modified was agreed to.

The PRESIDING OFFICER. Who yields time?

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 959

Mr. BELLMON. Mr. President, I call up my amendment No. 959, and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk proceeded to read the amendment.

Mr. BELLMON's amendment (No. 959) is as follows:

On page 13, following the word "referendums", insert a "period", and strike the following: "except as necessary to the provision of legal advice and representation by an attorney for any eligible client with respect to such client's legal rights and responsibilities.".

On page 16, strike line 11 through line 14.

On page 17, strike line 4 through line 10.

Mr. BELLMON. Mr. President, the purpose of this amendment is fairly simple and easily understood. Briefly, it prohibits the use of these funds to advocate or support referendums for any kind of lobbying activity or for any political activity whatsoever.

While I was serving as governor of Oklahoma, the concept of legal aid to the poor was introduced under the economic opportunity program. As with many of the OEO programs, there was opposition to this undertaking from the legal profession and other sources. But after it had been in operation, with the involvement of attorneys at the local level, the legal services program gradually won acceptance because it demonstrated that with a little help in the form of legal guidance, many low-income persons could become more self-reliant and productive citizens.

With the dismantling of the Office of Economic Opportunity the administration proposed the establishment of a Legal Services Corporation to take over the various legal aid programs. A bill creating such a corporation was debated and passed by the 92d Congress, but was vetoed because of White House objections regarding the appointment of board members.

Now the issue is before Congress once again in the form of a compromise measure which has the backing of the administration. However, the present bill has some objectionable features that I strongly feel should be removed. Therefore, I am offering an amendment to eliminate some of these features and tighten up the language of the bill to prevent possible abuses of the program.

Let me make it plain that this amendment is not an effort to weaken the bill, but rather to strengthen it for the protection of all citizens. Nor is it an attempt to further stall consideration of the bill.

First, my amendment would insure that all attorneys engaged in legal assistance activities refrain from any political activity for a particular individual or party. Second, the amendment would further guarantee that no funds, program personnel or equipment could be contributed or made available by the corporation for use in advocating or opposing any ballot measures, initiatives, or referendums, by removing the exception clause in the bill which is a major loophole. Third, another provision of the amendment would insure that no funds made available through grants or contracts could be used by recipients to undertake to influence the passage or defeat of any legislation by the Congress or by any State or local legislative bodies. The only involvement in legislative matters would be in the event a legislative body requests information.

In general, my amendment removes several loopholes which, in my opinion, would permit possible illegal actions or political activities.

Mr. President, consideraton of this legislation has been long delayed, and I am hopeful that a suitable compromise can be reached in order that the matter can be finally resolved.

Mr. President, my hope is that this amendment will be acceptable to the authors of the bill. In the event it is not, I will ask for the yeas and nays.

Mr. NELSON. Mr. President, will the Senator from Oklahoma yield for a question?

Mr. BELLMON. I am glad to yield to the Senator from Wisconsin.

Mr. NELSON. In the Senator's preliminary remarks he made reference to political activities. Is the Senator aware that we specifically provide that these employees under this statute are covered by the Hatch Act itself, so that they are barred from political activity?

Mr. BELLMON. These attorneys are prohibited from any voter registration activity to the extent necessary according to the provision—I would invite attention to section (C) on page 17, beginning on line 3, which reads:

. . . any voter registration activity, except as necessary to the provision of legal advice and representations by an attorney as an attorney for any eligible client with respect to

such client's legal rights and responsibilities . . .

Mr. NELSON. If I may ask a question on the Senator's time—since I have only 1 hour to speak on all amendments—is the Senator aware that the amendment he is dealing with was carefully drafted by the distinguished Senator from Ohio (Mr. TAFT) and that the sole exception we put in there is on the voter registration question? That is because an attorney should be entitled to provide legal representation to an individual to enable him to register to vote. Is the Senator aware that we were getting at is this: If a client is denied the right to register to vote, as to securing that specific right, the lawyer could assist him?

Mr. BELLMON. Is the Senator saying that it is not the intent of the bill that the attorneys could lead any voter registration drive, that it deals only with the case of a single voter?

Mr. NELSON. Absolutely. He may not lead a voter registration drive.

Mr. BELLMON. Only in the case of a single voter whose right to register had been interfered with?

Mr. NELSON. Each such individual would have to be an eligible client. There might be five individuals who are denied the right to register who assert that they are qualified to register to vote. But legal representation has to be on behalf of a client, and not a voter registration drive.

Mr. BROCK. Mr. President, will the Senator from Oklahoma yield for a question?

Mr. BELLMON. I am glad to yield to the Senator from Tennessee.

Mr. BROCK. I think the Senator from Wisconsin said that these people are covered by the Hatch Act but I do not know where that is in the bill. I thought they were excluded from the Hatch Act. I thought they were not covered by the Hatch Act.

Mr. NELSON. If the Senator will withhold for a moment, I will get the section.

Mr. BELLMON. Mr. President, I ask for the yeas and nays on my amendment.

The yeas and nays were ordered.

Mr. NELSON. Mr. President, I call attention to the absence of a quorum so the Senator from Ohio, who offered the language which would be stricken by the Senator from Oklahoma, will have an opportunity to speak to it.

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

The legislative clerk proceeded to call the roll.

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

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

Mr. TAFT. Mr. President, unfortunately, I was not able to be on the floor when the Senator from Oklahoma was discussing his amendment. I do want to invite to his attention the exception which occurs in line 21 on page 13, which also applies to the other provisions on pages 16 and 17 to which the Senator's amendment refers.

The Senator's amendment, would strike the following wording on page 13—"except as necessary to the provision of legal advice and representation by an attorney for any eligible client with respect to such client's legal rights and responsibilities". This wording relates to the right of an eligible client of the Legal Services Corporation to ask his attorney for advice and to obtain advice from his attorney as to what his individual rights might be with regard to registering to vote or otherwise participating in the electoral process. The wording "by an attorney as an attorney," I believe effectively limits political activity per se by corporation attorneys.

The Senator from Maine commented that the objective of the bill is not to deny to individuals seeking legal advice and representation the rights that any citizen normally has in going to an attorney and paying for and receiving such services. I believe that we have attempted to rule out—and I certainly feel that the intent of the committee was to rule out—political activity.

Certainly, the advice to a client as to what his rights and responsibilities are under the law would seem to me to be a very legitimate purpose, and I am certain the Senator would not want to limit such rights.

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

Mr. TAFT. I yield.

Mr. BELLMON. Mr. President, I would not quarrel with the Senator from Ohio as to the intent of the language, nor would I quarrel with the objective, if we could be certain that these attorneys would not go out on their own and find clients and use those clients as an excuse to do the very things which have brought discredit and criticism upon the legal services program in the past.

Mr. TAFT. I am fully familiar with the problems. It is not the Legal Services Corporation. I am fully cognizant of the problems that arose with regard to the OEO legal services. In my election to Congress in 1966, I recall personally objecting to some of the activities that were being carried on, which I thought were of an extremely political nature and really not of a legal nature at all, by some of the employees of the OEO Legal Services Division at that time. So I am not unfamiliar with the problem.

The reason for my language here is to eliminate that type of activity, but leave in the representation of eligible clients as to what their rights are under the various laws involved.

Eligible clients, for example, may be denied the right to vote. The language that the Senator would strike would eliminate such economically disadvantaged individuals from being advised as to how they could qualify to vote.

Mr. GOLDWATER. Mr. President, will the Senator yield for a question?

Mr. TAFT. I yield.

Mr. GOLDWATER. I want to make clear that I am not a lawyer, but I am interested in language on page 17, line 3:

Any voter registration activity, except as necessary to the provision of legal advice and representation by an attorney as an attorney for any eligible client . . .

Am I correct in assuming that a client could be an organization or could even be, let us say, an Indian tribe in my State?

Mr. TAFT. Whether they would qualify, I would question. An indigent Indian tribe might qualify, and an indigent association of some type, some local community organization which had no resources, might qualify.

Mr. GOLDWATER. So that a client does not mean one person.

Mr. TAFT. Not necessarily.

Mr. GOLDWATER. That is what bothers me.

Both of the exceptions on pages 16 and 17, in my mind, make it possible for these attorneys to practice politics. For example, on page 16, where we get into the exception, the language is very clear:

. . . except where . . . a legislative body, a committee, or a member thereof requests personnel of any recipient to make representations thereto . . .

In other words, one member of a city council, one member of a county board of supervisors, or one Member of Congress could ask one of these attorneys to come in and be an advocate, in effect, which is engaging in politics.

I do not want to see anyone, including attorneys, denied their right to vote, under any language; but neither do I want to see these attorneys continue to practice politics, as they have been doing.

Mr. TAFT. I appreciate the Senator's concern. I share his concern. That is why I insisted upon the inclusion of the words "by an attorney as an attorney" in the language on page 17, just as I did on page 13.

I feel the same as to the activities the Senator is referring to—if they go beyond advising the individual client or the indigent group as to what their legal rights are. I refer particularly to those abuses where individuals solicit for a particular political cause, organize carpools to take voters to the polls, and other activities of this kind which have occurred in the past. This ought to be ruled out, and I am happy to say that I think this language does statutorily prohibit such activities.

Mr. GOLDWATER. It seems to rule it out, but the House bill had absolute prohibition against this, without any equivocation at all. Why the committee could not take the House language, I do not know.

Mr. TAFT. As I explained to the Senate earlier to the reason why I cannot accept the Senator's amendment is that if the objective is to establish an independent Legal Services Corporation to provide legal services to those who are unable to obtain them, we should not provide second-class legal services.

If an individual who is in this position wishes to be advised by an attorney, acting as an attorney, as to what his particular rights are under the various laws pertaining to elections and his position as a citizen in exercising his rights, I do not think he ought to be deprived of that.

Mr. GOLDWATER. Let me ask the Senator another question that does not refer to this particular part of the bill.

Let us assume that in any Western State where we have large numbers of Indians, where it would be possible, for example, for any one of these attorneys or any number of these attorneys to rep-

resent, say, one of the Apache tribes, we find out in the course of a campaign that they are engaged in registration, that they are engaged in transporting people to the polls, and are using Federal money to do it. What is our recourse? What do we do? We have not been able to stop it before. We have been promised. I might say that in debates on this floor, I have been promised time and again that it would not happen again.

Mr. TAFT. I believe we ought to move toward the independent corporate concept for this activity, so that we can actually build up around the legal services activities being financed with public funds a professionalism and a high standard of conduct.

I point out specifically, for instance, language on page 13 of the committee report which states:

> The Committee strongly believes that all legal services attorneys must at all times represent their clients in accordance with the highest ethical standards of their profession as embodied in the Canons and Code, and the Committee places particular emphasis on those provisions governing the inviolability of the attorney-client relationship, the restrictions on, solicitation of clients by attorneys, and the requirements that attorneys in the program, like all other attorneys, provide the highest quality legal advice and representation in a professionally responsible manner.

I think the answer really lies in that language with regard to the Indian tribes, unless the Indian tribes were indigent and unable to secure funds in any other way, which has not been the case in the past.

Page 14 of the committee report details the eligibility requirements. The Director of the Office of Management and Budget "will establish maximum eligibility levels for the assistance of legal services to persons unable to afford legal assistance."

The principal criterion is that a person or group of persons be "financially unable to afford legal assistance."

I think that most of what the Senator is concerned about so far as Indian tribes are concerned would not apply.

Mr. GOLDWATER. To my mind, anything would be better than OEO. I like the general broad idea of a corporation, but I do not agree——

Mr. BROCK. Mr. President, may we have order?

Mr. TAFT. Mr. President, may we have order?

The PRESIDING OFFICER. The Senator will suspend briefly. The Senate will be in order.

The Senator may proceed.

Mr. GOLDWATER. Let me put it another way. We are talkng about the ethical conduct of attorneys. I think it is perfectly ethical and proper for an attorney to engage in politics. In fact, I cannot think of many attorneys who are not doing it regularly. But I do not think an attorney employed with tax money should be advocating anything except the rights of his client.

I referred to the Indian tribes. I could well refer to any group, any neighborhood group; it might be a group of 5, 10, or 500 who would seek under a title which would come under the purview of this act the services of one of these attorneys. If they went downtown and got an attorney and paid him out of their own money, that would be another horse; but to have a taxpayer pay for an attorney to represent a group advocating things the taxpayer probably does not believe in or advocate the election of persons they may not support, is a different matter.

Mr. TAFT. I agree with the Senator, if it is not a legal activity, if it is a political activity; if the individual is not acting as a lawyer, I agree.

But I think we have clarified the guidelines. I hope I might satisfy the Senator from Oklahoma and the Senator from Arizona that we are meeting their objections.

Mr. GOLDWATER. If the Senator will yield for one more question, I will be through.

There are no criminal penalties in this bill that I can find. I asked before: What do we do in a Western State when we find a continuation of legal activity, whether it be advocating a cause for the support of a candidate, or registering in either party to stop it if there is no criminal penalty?

Mr. TAFT. First, we are dealing with men who are members of the bar. They are subject to discipline within the Canons of Ethics and the Code of Professional Responsibility. Also, if they are violating the law, they are subject to penalty for violating the law, as well as discipline under the Canons of Ethics.

Mr. GOLDWATER. That does not quite answer my question. Let us say that about the middle of October we find this practice going on. The election is over before any bar association is going to move.

Mr. TAFT. The corporation is responsible to this body. There is that restriction.

Mr. GOLDWATER. I want to know how we stop it the moment we find it happening. We have not been able to do so in the past. I do not care if it is being done in the Democratic Party or the Republican Party; I want to stop it immediately and not have to drag the matter through the State bar associations, and Congress.

We have talked about this before. I recall a debate I had in this Chamber with the Senator from Massachusetts—and I forget who the other Senator was—4 years ago. I was promised: No more politics.

Mr. TAFT. Of course, I suppose one might say the same objections would apply, the same problems could apply. I think there are far better assurances in the corporation concept we are proposing.

Mr. GOLDWATER. I agree they are better. In fact, I tried to get rid of the OEO, and I had the President's assurance that he would help get rid of it. Do not get me wrong. This is an improvement, but I do not see enough change in the bill to change what we have experienced in the past.

Mr. HATHAWAY addressed the Chair.

Mr. GOLDWATER. I yield to the Senator from Ohio any part of my hour that he wants.

Mr. TAFT. I yield the floor.

Mr. HATHAWAY. Mr. President, I would like to call the attention of the Senator from Arizona to page 12 in regard to sanctions that may be promulgated, starting on line 3 with the words "The Board, within 90 days after its first meeting, shall issue rules and regulations."

I think that might satisfy the Senator with respect to enforcement of the provision with which he has expressed a great deal of concern.

Mr. GOLDWATER. Yes, but this does not give very fast relief.

Mr. HATHAWAY. This language states that—

> The board, within 90 days after its first meeting, shall issue rules and regulations to provide for the enforcement of this paragraph.

That could give immediate action such as injunctive relief during the course of campaigns, or immediate dismissal or suspension.

Mr. GOLDWATER. Would not the Senator feel better if we had something in this act to prohibit without any exception any political activity? I feel this bill is not tight enough on that point. That is why I am in favor of the amendment that has been offered. I would say that if I were on the other side of the aisle.

Mr. HATHAWAY. I agree wholeheartedly with the Senator, but I think that actually the exceptions the Senator wants knocked out, in a court of law would be construed to be there anyway because the bill just provides a prohibition against political activity. Certainly a court would not say that would prohibit a lawyer from giving his views on voter registration or lobbying, or picking a candidate for public office. I think the provision the Senator from Ohio clearly spelled out in a way really aids Senators who are concerned about political activities by stating that an attorney can indulge in political activity only to give legal advice as to what a person's rights are with regard to registration and lobbying.

Mr. GOLDWATER. The language is perfectly clear as to that but interrogating the Senator from Ohio he admitted a client could be an organization and the organization could have a very sizable political effect. Let us say the attorney was asked about the rights of this group to vote. There is no question they can vote. But he is asked how do they do it and then he advocates the formation of transportation, he advocates registration in a certain party, not just registration. Those are the kinds of things I object to and they are the kind of things I do not think this bill stops. They are the kind of things I would feel better about if there were some way that members of either party could say, "Wait a minute. We do not want this going on in my State," and you blow the whistle and it stops.

The language is perfectly clear. I just do not think it goes far enough. That is why I support the amendment of the Senator from Oklahoma.

Mr. HATHAWAY. It just seems to me that representation by an attorney as an attorney clearly spells it out. The only

advice he can give is legal advice. He cannot advise him to join a political party or do something to enhance political activities.

Mr. BELLMON. Mr. President, I would like to ask the Senator from Ohio to yield for a couple of questions.

Mr. TAFT. I do not have the floor, but I shall be glad to answer the Senator's questions.

Mr. BELLMON. I think we are all in agreement that we want a good bill and what we are concerned about is that we take out the weak parts of the bill that brought the OEO to criticism in the past.

As I read the language in paragraph 4 on page 13:

> Neither the Corporation nor any recipient shall contribute or make available corporate funds or program personnel or equipment for use in advocating or opposing any ballot measures, initiatives, or referendums, except as necessary to the provision of legal advice and representation by an attorney as an attorney for any eligible client with respect to such client's legal rights and responsibilities.

What that exception says to me is that if I am an attorney working for the corporation, all I have to do in order to do the things that are first prohibited in that section is to find myself a client who will ask me to do these things.

Mr. TAFT. If he actively seeks a client, he will be violating the canons of ethics.

Mr. BELLMON. That is a matter of judgment. I am not sure how that would be enforced. I might change my mind if the Senator will show me how. The way it reads, the way he can do it and use these funds for that purpose is find someone who will let him do it in his client's name.

Mr. TAFT. What the Senator is saying is that it is almost impossible to eliminate the hazards that may occur. I do not agree. I think the definition of the language in S. 2686 responds adequately to this problem. I think S. 2686 gives very definite standards and guidelines to the Legal Services Corporation in delivering legal services to the economically disadvantaged.

Mr. BELLMON. The Senator from Ohio is an attorney and the Senator from Oklahoma is not, but I would think it is simply impossible to ever convict an attorney for bringing in a client who said he wanted certain services and to convict him for having brought him in in the first place.

Mr. TAFT. There are many laws on our statute books in which that has occurred and in which the lawyer has been disciplined.

Mr. BELLMON. This bill is not on the law books yet.

Mr. TAFT. No. I mean soliciting a client is a violation of the "Canons of Ethics."

Mr. BELLMON. This is a different kind of client. This is a client who normally would not be aware or would not be sophisticated enough to know it is breaking a law to engage in this kind of activity.

Mr. TAFT. The individual who is breaking the law and violating the canons of ethics would be the attorney.

Mr. BELLMON. The attorney who finds a poor person and suggests that the poor person go to the Legal Services Corporation and get this kind of help would be breaking the law?

Mr. TAFT. The attorney would be in violation of the canons of ethics.

Mr. BELLMON. What is the penalty?

Mr. TAFT. The penalty could be disbarment.

Mr. BELLMON. Has that ever been done?

Mr. TAFT. Yes.

Mr. BELLMON. I have a hard time accepting that kind of situation. To me this provides the way to do it whenever such a prohibition appears not only in paragraph 4 but also in other areas covered by my amendment.

What I would like to do by this amendment is make it a strong bill that prohibits the kind of activities that brought about so much crticism of the old OEO. Without my amendment I am sure it will come to the same disrepute that its other activities brought it into and that it finally will go down in defeat someday when it comes before us.

Mr. TAFT. I hope the Senator's fears are not justified. Certainly I, as a member of the committee—and not only I, but other members of the committee—will attempt to oversee matters of this nature, to prevent them from occuring.

Mr. BELLMON. Mr. President, will the Senator yield for a further question?

Mr. TAFT. Yes.

Mr. BELLMON. Are these attorneys now effectively under the Hatch Act?

Mr. TAFT. S. 2686 would extend the Hatch Act to Corporation attorneys.

Mr. BELLMON. I am sorry; I missed the Senator's reply.

Mr. TAFT. Corporation attorneys would be covered by the Hatch Act.

Mr. BELLMON. Would the Senator feel that it would be wise to put them under the Hatch Act?

Mr. TAFT. Counsel calls my attention to the fact that, under the language on page 14, they are covered by the purposes of section 1502 of title V, which is the Hatch Act, not general coverage. It is limited coverage. I wanted to make sure that the Senator understands that.

Mr. NELSON. The provisions of the Hatch Act apply to these people exactly as they apply to all employees of grant-in-aid programs in any State of the Union. We took exactly the Hatch Act and applied it. It is broader as to those who are Federal employees, but we took exactly what applies to all other grant-in-aid programs in the United States and applied it to this bill.

Mr. BROCK. The real answer is that there is no protection against Hatch Act abuses for those employees other than directly during their office hours. That is all the protection they have because if they are playing politics during business hours, they are going to get fired.

The problem is when they go out and attend rallies and other political activities. The Senator has raised an absolutely valid point. They should be covered by the Hatch Act, so far as I am concerned.

Mr. HELMS. Mr. President, on my own time, I should like to direct a question to the distinguished Senator from Wisconsin. I want to have the matter clear in my mind, if I can. The proponents of the bill are not in favor of political lawyers running around the country. Is that correct?

Mr. NELSON. That is correct.

Mr. HELMS. Therefore, I assume the Senator would be willing to accept any proposal that would prevent that.

Mr. NELSON. Well, it depends on what the Senator's definition of "any proposal" is. I think we should all play according to the same rules about employees in the Legal Services Corporation as would apply to all other grant-in-aid programs.

Why should somebody working in a grant-in-aid program be barred from doing anything on a political job? Why should he be barred from a committee? Why should he be barred from working at night on his own time, as any other citizen can do?

Mr. HELMS. The answer to the Senator's question is that other persons are State and local employees; these persons would be Federal employees. The Senator from North Carolina is curious as to why the Senator from Wisconsin has left out Federal employees.

Mr. NELSON. A project attorney is not a Federal employee. Under these statutes, he never has been, since the beginning.

Mr. HELMS. He may not be, but he is drawing tax money paid by the taxpayers to the Federal Government.

Mr. NELSON. What the Senator is saying to them is, "If you work for the welfare department, on your own time at 7 o'clock at night, if you want to, as an American citizen, exercise your constitutional right to support someone you wish to support, it is OK." However, the Senator would bar him from doing so if he were an employee of the legal services department. However, if he were an employee of the welfare department or of an educational institution, it would be OK. It is OK for everyone else who stands in exactly the same position to do this. However, those in the legal services department could not do it.

Mr. HELMS. Mr. President, I am afraid that the Senator is standing on his own petard. The others are not executive agencies. This one is.

I thank the Senator for yielding.

The PRESIDING OFFICER. Is this time charged to the Senator from Oklahoma?

Mr. HELMS. The time is charged to me.

Mr. NELSON. One cannot transfer his time to another Member of the Senate.

Mr. BELLMON. He was speaking on his own time.

I now speak on my own time.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

Mr. BELLMON. Mr. President, I am ready for a vote. However, I first want to point out that from the debate this afternoon it appears that the only disciplinary action available to be taken against attorneys who might act against the prohibition set forth in this law—the ones that I am trying to remove by my amendment—would by disbarment of those attorneys from the practice of the law. That is what the Senator from Ohio

said. If a lawyer works for the Corporation and goes out and finds a client, he is guilty of breaking one of the canons of ethics of the American Bar Association. And he could be disbarred for that action.

To me it is inconceivable that any bar association would strip a practicing attorney of the right to earn a livelihood. This would apply to representing a client in his effort to run for office or any of the other things mentioned here.

It would be far better to move to strike these exceptions and make the law read as it is intended to read. Then we do not have the danger of the circumstances that grew up under the OEO.

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

Mr. BELLMON. I would prefer to finish my remarks first.

Mr. President, that is the reason for my amendment. I believe that it improves the bill and would make it possible for people in this country who cannot afford legal services to have those services on a continuing basis. It will make it possible for the Congress to appropriate the money that is needed. And in the long run the people will be better off.

Mr. President, I ask unanimous consent that Charles Waters, of my staff, be granted the privilege of the floor during the consideration of this measure.

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

Mr. TAFT. Mr. President, if the Senator would yield for a question, would the Senator wish to bar an individual from obtaining legal advice who was unable to obtain legal advice on his own as to what his rights might be under the Voting Rights Act, under the right to register, or obtain information on his right to run for political office?

Mr. BELLMON. Mr. President, let me say that I have never noticed any dearth of candidates in this country, certainly not in my own State.

Mr. TAFT. What about the individual who desires to vote but who is denied the right to vote and is unable to consult an attorney to find out how he can exercise his right to vote? That individual would be barred by the Senator's amendment.

Mr. BELLMON. Those kinds of questions are handled regularly by the election officials in the State. I do not believe there is a great problem in that area.

Mr. TAFT. Suppose that the election officials believe that a legal question is involved here?

We have to find some middle ground. The committee has attempted to find a middle ground between the two problems.

Mr. BELLMON. We should make an exception in this case.

Mr. TAFT. I struggled with that question. I disagree with the Senator. I believe that the exception will be effective.

Mr. THURMOND. Mr. President, I ask unanimous consent that Mr. Henry McMasters be given the privilege of the floor during the consideration of this measure.

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

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

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Indiana (Mr. HARTKE), the Senator from Alaska (Mr. GRAVEL), the Senator from Idaho (Mr. CHURCH), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from Montana (Mr. METCALF), the Senator from New Mexico (Mr. MONTOYA), and the Senator from Georgia (Mr. TALMADGE) are necessarily absent.

Mr. GRIFFIN. I announce that the Senator from Virginia (Mr. WILLIAM L. SCOTT) is absent on official business.

I further announce that the Senator from Kentucky (Mr. COOK), the Senator from Oregon (Mr. HATFIELD), and the Senator from Wyoming (Mr. HANSEN) are necessarily absent.

I further announce that, if present and voting, the Senator from Oregon (Mr. HATFIELD), and the Senator from Kentucky (Mr. COOK) would each vote nay."

The result was announced—yeas 29, nays 59, as follows:

[No. 20 Leg.]

YEAS—29

Allen	Cotton	Hruska
Baker	Curtis	McClellan
Bartlett	Dole	McClure
Beall	Ervin	Nunn
Bellmon	Fannin	Packwood
Bennett	Goldwater	Roth
Brock	Griffin	Thurmond
Buckley	Gurney	Tower
Byrd, Harry F., Jr.	Helms	Weicker
	Hollings	Young

NAYS—59

Abourezk	Haskell	Nelson
Aiken	Hathaway	Pastore
Bayh	Huddleston	Pearson
Bentsen	Hughes	Pell
Bible	Humphrey	Percy
Biden	Inouye	Proxmire
Brooke	Jackson	Randolph
Burdick	Javits	Ribicoff
Byrd, Robert C.	Johnston	Schweiker
Cannon	Kennedy	Scott, Hugh
Case	Long	Sparkman
Chiles	Magnuson	Stafford
Clark	Mansfield	Stennis
Cranston	Mathias	Stevens
Domenici	McGee	Stevenson
Dominick	McGovern	Symington
Eagleton	Metzenbaum	Taft
Eastland	Mondale	Tunney
Fong	Moss	Williams
Hart	Muskie	

NOT VOTING—12

Church	Hartke	Scott, William L.
Cook	Hatfield	Talmadge
Fulbright	McIntyre	
Gravel	Metcalf	
Hansen	Montoya	

So Mr. BELLMON's amendment (No. 959) was rejected.

Mr. JAVITS. Mr. President, I move that the vote by which the amendment was rejected be reconsidered.

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

The motion to lay on the table was agreed to.

Mr. FANNIN. Mr. President, I had intended to call up my amendment 938 prohibiting class actions. However, now that Senator CURTIS' amendment No. 471 has been accepted, I will not call up my amendment, although my amendment would be more restrictive than his.

Since I am not calling up my amendment, I ask unanimous consent to insert in the RECORD the remarks I intended to make in support of my amendment.

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

STATEMENT BY SENATOR FANNIN

Mr. President, my amendment simply states "no funds appropriated under this act shall be used to furnish assistance to any organized group. All assistance is limited to representation of eligible individuals."

I may have no quarrel with the purposes of some organized groups, but I do object to their funding and free legal advice and advocacy at the taxpayers' expense. According to what I have read and the mail I have been receiving, the Committee bill is principally supported by the American Civil Liberties Union, Common Cause and the AFL–CIO. I suggest that each of these organizations has sufficient funds to promote their liberal laws and social reform without saddling the American taxpayer with the expense through legal service lawyers. I have left out one group of supporters—the legal service lawyers who occupy the galleries during debate on this bill. To them, I suggest that there will be plenty of work for lawyers representing the poor on an individual basis. If the legal service lawyer is of the activist type who wishes to work social reform and get notice from the news media by class action suits to obtain legal reform, there is plenty of opportunity elsewhere for their talents. Perhaps they would not be able to handle, or have no desire to handle, the run of the mill divorce case, a garnishment, evictions, bankruptcies, repossession of merchandise, the type of service which I believe the poor really need.

Mr. President, Congress was at fault in 1966 and 1967 in not providing restrictions and guidelines as to what it wanted legal services to do. We were "sold a bill of goods". Many of us, if not most of us, thought of legal services as meeting the frustrations in the lives of its poor clients—handling divorce cases, evictions, social security problems, welfare, bankruptcies, repossession of merchandise, line fence and property line disputes. We were led astray because at that time the overwhelming percent of cases handled by legal services fell into such categories.

Mr. President, Congress did not anticipate the radical change that was about to begin in the activities of legal services. We did not foresee the change in philosophy. Legal services entered the field of "law reform", selecting cases in the form of class action suits designed to benefit not just a single client, or a small group, but thousands in the affected class. Legal staff attorneys, paid from tax funds, began to sue State, local and federal officials in class action suits. Numerous instances of irregularities were publicized as legal service's attorneys acted on behalf of the "voluntary poor" hippies, draft evaders, black militants and even accused criminals. Legal services attorneys became lobbyists before federal and state legislatures; they took on the job of registering people to vote in the political party which the particular legal service employee advocated. They took up the job of organizing the poor into labor unions.

With the change in philosophy the attorney-client relationship fell by the wayside. The lawyer, not the client, dictated the action to be taken. In many cases the action taken was to the adverse interests of the client and his actual desires.

Mr. President, I want to state as strongly as I can that I am for government paid legal services for the poor in non-criminal cases. The poor deserve the legal services—good legal services in handling such things as divorce cases, child support from the runaway father, evictions, eligibility for welfare, repossession of merchandise which some

unscrupulous merchant sold them, bankruptcies, line fence disputes, etc.

An evaluation of class action suits by legal service attorneys was made by Harry Brill, now a professor at the University of Massachusetts and former director of the San Francisco Neighborhood Legal Assistance Foundation and placed in the Congressional Record on January 23 by Senator Tower.

I quote from that article:

What the Foundation has done poorly, unsuccessfully, or not at all must be tallied alongside its real accomplishments. And such an accounting unfortunately reveals that the effects of the Foundation's class action suits have been minimal or even harmful.

Unfortunately, a very large proportion of class action legal victories do not in fact lead to actual social and economic gains. Unlike individual cases, in which favorable legal decisions are readily translated into real gains, class action involves more difficult hurdles—often insurmountable ones. The Foundation won several paper victories in which court orders were ignored because of an inability to comply. For example, the Foundation obtained a favorable decision against the Welfare Department's low rent allotment to recipients. The court ruled that it must be increased to a more realistic figure. The Department, however, was unable to comply without receiving assurances of additional funds from the state legislature. Though the Foundation made legal headway, no concrete gains were achieved for the people on welfare.

Senator McClure put into the record of January 23rd the proceedings of the National Legal Services Colloquim held in Vail, Colorado. I was particularly interested in the recommendations which came out of that meeting with respect to group actions. I quote a portion of the advice given to legal services lawyers:

"Whenever possible, a Legal Services attorney should act on behalf of a client group rather than an individual client. This brings involvement of the poor; some education about the processes that control their lives and how to deal with them; provides a vehicle for resort to the news media; more credibility in dealing with legislators; and a mechanism for the involvement of groups made up of non-poor persons.

General community representation can be successful in some cases, especially if you happen to command instant attention from the press as in the case with Ralph Nader. Many of the bills that Legal Services lawyers will push are not, however, earth-shattering news stories. In such the news angle may initially be in the group and in its activities.

You can find other allies, preferably already organized in some form or another, wherever you can find some sort of similarity of interest, or parallelism, between the two in the particular legislation. (It would not be unheard of, either, to put in "sweeteners" desirable to other groups you wish to enlist.)

You ought to look to church groups; labor unions; women's clubs and groups, such as the League of Women Voters; partisan political groups; bar associations; university and law faculties; editorial writers; state executive agency officials concerned about the problem; close friends of a key legislator; and "allies of opportunity."

Mr. President, this is the type of thing we have been spending some $70 million per year of the taxpayers' money to support and which the Committee bill would spend even more.

The cases of misuse of funds which Congress provided for legal services to the poor are legion.

In Los Angeles, the Western Center on Law and Poverty filed a suit against the California Youth Authority on behalf of thirteen employees who had been suspended or demoted. The national office agreed with critics that the clients' "incomes place them in the middle or upper income brackets." But the Western Center argued that representation was proper because the clients had been turned down by three private attorneys.

In St. Louis, Governor William Hearnes vetoed a $390,359 grant for the Legal Aid Society of St. Louis, "charging that the project had represented rent strikers in a public housing project, black militants involved in a church confrontation, and black students accused of mutilating an American flag." Investigation proved that a number of the clients were "clearly ineligible."

In New Orleans, the New Orleans Legal Assistance Corporation defended twelve members of the black militant National Committee to Combat Fascism when they were arrested after a two-day shoot-out with police. In Michigan, Upper Peninsula Legal Services turned out to have 25% of its caseload in criminal litigation contrary to the OEO statute.

Senator Mondale, in introducing his version of independent legal services corporation, referred to their current program:

"This program has done more than cope with the individual problems of individual clients. Recurring patterns of problems—affecting large numbers of the poor—have been discovered and effectively addressed.

"Broad social reform has resulted from legal services cases which:

"Eliminated welfare's 'man-in-the-house' rule and residency requirement;

"Granted tenants in public and private housing substantial new rights in dealing with their housing problems;

"Obtained minimum justice for migrants and farm workers by reducing illegal border crossing and requiring enforcement of minimum wage legislation;

"Forced the Department of Agriculture to feed hungry people as the law requires."

These may be all laudable actions in the opinion of the Senator from Minnesota. I might agree with the Senator from Minnesota that some of these social reforms may be desirable, but I cannot agree that the Legal Service Corporation was the right vehicle to obtain them.

Mr. President, in conclusion, I urge approval of my amendment because it would establish the traditional lawyer-client relationship for legal service attorneys.

AMENDMENT NO. 810

Mr. HELMS. Mr. President, I yield myself such time as I may need to call up my amendment at the desk No. 810 and to ask that it be stated.

The PRESIDING OFFICER (Mr. BARTLETT). The amendment will be stated.

The assistant legislative clerk read as follows:

Amendment intended to be proposed by Mr. HELMS to S. 2686, a bill to amend the Economic Opportunity Act of 1964 to provide for the transfer of the legal services program from the Office of Economic Opportunity to a Legal Services Corporation, and for other purposes, viz:

On page 14, strike out lines 5 through 7.

Mr. HELMS. Mr. President, if I have read the attitudes correctly of Senators on this floor today, I have heard declarations that no one is in favor of political lawyers financed by the taxpayers of this country.

EXTENSION OF TIME FOR REPORTING S. 1541

Mr. PERCY. Mr. President, will the Senator from North Carolina yield?

Mr. HELMS. I yield.

Mr. PERCY. Mr. President, I ask unanimous consent that the previous order of referral of S. 1541 to the Committee on Rules and Administration with instructions to report by February 1 be vacated.

I ask unanimous consent that S. 1541, the Federal act to control expenditures and to establish national priorities, otherwise known as the Budget Control Act, be referred to the Committee on Rules and Administration with instructions that the bill be reported to the Senate not later than February 25, 1974.

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

Mr. PERCY. Mr. President, this unanimous-consent agreement reflects an understanding with the distinguished Senator from West Virginia (Mr. ROBERT C. BYRD) who is chairman of the Subcommittee on the Standing Rules of the Senate of the Committee on Rules and Administration. It also reflects discussions with the ranking minority member of that subcommittee, the distinguished assistant minority leader, Senator GRIFFIN, and the chairman, Senator CANNON, and ranking minority member. Senator COOK, of the Committee on Rules and Administration. During these discussions, Chairman ERVIN and I have been assured that when S. 1541 is reported on February 25 it will be immediately scheduled for floor action.

This new unanimous-consent agreement has the effect of extending, by a period of 3 weeks, the time during which the Committee on Rules and Administration may complete its work on the budget control bill. S. 1541 was ordered reported by the Government Operations Committee on November 8. On November 28 the bill was formally reported with Senate Report No. 93–579. On November 30, 1973, the bill was referred to the Committee on Rules and Administration to report back by January 21, 1974. On December 7, 1973, the previous order was vacated and the bill was by unanimous consent referred to the Rules Committee until February 1, at which time it was automatically to be placed on the calendar.

Mr. President, I would like to commend the distinguished assistant majority leader, for the diligence with which the Subcommittee on Standing Rules of the Senate has undertaken its work on this very complex and important legislation. The staff of the Rules Committee began work on the bill in December, and continued immediately after the Christmas vacation with hearings on January 15. These hearings were preceded, and have been followed, by intensive work by the staffs of the Government Operations Committee, the Rules Committee, and other committees and joint committees of the Senate and the House which have an interest in this legislation. This group includes staff of the Finance Committee, the Appropriations Committee, seven authorizing committees, the Joint Economic Committee, the Joint Committee on Internal Revenue Taxation, the Joint Study Committee on Budget Control, and the House Appropriations Committee. To the credit of the Rules Committee, all committees of the Senate have been given full opportunity to comment on the bill and to participate in staff discussions. During the past week these staff

representatives have met every day, usually all day, in an effort to agree on a bill. I have been kept informed daily of the progress of these exhaustive discussions. Underlying them is a determination on the part of all those committees and members represented that consensus will be reached and that differences about provisions of the bill will be resolved. Based on this understanding, and on evidence that an intensive effort is every day being made to report legislalation which achieves the objective of budget reform, I do not hesitate to agree to an extension to February 25 of the date by which the Rules Committee will report the bill.

I want to express to the distinguished gentlemen from West Virginia, my appreciation for his interest in this bill. I know my appreciation is shared by the chairman of the committee. I have no doubt that it will be better legislation because of his interest. We are equally indebted to Senator CANNON, chairman of the Committee on Rules and Administration, Senator COOK, the ranking minority member, and Senator GRIFFIN, the ranking minority member of the Subcommittee on the Standing Rules of the Senate, for their assistance. I also want to express appreciation for the skillful leadership of the Rules Committee staff director, Mr. William Cochrane, and of Mr. Herbert Jasper who I understand has been doing a masterful job as chairman of the staff group that is working on this legislation. The counsel for the minority, Mr. Joseph O'Leary and Mr. Games Medill, have also been most helpful.

Mr. President, based on these reports, and upon my discussion with the leadership, I feel confident that the Rules Committee will report to the Senate on February 25 a better bill, a bill that preserves, and strengthens, the objectives of reform of the congressional budget process, and a bill that hopefully can be supported by all committees and Members of the Senate.

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

Mr. HELMS. I yield.

Mr. ROBERT C. BYRD. Mr. President, I do not presume to speak for the chairman of the Committee on Rules and Administration, who is present on the floor, but I should like to say to the distinguished Senator from Illinois (Mr. PERCY) that he has made an inadvertent oversight. I should like to call to his attention that in my discussions with him, I made clear that, with regard to my request for further time on this bill before reporting it back to the Senate, it was with the full concurrence of, and was after consultations with, the distinguished chairman of the Committee on Rules and Administration, the Senator from Nevada (Mr. CANNON). He is also a member of the Subcommittee on Rules and Administration.

The Senator from Illinois mentioned the distinguished assistant Republican leader, the Senator from Michigan (Mr. GRIFFIN), he mentioned me, for which I am grateful; but I am sure the Senator from Illinois would want to include the Senator from Nevada, the chairman of the Committee on Rules and Administration, who was fully conversant with everything that was done and was agreeable to the idea of a reasonably short further delay.

Mr. PERCY. If the Senator from North Carolina will yield to me further, let me say to the distinguished Senator from West Virginia (Mr. ROBERT C. BYRD) that the omission was entirely inadvertent. Certainly, the Senator from Nevada (Mr. CANNON) has been extremely cooperative and very helpful and I wish to commend him now, as I have on several other occasions, for the outstanding work of the Committee on Rules and Administration in improving the quality of the bill. We have appreciated that very much indeed.

Mr. ERVIN. Will my distinguished colleague from North Carolina yield to me for 30 seconds?

Mr. HELMS. I am glad to yield to my senior colleague.

Mr. ERVIN. Mr. President, I am pleased to concur in the unanimous-consent request by the distinguished Senator from Illinois (Mr. PERCY) that S. 1541, the budget control bill, be referred to the Committee on Rules and Administration with instructions that the bill be reported to the Senate not later than February 25, 1974, and be automatically placed on the calendar at that time.

Members of the staff of the Committee on Rules and Administration are working diligently every day with staff members of the Government Operations Committee and the other committees and joint committees which have an interest in this important bill. This staff group has been led by Mr. Herbert Jasper, who is working under the outstanding direction of my fellow North Carolinian, William McWhorter Cochrane, the staff director of the Committee on Rules and Administration. I am assured that they are making excellent progress in resolving questions that various Senators have raised about S. 1541 as it was reported by the Committee on Government Operations.

This is a very complex bill that will have far-reaching effects on how the Senate and House of Representatives deal with authorization and appropriation measures in order to devise a congressional budget. The Government Operations Committee and its Subcommittee on Budgeting, Management, and Expenditures spent 10 months developing the bill in its present form, and I well understand the magnitude of the task facing the Committee on Rules and Administration in handling the bill in a short period of time.

Under the leadership of the chairman, Senator CANNON, and the distinguished assistant majority leader, Senator ROBERT C. BYRD, who serves as chairman of the Subcommittee on the Standing Rules of the Senate, the committee is making remarkable progress toward producing a strong bill that will satisfy an overwhelming majority of the Senate.

Mr. President, the 93d Congress can make no more important contribution than enactment of a bill that enables us to get a handle on the Federal budget. For generations, we have operated under a haphazard system of dealing with Federal expenditures, revenues, and deficits, and we desperately need to devise a method of overall control of the budget. We can do this while maintaining the viable roles played by the existing committees of the Senate and House, and I know the Committee on Rules and Administration will perform this task during the month of February. It will be an essential step in redressing the constitutional balance of power between the executive and legislative departments of our Government.

Mr. CANNON. Mr. President, will the Senator from North Carolina yield to me for 30 seconds?

Mr. HELMS. I yield.

Mr. CANNON. Mr. President, I should like to say that it appeared at one point this bill would have gone through the Senate very hurriedly, without the adequate consideration and study it deserved. The distinguished Senator from West Virginia (Mr. ROBERT C. BYRD) has given it that study through the subcommittee and we have pointed out a lot of the deficiencies in the bill as it was presented. We are attempting to correct them and to write a bill that will achieve the desired result that all of us are interested in.

I asked initially for the extension of time that we first received to consider this matter, and I am happy that the proponents of the bill are willing to give us additional time so that the bill can be thoroughly reworked, so that it will achieve the desired result, with the help, I may say, of the proponents—and, really, I do not know that we have any opposition at all as long as we can work and get worked out a real, workable bill.

I thank the Senator for yielding me this time.

Mr. MAGNUSON. Mr. President, I wish that all Senators could spend the time, the long weeks and days, trying to arrive at a total budget figure that reflects fiscal responsibility. We on the Appropriations Committee do just that.

I dislike the implication that the Appropriations Committees of the Senate and the House have not done their job. In fact, we have cut the President's budgets by roughly $26 billion since he first took office.

Furthermore, I do not subscribe to somebody coming in when someone has been doing a good job and saying, "You have been doing fine, but someone else should now take over."

I hope you consider these implications. Otherwise, you are going to lose some of us who are responsible.

Maybe you can hold hearings, if you wish, in the Appropriations Committee. Maybe you can spend 3 months with 500 witnesses and finally, after sweating it out, come to a conclusion. But what is the use if the final decision is referred to others.

Mr. PERCY. The distinguished Senator has left the implication that the Senator from Illinois has——

Mr. MAGNUSON. I do not mean the Senator from Illinois.

Mr. PERCY. In some way detracted from the work of the Appropriations Committee. The Senator will recall that the Senator from Illinois served on the Appropriations Committee, and at no time has the Senator from Illinois ever said anything about the budgetary process when he did not quote from the joint committee and the report filed by the joint committee on which the following Members of the Senate Appropriations Committee served, Senators McCLELLAN, HRUSKA, STENNIS, PASTORE, BIBLE, YOUNG, and COTTON.

The Senator from Illinois did not even serve on that committee, but I have felt free to quote from that report; and I have never gone beyond the words of that report, which the distinguished Senator I just named signed, as the evidence that a budgetary committee and a budgetary process now is needed.

Furthermore, the most important changes we are proposing are to have back-door spending put under the control of the Appropriations Committee, because I was aghast to find that the Appropriations Committee did not control the budget as such. In fact, 56 percent of the budget does not even go through the appropriation process.

Mr. HELMS. Mr. President, I have the floor.

The PRESIDING OFFICER. The Senator from North Carolina has the floor.

Mr. MAGNUSON. I am glad to have the assurances that the Appropriations Committee is given a little consideration around here.

LEGAL SERVICES CORPORATION ACT

The Senate continued with the consideration of the bill (S. 2686) to amend the Economic Opportunity Act of 1964 to provide for the transfer of the legal services program from the Office of Economic Opportunity to a Legal Services Corporation, and for other purposes.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that I may yield 5 minutes of the 1 hour allotted to me under the cloture rule to the distinguished Senator from North Carolina, because I am sure that we have consumed that much of his time in discussing the budget reform bill.

The PRESIDING OFFICER. Is there objection?

Mr. JAVITS. Mr. President, reserving the right to object—and I will not object—I think it should be made clear to the Senate that we will object when it is just an arbitrary proposition.

The PRESIDING OFFICER. The Senator has a right to object or not object, but this is on the Senator's time.

Mr. JAVITS. I yield myself 30 seconds of my time to state that we will not object to these requests for changes where there is a reason for it, as there is here; but we reserve the right to object when it is just passing time around.

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

The PRESIDING OFFICER. That, of course, takes unanimous consent, and the Senator has that right.

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.

Mr. ROBERT C. BYRD. Mr. President, why does it require unanimous consent for the Senator from North Carolina to suggest the absence of a quorum?

The PRESIDING OFFICER. The Chair was addressing the Senator from New York.

Mr. ROBERT C. BYRD. I thank the Chair. I misunderstood.

The PRESIDING OFFICER. With respect to objecting to the transfers of time.

Mr. ROBERT C. BYRD. We had quite a long discussion earlier today on the point to which I thought the Chair was addressing itself.

The PRESIDING OFFICER. Does the Senator from North Carolina suggest the absence of a quorum?

Mr. HELMS. I do, Mr. President.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. HELMS. 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. HELMS. Mr. President, I ask unanimous consent that I may withdraw temporarily the amendment I just called up.

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

Who yields time?

Mr. HELMS. Mr. President, I yield to the Senator from Idaho.

Mr. McCLURE. Mr. President, I ask unanimous consent that Margo Carlisle of my staff be accorded the privilege of the floor at all stages of the proceedings on the bill now pending.

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

AMENDMENT NO. 958

Mr. BROCK. Mr. President, I call up my amendment 958.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

On page 24, line 16, strike out "FINANCING" and insert in lieu thereof: "FINANCING AND APPORTIONMENT".

On page 25, between lines 12 and 13, insert the following new subsection:

"(d) All funds appropriated pursuant to this section shall be apportioned among the States in amounts prorated according to the proportion of the Nation's poor residing in such States. The poverty definition shall be established by the Office of Management and Budget.".

Mr. BROCK. Mr. President, this amendment should not raise the political hackles as did some of the other amendments. It states:

All funds appropriated pursuant to this section shall be apportioned among the States in amounts rated according to the proportion of the Nation's poor residing in such States. The poverty definition shall be established by the Office of Management and Budget.

The purpose of the amendment is obvious. It is rather simple and open on its face. The purpose is to guarantee that a poor person in Tennessee, Kansas, or Oklahoma has the same privilege as a poor person residing in another State. As the bill is now written more than 30 States are penalized. They range from the State of Texas, to the States of Tennessee, West Virginia, Ohio, Pennsylvania, Iowa, Kentucky, North Carolina, South Carolina, Mississippi, Alabama, Virginia, Indiana, Arkansas, Louisiana, New Mexico, Kansas, and other States.

Just to give an example, the State of Kentucky would be underfunded on a professional basis by more than $1 million. North Carolina would be underfunded more than $1.6 million. I do not think the amendment takes a great deal of conversation. It simply provides that every State should receive funds on the basis of those who are poor who reside in the State or in the affected area, regardless of where they live.

I urge the adoption of the amendment.

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

Mr. HATHAWAY. 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. HATHAWAY. 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. HATHAWAY. Mr. President, while at first blush this amendment may appear to be effective or equitable in the distribution of funds, actually it is not, because in the first place there is not that much money allocated, and if we did divide it up in accordance with the formula of the Senator from Tennessee, probably no State would have a sufficient amount to do a creditable job.

Second, many States are not geared up to do much of anything with money they would receive from the Federal Government, while other States are so geared. This is especially true in view of the low amount that has been authorized and will be appropriated. We would be better advised to continue the present practice.

I assume the corporation is going to continue what Mr. Arnett already has established as the Director of OEO, and that is to distribute the money to those States which show the need and which are equipped to handle the program.

Mr. JAVITS. Mr. President, I yield myself 1 minute.

The PRESIDING OFFICER. The Senator from New York is recognized.

Mr. JAVITS. Mr. President, the real problem with this amendment is that it cuts down the efficacy and the efficiency in terms of the good service of the Legal Services program to the lowest common denominator because it has no reference

whatever to the effectiveness of the job and it is simply mechanical as to whether anyone is ready to receive the money or not.

The amount of the authorization is increased beginning in 1975 and 1976.

I express my intention now, standing here as the ranking minority member of the committee which exercises legislative oversight, to see that there is every effort to comply with exactly this standard based upon the competence of the programs and the competence to receive the money and to do something effective with it.

In view of the fact that we are picking a very high-level board and really making this a national legal aid operation with tremendous authority in the bar, it would be very unwise to make it mechanistic in this way and thereby risk a serious dilution of the money.

Mr. President, I hope the amendment is rejected.

Mr. BROCK. Mr. President, I yield myself an additional 3 minutes.

The PRESIDING OFFICER. The Senator from Tennessee is recognized.

Mr. BROCK. Mr. President, I wish to state that I intend to ask for the yeas and nays on the amendment.

I am fascinated by the arguments. I am fascinated by the statement of the Senator from Maine that this would demolish the bill because there is not enough money in the bill to do a job in 50 States and therefore nothing would happen anywhere. If that is the case, the bill is underfunded now. Why do we not go ahead and ask for what is necessary to do the job. The argument is not attractive for that reason.

Second, the Senator from New York indicates an interest in trying to obtain a better grade of equity when the funding goes up. I would be happy to modify my amendment when the quantity of money would go up but I do not get any indications that such a modification would be accepted here.

Mr. HATHAWAY. Mr. President, I would be glad to discuss with the Senator an increase in the authorization, and some triggering mechanism under which the appropriation of so many dollars would reduce the Senator's formula. However, I understand the administration would not recommend any more than the amount authorized. That is why I made the comment that I did.

Mr. BROCK. The logic of the Senator from Maine is because we have a limited amount of funding we have to apply it disproportionately in some States, and he is saying the poor in some States are not going to be given adequate representation so discrimination and inequity are being brought into the legislation in the beginning. As I said, the number of States that are penalized by the present approach exceed 30 States. That covers 60 percent of the people of this country, people who will be disadvantaged by this funding formula.

I just do not understand what the difference is between a poor person in Tennessee, a poor person in Texas, and a poor person in New York.

I am reminded that Tennessee is close to the garden region of North Carolina. It is also part of the garden region of the South.

Mr. HATHAWAY. Mr. President, if the Senator will yield, I shall be glad to discuss some suggested language with him that I think would accomplish his purpose, and we could have a quorum call for that purpose.

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

The yeas and nays were ordered.

Mr. BROCK. 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. BROCK. 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. BROCK. Mr. President, I ask unanimous consent that a chart headed "Office of Legal Services Funding Comparison by States" which shows what the current spending level would be today under the pending bill as opposed to the funding level by States under my amendment, based upon the number of citizens in the State be printed in the RECORD.

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

OLS FUNDING COMPARISON BY STATES

State	Total funding	Percent of poor	Percent of funding	Percent variation	Dollar variation
Connecticut	$1,436,400	0.78	2.64	+1.86	+$1,010,992
Maine	534,056	.48	.98	+.50	+271,772
Massachusetts	2,184,386	1.74	4.01	+2.27	+1,233,845
New Hampshire	359,826	.24	.65	+.41	+222,853
Rhode Island	470,309	.37	.87	+.50	+271,772
Vermont	332,016	.19	.66	+.47	+225,466
New Jersey	2,840,282	2.11	5.22	+3.11	+1,690,422
New York	6,559,326	7.32	12.06	+4.74	+2,576,398
Delaware	100,961	.21	.19	−.02	−10,871
District of Columbia	1,148,000	.45	2.11	+1.67	+907,718
Maryland	0	1.43	0	−1.43	−777,268
Pennsylvania	2,117,253	4.53	3.89	−.64	−347,868
Virginia	182,459	2.55	.34	−2.21	−1,201,232
West Virginia	750,217	1.40	1.38	−.02	−10,871
Alabama	112,274	3.16	.21	−2.95	−1,603,455
Florida	1,526,334	4.01	2.80	−1.21	−657,688
Georgia	738,350	3.41	1.36	−2.05	−1,114,265
Kentucky	404,214	2.65	.74	−1.91	−1,038,169
Mississippi	629,268	2.83	1.16	−1.67	−907,718
North Carolina	356,449	3.67	.66	−3.01	−1,636,067
South Carolina	356,430	2.19	.66	−1.53	−831,622
Tennessee	527,320	3.08	.97	−2.11	−1,147,300
Illinois	2,645,073	4.10	4.86	+.76	+413,093
Indiana	809,538	1.82	1.50	−.32	−173,934
Michigan	2,382,650	3.02	4.38	+1.36	+739,220
Minnesota	482,545	1.47	.89	−.58	−315,226
Ohio	$1,852,075	3.84	3.40	−0.44	$−239,159
Wisconsin	814,402	1.55	1.50	−.05	−27,117
Arkansas	132,493	1.93	.24	−1.69	−918,589
Louisiana	816,535	3.44	1.50	−1.94	−1,054,475
New Mexico	333,891	.84	.61	−.23	−125,015
Oklahoma	455,398	1.71	.84	−.87	−472,883
Texas	1,935,871	7.55	3.56	−3.99	−2,168,740
Iowa	422,244	1.17	.78	−.39	−211,982
Kansas	302,410	1.02	.56	−.46	−350,030
Missouri	1,007,296	2.98	1.85	−.63	−442,433
Nebraska	306,050	.69	.56	−.13	−70,661
Colorado	967,800	.97	1.78	+.81	+540,271
Montana	460,238	.34	.85	+.51	+377,207
North Dakota	15,000	.34	.03	−.31	−268,499
South Dakota	240,825	.44	.44	0	0
Utah	259,336	.44	.48	+.04	+21,742
Wyoming	95,410	.14	.18	+.04	+21,742
Arizona	1,565,389	.97	2.87	+1.90	+1,132,734
California	10,253,398	7.94	18.80	+10.86	+5,902,888
Hawaii	346,000	.25	.64	+.39	+211,982
Nevada	158,915	.16	.29	+.13	+70,661
Alaska	488,495	.13	.90	+.77	+618,529
Idaho	112,085	.34	.21	−.13	−70,661
Oregon	404,140	.87	.74	−.18	−70,661
Washington	622,750	1.24	1.15	−.09	−48,919

Mr. BROCK. Mr. President, I have nothing further.

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

The assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Indiana (Mr. HARTKE), the Senator from Alaska (Mr. GRAVEL), and the Senator from Georgia (Mr. TALMADGE), are necessarily absent.

Mr. GRIFFIN. I announce that the Senator from Virginia (Mr. WILLIAM L. SCOTT) is absence on official business.

I further announce that the Senator from Kentucky (Mr. COOK), the Senator from Wyoming (Mr. HANSEN), and the Senator from Oregon (Mr. HATFIELD) are necessarily absent.

I further announce that, if present and voting, the Senator from Kentucky (Mr. COOK) would vote "nay."

The result was announced—yeas 28, nays 64, as follows:

[No. 21 Leg.]

YEAS—28

Allen	Curtis	McClellan
Baker	Dole	McClure
Bartlett	Eastland	Nunn
Beall	Fannin	Stennis
Bellmon	Goldwater	Stevens
Bennett	Griffin	Taft
Brock	Gurney	Thurmond
Byrd, Harry F., Jr.	Helms	Tower
Chiles	Hruska	Young
	Mathias	

NAYS—64

Abourezk	Biden	Cannon
Aiken	Brooke	Case
Bayh	Buckley	Church
Bentsen	Burdick	Clark
Bible	Byrd, Robert C.	Cotton

Cranston	Kennedy	Pell
Domenici	Long	Percy
Dominick	Magnuson	Proxmire
Eagleton	Mansfield	Randolph
Ervin	McGee	Ribicoff
Fong	McGovern	Roth
Hart	McIntyre	Schweiker
Haskell	Metcalf	Scott, Hugh
Hathaway	Metzenbaum	Sparkman
Hollings	Mondale	Stafford
Huddleston	Montoya	Stevenson
Hughes	Moss	Symington
Humphrey	Muskie	Tunney
Inouye	Nelson	Weicker
Jackson	Packwood	Williams
Javits	Pastore	
Johnston	Pearson	

NOT VOTING—8

Cook	Hansen	Scott,
Fulbright	Hartke	William L.
Gravel	Hatfield	Talmadge

So Mr. BROCK's amendment (No. 958) was rejected.

Mr. NELSON. Mr. President, I move to reconsider the vote by which the amendment was rejected.

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

The motion to lay on the table was agreed to.

Mr. MANSFIELD. Mr. President, I yield myself 2 minutes.

Mr. TOWER. May we have order, Mr. President?

The PRESIDING OFFICER. The Senate will be in order.

Mr. MANSFIELD. I would like to have the attention of the Senate, so that, if possible, we could be able to get a rundown as to the number of amendments still to be offered, and in that way Senators could be able to gauge the rest of their day accordingly.

I ask the Senator from Tennessee (Mr. BROCK), the Senator from Texas (Mr. TOWER), and the Senator from North Carolina (Mr. HELMS) if they have any idea as to how many amendments will be offered.

Mr. BROCK. Mr. President, if the Senator will yield, I think the Senator from North Carolina and I would limit ourselves to one final amendment, which will be an amendment in the nature of a substitute for the entire bill.

Mr. MANSFIELD. The Senator from Texas?

Mr. TOWER. I have two amendments which I intend to call up. I have others; I am uncertain in my mind whether I will call them up. There is a strong possibility I will not.

Mr. MANSFIELD. Well, the Senator never takes too much time, anyway, so even if he does it will not take too long.

Are there any others? On that basis, then, it looks as though we will have three amendments, and that we will be able to get to a final vote around 5 o'clock.

I thank the Senators for their cooperation and understanding.

Mr. HART. Mr. President, I yield myself 1 minute.

I ask unanimous consent that a member of my staff, Darryl Gorman, be permitted the privilege of the floor for the remainder of the consideration of this measure.

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

Mr. TUNNEY. Mr. President, I am proud to add my name to the prominent list of supporters of S. 2686, a bill which deservedly has the support of the American Bar Association, California State Bar, Los Angeles County Bar, San Francisco Bar, the National Legal Aid and Defenders Association, and over 25 State and local bar associations, as well as many others. The bill assures the independence of attorneys representing the poor, strengthens our judicial system and is flexible and open in its search for new methods of financing legal services.

I heartily commend the Subcommittee on Employment, Poverty, and Migratory Labor, as well as the full Labor Committee for this important bipartisan effort. Through months of delicate negotiations, the subcommittee and the administration were able to reach agreement. While I would have supported a bill with even greater assurances of independence for Legal Services attorneys, as the product of a compromise, S. 2686 is a bill acceptable to all concerned. Therefore, echoing the sentiments of Melvin Laird, Counsellor to the President for Domestic Affairs, in his letter to Senator NELSON of October 4, 1973, I, too, am pleased that the full Senate has been presented a bill which assures the "freedom of the attorney to represent his client, and maintains a vital program."

In 1964, Congress made a commitment to equal justice for all in our criminal courts when it passed the Criminal Justice Act insuring representation for indigent criminal defendants. As a result of this commitment, both the judicial system and public faith in the workings of government were strengthened.

Now, as the President stated on May 15, 1973, it is time to extend this commitment to those seeking redress through our civil law by establishing a Legal Service Corporation.

The President stated:

> America's system of law now requires equal treatment for all in our courts of criminal justice. It is no less important that equal access be afforded those who seek redress through our civil laws.

The truth is becoming increasingly clear: Rights granted and protected under the civil law often have a more profound effect on the lives of law-abiding Americans than those protected under the criminal law.

While welcoming the President's support of this bill, I feel compelled to note that it is this President and this administration which, in 1971, vetoed a bill containing provisions similar to S. 2686; and it is this administration which, during the first half of 1973, used all its influence to dismantle the OEO legal services program, a program which, since its enactment in 1965, has reflected the Congress commitment to legal representation for all Americans.

In recent years, both the nature and number of the average citizen's legally protected rights have changed. We have more laws; they are more complex; they deal less with traditional property disputes and more with the environment, job safety, medical care, consumer protection, retirement disability, and other aspects of our personal lives. Because these new rights intimately affect all Americans, unlike the traditional property rights which affected only property owners, the need for representation of all citizens has increased.

Today, Americans at all levels of the economic structure are growing increasingly frustrated by their inability to get access to the legal forums whose decisions affect their lives. It is our obligation as Senators to see that important rights in the civil area are not surrendered either because people cannot afford an attorney or because the high cost of legal services makes the vindication of such rights uneconomical.

Lest there be any doubt about the effectiveness of Government-sponsored Legal Services programs, let us examine the track record. Programs support the handling of over 1½ million cases each year; 18 percent of the cases involve consumer and employment problems; 42 percent involve family problems such as divorce and annulment proceedings; 9 percent involve administrative problems such as the handling of veterans cases, and 20 percent concern other important rights.

In addition to the large number of cases handled, there is evidence that high quality representation is being provided. The figures show that of those cases litigated, 72 percent are won and 6 precent settled while only 12 percent are lost. Furthermore, Government Legal Services attorneys have been successful in avoiding needless litigation by promoting fair settlements. GAO reports indicate that only 28 percent of Legal Services cases lead to court actions with only 1 percent involving appeals.

Sometimes, the voluminous publicity surrounding landmark litigation often brought by Legal Services attorneys creates the mistaken impression that Legal Services attorneys spend too much time trying to reform the law instead of dealing with the more mundane but critical, day-to-day problems of their clients. The evidence available simply refutes this contention. For example, after 16 days of hearings, three justices concluded that from 95 to 98 percent of the cases handled by California Rural Legal Assistance dealt with day-to-day problems. A 1973 GAO report noted that Legal Services attorneys lack sufficient time to devote to law reform cases.

The Judiciary Subcommittee on Representation of Citizen Interests, which I chair, recently held 6 days of hearings concerning the effect of legal fees on the adequacy of representation. These hearings, and the responses which they invoked from citizens across the Nation, clearly showed that we must, as a country, commit ourselves to finding new methods of delivering legal services to all Americans, the middle class as well as the poor.

As we tackle this enormous, but crucial task, the bill presently on the floor is to be applauded; for S. 2686 upholds two principles which must be basic to any legislation in the area of citizen representation.

First, legal representatives must be independent; regardless of whether they are supported by grants, tax incentives, or salary checkoffs, lawyers must be as-

sured of the freedom to decide what types of cases they handle or in what forums their clients' interests may be best represented, subject only to those restraints placed upon the profession at large. In order to guarantee strong independent legal representation, legal representatives must be assured insulation from the sources of the political pressures and the governmental abuses which they seek to check.

Second, there must be room for flexibility and experimentation. Section 1007 (g) of S. 2686 provides for an independent study of demonstration projects, and alternative and supplemental methods of delivering legal services, including, but not limited to, judicare vouchers, prepaid legal insurance, and contracts with law firms. As the need for finding new methods of financing legal services is not peculiar to the poor, all Americans will benefit from this study. This is a subject of extreme interest to the subcommittee which I chair.

Therefore, I urge a strong show of support in the Senate for S. 2686 and would hope that the important principles affirmed by this bill would not be compromised by amendment or in conference.

I ask unanimous consent to insert certain statements in support of S. 2686, to which I have referred to, in the RECORD at this point.

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

THE STATE BAR OF CALIFORNIA,
San Francisco, November 20, 1973.

Re: National Legal Services Corporation.

Hon. JOHN TUNNEY,
Senate Office Building,
Washington, D.C.

DEAR SENATOR TUNNEY: I understand that S 2686, to establish an independent, federally funded national legal services corporation, is now before the full Senate for action, and that once passed it will go to conference committee to resolve differences between it and HR 7824.

As you know, legislation to establish a legal services corporation consistent with the principles of equal justice and the professionalism and independence of legal services lawyers continues to be of great interest to the State Bar of California. The July 18th statement of former State Bar President Leonard Janofsky contains an excellent exposition of those principles as applied to the deficiencies and restrictive provisions of HR 7824. A copy of his statement was previously sent to you and another copy is enclosed for your convenient reference.

Doubtlessly you are also aware that Leonard's statement has been endorsed, or similar statements have been adopted, by several local bar associations in our State. For example, the Trustees of the Los Angeles County Bar Association specifically approved the statement and Bill Shea, Los Angeles County Bar President, in announcing the approval, praised the statement as a well-reasoned and proper analysis of the several problem areas in the House bill.

We appreciate your continued interest in legal services for our nation's poor and look forward to your continued efforts for the establishment of an independent legal services corporation consistent with the basic principles which have been outlined in Leonard's statement.

Sincerely yours,

SETH HUFSTEDLER,
President.

STATEMENT OF LEONARD S. JANOFSKY, PRESIDENT OF THE STATE BAR OF CALIFORNIA

For some time the Board of Governors of the State Bar of California has closely watched the developments affecting the future of federally funded civil legal services for the poor. We have become increasingly concerned that the pending legislation to establish an independent, nonprofit corporation to continue that funding does violence to equal justice for all our citizens and the independence and professionalism of attorneys who would participate in legal services programs funded by that agency. This nation cannot tolerate one system of legal representation for the rich, and another inferior system for the poor.

The State Bar has supported the OEO program of funding local agencies to provide legal services to the poor virtually since the inception of that program. The State Bar has maintained an active, ongoing interest throughout the approximately eight years of the program's existence, and has opposed politically motivated efforts to restrict the independence and professional integrity of the attorneys who have labored throughout California and the rest of our nation to bring effective legal representation to the poor.

We have recognized for some time that continued federal funding is essential. Experience since the institution of OEO funding has demonstrated that volunteer services and funding from the private sector are not adequate to meet the legal needs of California's poor.

The State Bar has endorsed, for the last two years, the concept of an independent national legal services corporation to continue that funding free from political influences and interference. This endorsement was conditioned on the authorizing legislation containing strong safeguards to assure the professionalism and independence of lawyers in the program.

Independence and professionalism are not empty platitudes or concepts created for the benefit of lawyers. They are essential parts of our system of justice—a system premised on the lawyer's ability and obligation to represent his client's interests and to use the full scope of resources which are available to him as an advocate acting within our system of law.

We are a Nation of laws and adhere to the principle of equal justice for all. There can be no equal justice without equal representation before our judicial and legislative bodies. We cannot, as citizens or members of the legal profession, tolerate two systems of justice—one for the affluent and an inferior one for the indigent.

I am concerned that various provisions in the present form of the proposed legal services corporation bill would contradict or undermine the basic principles of equal justice for all and the professionalism and independence of legal services attorneys. Specifically:

By restricting the involvement of legal services attorneys in the legislative process, the bill would deny the poor person effective access to his Congress or state legislature in seeking resolution of legitimate problems.

The bill would have the corporation establish guidelines governing when appeals can be taken on behalf of clients. It also calls for guidelines governing when legal assistance can be provided to poverty groups and to poor people who want to form an organization for legitimate and socially useful purposes, such as an economic self-help group or day care center. This approach of requiring guidelines is potentially dangerous, especially in the case of group representation where the statutory language is virtually a mandate to the corporation to limit an important form of legal assistance.

The bill would prohibit continued funding of "backup centers"—programs which provide invaluable research, technical assistance, training and guidance for the many neighborhood legal services programs. The backup center concept is sound from an efficiency standpoint and the worth of these centers has been proven in practice.

The corporation would be subject to court awards of legal fees to defendants who prevailed in actions brought against them by legal aid programs funded by the corporation. In the vast majority of cases under our present judicial system the prevailing party is not entitled to an award of attorney fees. Why should the rule be different when poor people are being represented? This provision could bankrupt the already underfunded legal services program and stifle legitimate litigation—except in cases where victory is assured from the inception. We all know that those cases are few and far between. This provision would practically guarantee that poor people would be represented only when they are defendants.

The House has deleted from the bill references to the ABA's Canons of Ethics and Code of Professional Responsibility—insofar as they had reference to legislative advocacy and review of appeals. This must be disturbing to the legal profession. The deletion of these references manifests a lack of understanding that independent and professional representation of every client is mandated by the bar and the judicial system under which we operate.

The bill would effectively delegate to local bar associations the discretion and responsibility for hiring staff attorneys which properly belongs to local program boards of directors and directing attorneys. Input from, and involvement of local bars is essential but this dispersal of operational responsibilities is organizationally unsound.

The House has deleted from the bill a provision for three-year appropriation of funds for the proposed corporation. If the already drastically underfunded program of legal services for the poor is to be further subjected, on an annual basis, to political pressures and apparent lack of sensitivity to independent, professional legal services for the poor, then the future is indeed bleak.

The bill is now in the hands of the Senate where we hope for a version of legislation which is consistent with the basic principles required by the legal profession and its clients. But this is no cause for the legal profession to be optimistic or even temporarily complacent. We must all speak out now, in the strongest of terms, if our national leadership is to be responsive to the basic need for an effective system of justice for the poor. Without equal justice for all, justice for anyone is an illusion."

THE BAR ASSOCIATION OF SAN FRANCISCO,
San Francisco, Calf., November 8, 1973.

Hon. MIKE MANSFIELD,
Hon. HUGH SCOTT,
Hon. ALAN CRANSTON,
Hon. JOHN V. TUNNEY,
Hon. JAMES O. EASTLAND,
Senate Office Building,
Washington, D.C.

GENTLEMEN: On November 7, 1973, the Board of Directors of The Bar Association of San Francisco unanimously endorsed the pending bill to establish a National Legal Services Corporation in the form reported from Committee to the Senate floor the week of November 5, 1973.

The Bar Association of San Francisco has been a consistent supporter of the OEO legal service programs in San Francisco, the State of California and in the nation. Through appointment of our members to the Board of the governing body for the OEO legal service program in San Francisco, we maintain close liaison to that program. In addition many of our members have worked with a

variety of other OEO legal service programs as employees, volunteers or Board members. By these contacts we are convinced that the program continues to improve. If its relative independence from the vicissitudes of politics can be assured through the proposed corporation, we have no doubt that legal services to those who cannot afford to pay for them will be materially improved.

The Bar Association of San Francisco urges Senate passage of the pending bill.

Very truly yours,

MICHAEL TRAYNOR,
President.
ROBERT H. FABIAN,
President-elect.

TELEGRAM

JOHN TUNNEY,
U.S. Senate,
Capitol Hill, D.C.:

Whereas: Federally funded Legal Services programs are providing the much needed services of legal representation for the poor.

Whereas: The continuation of such programs is urgently needed so that the concept of justice and equality for all can become a reality.

Whereas: Fresno County Legal Services has been an excellent example of the constructive value of the Federal legal assistance program of providing competent legal services to low income people and in aiding the local legal community in dealing with low income persons.

Now, therefore, it is resolved:

1. The Fresno County Bar Association does hereby go on record as supporting the passage in Congress of a bill authorizing the establishment of a strong, independent public legal services corporation.

2. The Legal Services Corporation bill of the United States Senate's Committee on Labor and Public Welfare be adopted without any restrictive amendments.

3. Copies of this resolution be sent to our representatives in Government.

FRESNO COUNTY BAR ASSOCIATION.

AMENDMENT NO. 858

Mr. TOWER. Mr. President, I call up my amendment No. 858, and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The second assistant legislative clerk read as follows:

On page 19, after line 19, insert the following new paragraph:

"(7) to provide legal assistance under this title with respect to the desegregation of public schools or the transportation of schoolchildren to achieve racial balance.".

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

The yeas and nays were ordered.

Mr. TOWER. Mr. President, this amendment prohibits the Legal Services Corporation, any of its grantees, recipients, or staff attorneys from participating in any proceeding or litigation relating to the desegregation of public schools or the transportation of schoolchildren to achieve a racial balance.

Mr. President, Congressman WILMER D. MIZELL, of North Carolina, has provided me with evidence obtained from the Office of Economic Opportunity which shows that an OEO grantee for legal services, the Harvard Center for Law and Education, has participated extensively in the prosecution of at least eight such cases over the last few years, and that an average of $500,000 a year has been awarded by OEO legal services to the Harvard Center over the last 3 years to help finance these activities.

These eight cases I refer to specifically here today involve the school systems of Indianapolis, Ind.; Boston, Mass.; Stamford, Conn.; Dayton, Ohio; Suburban Pittsburgh, Pa.; Stockton, Calif.; El Paso, Tex.; and Detroit, Mich.

OEO files contain a status report on the Detroit case, Bradley against Milliken, now pending before the Supreme Court, written by a Harvard Center attorney from Ann Arbor, Mich. The report states in part:

This is the Detroit metropolitan school desegregation case in which we are cocounsel with the NAACP. . . . The case was begun in August of 1970, and after 50 days of trial and two trips to the court of appeals the district court found, in September of 1971, that Detroit is, as alleged, an illegally segregated school system.

Further hearings were held this spring as to relief, and on June 14, the district court held that a plan limited to Detroit proper would be constitutionally inadequate and educationally impractical—thus necessitating metropolitan relief affecting approximately 780,000 pupils in Detroit and 52 neighboring districts.

The attorney continues—

In our view, the State is constitutionally responsible for providing equality of educational opportunity, including "just schools" in place of racially identifiable schools, and certain educationally unjustified State policies contribute to rendering Detroit a racially identifiable system (65 percent black) compared to its neighbors.

Mr. President, I particularly call my colleague attention to the next passage which states:

Therefore, the State, which has no compelling interest in existing school district lines, is obliged to provide just schools for Detroit's children by disestablishing the interdistrict segregation. The State and suburban defendants contend that such relief is unauthorized unless it can be shown that suburban districts themselves have actively discriminated. To note that this is a landmark case on these issues is to labor the obvious.

Mr. President, this is, indeed, a landmark case, now pending before the U.S. Supreme Court. It involves over 800,000 people in a 1,952-square mile, tricounty area, as well as the litigation pending in at least seven other cities. I, for one, hope, however, that the landmark is established on the side of reason and responsibility for a change, and that the U.S. Supreme Court will reverse this incredible lower court ruling.

Nevertheless, my point in this debate is not the merits of any one case. My concern is that the American taxpayers, who have repeatedly shown their overwhelming opposition to forced busing, have been paying $1.5 million in the last 3 years to help the Harvard Center prosecute this busing case and others from the lowest court on through the appeals process. I can assure you that the people of Texas will not stand for Federal funding of desegregation suits brought against their schoolchildren which result in the forced busing of their children miles away from their homes at even greater expense.

The legal services program was intended to guarantee to every American the right to due process of law and the right to a competent defense in the courts. The program was not intended to be a boon to the advocates of forced busing of schoolchildren any more than it was intended to provide a bankroll for political activity.

I urge my colleagues to join me today in putting an end to this federally financed promotion of forced busing and in preventing these abuses of the past from becoming precedents for the future.

Mr. President, I urge my colleagues the adoption of my amendment.

I ask unanimous consent to have printed in the RECORD a letter from Representative WILMER D. MIZELL and pertinent material bearing on this issue.

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

IMPORTANT LEGISLATION PENDING TODAY

JUNE 19, 1973.

DEAR COLLEAGUE: It has come to my attention that the Office of Economic Opportunity's Legal Services Program has given substantial financial support for the last three years to promote a civil suit in Detroit calling for forced busing across school district lines.

The Legal Services Program has funded, at an average rate of about $500,000 a year, the Harvard Center for Law and Education, for its activity as co-counsel with the NAACP in the case.

I am today introducing an amendment to H.R. 7824, the Legal Services Corporation bill, to prohibit any more federal funds from being used in such promotion of cases involving forced busing.

I strongly urge your support for this amendment.

Sincerely,

WILMER D. MIZELL.

LEGAL SERVICES INVOLVED IN PROBUSING ACTIVITIES

The ruling last week by the Sixth U.S. Circuit Court of Appeals may become a critical factor in defeating a revolutionary proposal now on the verge of congressional approval: the Independent Legal Services Corporation to aid the poor.

In reaffirming the decision of a three-judge federal panel that the city and suburban schools of Detroit must be merged into a single district, the Appeals Court has more than aroused the anti-busing forces in Congress. It has also raised the alarm against enactment of the new corporation, even though the corporation is still expected to pass the House handily in its first big test, possibly this week.

Nevertheless, the corporation's future has been jeopardized by the fact that a number of legislators were furious to discover that a key legal services program, the Harvard Center on Law and Education, was instrumental in obtaining the Detroit verdict demanding a city-suburban merger, a desegregation solution so extreme that the Supreme Court refused to apply it to a Southern city, Richmond, Virginia, and its surrounding suburbs last month.

The OEO-funded Harvard Center, which became co-counsel with the NAACP on the Detroit case, is but one of roughly 20 legal services "back-up" centers which do intensive anti-poverty research, publish vast quantities of legal services material and press the courts to make earthshaking constitutional decisions that will tilt our current economic, political and social system to the left.

While such "back-up" centers are currently financed by the present anti-poverty program, a number of lawmakers have been incensed to discover that the new legal services corporation proposal will be in a position

to finance literally dozens of such radical legal services centers.

Moreover, the new corporation concept, which was approved by the House Education and Labor Committee without a single hour of hearings, will be even further removed from the control of Congress than the present legal services program.

Thus there is growing concern about the new corporation, with the likelihood that the House would now solidly sustain a veto of the proposal, a course of action hinted at by the President's subordinates.

Furthermore, there is the possibility that Michigan's Robert Griffin, the GOP whip in the Senate may end up swinging his influential weight against the corporation. The reason Griffin has emerged as a leading legislative opponent of busing.

"If Griffin becomes aware of the legal services involvement in forced busing," predicted one informed source, "he may persuade a lot of senators and congressmen to oppose the bill."

While the bill is still likely to pass in its present form, he added. "Griffin's response against the corporation proposal could firm up the President's initial resolve to veto."

The Harvard Center's involvement in zealously pushing integration isn't confined to the Detroit school case, either. In a recent report of its activities, the center referred to its interest in the following cases:

United States and Bradley v. Indianapolis School Commr's. "This is a school desegregation case which was brought by the government in 1968 and culminated in a favorable judgment, looking toward desegregation on a metropolitan basis, in August of 1971. When it appeared that the government was not going to push for effective relief, we assisted the NAACP to intervene on behalf of local black plaintiffs. . . . We expect to participate actively in further discovery and trial of this case."

Moss v. Stamford (Conn.) Board of Education: "We are assisting Norwalk-Stamford Legal Services (primarily Steve Hershey) with his action which was filed earlier this month. Our role so far has been to consult on the theory of the case and to advise on discovery and trial strategy. Stamford adopted and has largely implemented a pupil racial desegregation plan which imposes the burden of desegregation (in terms of pupils transported and schools closed) almost exclusively upon black and Spanish-speaking families. . . ."

Greenhouse v. Greco: "We are cooperating with University Legal Services, Washington, D.C., in this action which challenges racial segregation of parochial schools in the Roman Catholic diocese of Alexandria, Louisiana. We have participated in the preparation of pleadings and discovery and we shall help at trial, which is scheduled for December 1. The case involves some 10,000 children in 35 schools, of which all but two are practically all-white or all-black. The case is novel (a previous one like it in Louisiana ended when the schools desegregated before trial) and significant in that the schools receive substantial federal support and are segregated despite Title VI of the 1964 Civil Rights Act, and the parochial system is impairing public school desegregation by accommodating fleeing whites."

Hoots v. Commonwealth of Pennsylvania: "This case, filed in 1971 by Pittsburgh Legal Services, challenges the school consolidation process in suburban Pittsburgh. It is alleged that racially identifiable districts were created, despite the availability of feasible, less segregatory alternatives. It is also alleged that the district in which the plaintiffs reside is not viable economically or educationally. Upon request of the director of the Pittsburgh Legal Services Office, we have, on several occasions, given advice on the case. In July, 1972, we met here with local counsel to discuss a proposed pretrial statement."

Hernandez v. Stockton Unified School District: "We have been asked by California Rural Legal Assistance to file an amicus curiae brief in the California Supreme Court. The appeal urges that the lower courts erred, under California law, in denying desegregation relief, and we are asked to address certain broader desegregation considerations. We are considering participation."

Briefly, then, the current legal services program, supported by the taxpayers, is eagerly promoting busing and harsh desegregation methods at virtually every opportunity, even though the President has promised to point this country in an opposite direction. Yet the newly proposed legal services corporation, shorn of all safeguards against radical activism, represents the current legal services program raised to the third and fourth power. That's why a goodly number of lawmakers are now growing disenchanted with the new corporation set-up. But whether there are enough to defeat the corporation or provoke a Presidential veto is still an iffy question.

AMENDMENT

On page 19, after line 19, insert the following new paragraph:

"(7) to provide legal assistance under this title with respect to the desegregation of public schools or the transportation of school children to achieve racial balance."

Similar to the House provision.

AMENDMENT

On page 19, after line 19, insert the following new paragraph:

"(7) to provide legal assistance under this title with respect to the desegregation of public schools or the transportation of school children to achieve racial balance.".

OEO Reprieve Rescues Center for Law and Education

(By Mark C. Rutzick and Phil Spector)

The Harvard Center on Law and Education, the Law School-sponsored OEO back-up center which had been threatened with a March 1 termination of funds, has been given a 30-day reprieve. The extension was announced after Dean Albert M. Sacks and Professor Frank I. Michelman met Wednesday with OEO Acting Assistant Director J. Laurence McCarty in Washington. Michelman emerged from the meeting cautiously optimistic, saying, "We were given no indication this this money would be the end."

The Washington meeting was the culmination of an energetic lobbying effort by the Law School, which involved contact with administration officials and members of Congress. The effort was aimed at keeping the Center alive for a grace period of up to six months, or longer.

The Center, one of 10 OEO Legal Services back-up centers located through the country, was informed last month that its funding would not be renewed when its current grant ran out March 1. The other back-up centers received similar notices. The cutbacks are part of the Nixon Administration's effort to dismantle the poverty programs built up in the 1960s.

The Center is jointly sponsored by the Law School and the Harvard Graduate School of Education, but currently neither supplies any financial support.

Michelman said that he and Sacks had stressed in their lobbying efforts that professional considerations required that the Center be given a "winding down" period longer than the 30 days it had received before yesterday's deadline.

He said that the Center was heavily involved in litigation, and that "simple professional responsibility" made it necessary to extend its life at least temporarily. He added that a "reliance" factor served to prevent the Center's employees from being cut off from their salaries so quickly. The Center employs approximately 10 attorneys as well as a nonprofessional staff.

Michelman emphasized that he thought the political picture for funding beyond July 1 was too murky for prediction, but until a new Legal Services corporation were said that if the center managed to survive formed, its continued existence would be "a whole new ballgame."

Michelman, who serves as liaison between the Law School and the Center, described the Center's budget as "around $350,000" per year.

Sacks had said on Monday that if OEO refused to extend funding beyond yesterday's deadline, the Law School would itself step in and continue funding on a short-term basis. Since Michelman had described the necessary winding-down period as up to six months, Wednesday's reprieve did not end the possibility of future Law School intervention. Sacks said he expected the Education School would share all such expenses.

The Center is headed by Marian Wright Edelman, a prominent lawyer and Democratic political figure. However Michelman said he did not think her political visibility was a factor in the original decision to close the Center.

The Center is currently involved in the school desegregation case in Detroit which has resulted in a court order for massive metropolitan busing. It also is participating in a lawsuit seeking to challenge the Boston school system for failure to integrate. President Nixon has publicly opposed school busing as a method of integrating schools.

In a related action, a group of students at the Law School has been collecting signatures in support of the continuation of the OEO Legal Services program itself, which is also threatened by Nixon Administration cutbacks. The group is circulating a petition calling for "a fully-funded and autonomous legal services program." As of Wednesday it had collected over 800 signatures.

The Law School group is coordinating its moves with a recently-formed national organization called Action for Legal Rights. Alice W. Ballard, 3L, said the national body is asking each OEO lawyer to contribute $25 toward a large-scale Congressional lobbying effort aimed at saving the Legal Services program. The local group is also seeking contributions to the effort.

The Law School petition expresses full support for a resolution recently adopted by the American Bar Association House of Delegates. The resolution urges the creation of an independent well-financed corporation for Legal Services.

According to Dace McCoy, 3L, the signed petitions will be sent to the White House and to Congress. She added that concerned students and faculty should take independent action including writing letters to their Congressman and Senators.

United States and Bradley Versus Indianapolis School Commr's (V.A. No. IP 68-C-225, S.D. Ind.)

This is a school desegregation case which was brought by the government in 1968 and culminated in a favorable judgment, looking toward desegregation on a metropolitan basis, in August of 1971. When it appeared that the government was not going to push for effective relief, we assisted the NAACP to intervene on behalf of local black plaintiffs. We have completed substantial investigative work, primarily involving adjacent and suburban school districts. Further district court proceedings are awaiting decision on the defendants' appeal of the original judgment (argued in the 7th Circuit this month)

and decision on defendants' motion for a three-judge court, which they assert is required because a metropolitan desegregation order would conflict with Indiana's statewide redistricting arrangements. We expect to participate actively in further discovery and the trial of this case. (Dimond)

BRADLEY VERSUS MILLIKEN (C.A. No. 35257, ED. MICH.)

This is the Detroit metropolitan school desegregation case in which we are co-counsel with the NAACP on behalf of black and white children. The case was begun in August of 1970, and after 50 days of trial and two trips to the court of appeals the district court found, in September of 1971, that Detroit is as alleged an illegally segregated school system. Further hearings were held this spring as to relief, and on June 14 the district court held that a plan limited to Detroit proper would be constitutionally inadequate and educationally impracticable—thus necessitating metropolitan relief affecting approximately 780,000 pupils in Detroit and 52 neighboring districts. The court of appeals stayed implementation of the district court's order in July (but directed that planning as prescribed should proceed), and the appeal on the entire case was argued on August 24 pursuant to an expedited schedule. In our view, the state is constitutionally responsible for providing equality of educational opportunity, including "just schools" in place of racially identifiable schools, and certain educationally unified state policies contributed to rendering Detroit a racially identifiable system (65 percent black) compared to its neighbors (98 percent white). Therefore, the state, which has no compelling interest in existing school district lines, is obliged to provide just schools for Detroit's children by disestablishing the interdistrict segregation. The state and suburban defendants contend that such relief is unauthorized unless it can be shown that suburban districts themselves have actively discriminated. To note that this is a landmark case on these issues is to labor the obvious. Cert. petitions are virtually inevitable following decision by the court of appeals. It should be noted that the NAACP is paying the litigation costs and out-of-pocket expenses in this case (as in Boston and Indianapolis), enabling the Center to engage in important work without quickly expending our modest litigation budget, which otherwise would be a consequence of this case alone. (Paul Diamond) Harvard Atty in Am. Arbs.

MOSS VERSUS STAMFORD (CONN.) BOARD OF EDUCATION (C.A. No. B–586, D. CONN.)

We are assisting Norwalk-Stamford Legal Services (primarily Steve Hershey) with his action which was filed earlier this month. Our role so far has been to consult on the theory of the case and to advise on discovery and trial strategy. Stamford adopted and has largely implemented a pupil racial desegregation plan which imposes the burden of desegregation (in terms of pupils transported and schools closed) almost exclusively upon black and Spanish-speaking families. The plaintiffs are supportive of desegregation, but they view it as illegally discriminatory to adopt a plan—in the presence of equally effective, more equitable alternatives—that is one way in accommodating majority community convenience at the expense of the minority. More than a year ago, when Stamford was weighing its options, the federal (HEW) authorities expressed similar reservations to Stamford about this plan. School authorities have tended widely to adopt one-way plans, usually to gain white acceptance of desegregation itself. Although some courts have disapproved such plans, the issue is relatively underdeveloped and important in that the objectives of desegregation are not fulfilled where the plan is perceived by the minority community as the latest manifestation of "white is right." (Van Loon)

BRINKMAN VERSUS GILLIGAN (C.A. No. 72–137, E.D. OHIO)

We are cooperating with the NAACP and local counsel in this case which challenges alleged de jure segregation in Dayton, including that system's rescission of its own voluntary desegregation plan for reasons related not to education but to white community opposition. We have been assisting with discovery and will participate in the trial, which is tentatively scheduled for the 3rd week in November. The rescission of voluntary plans in districts not previously found to be illegally segregated is recurring and presents relatively novel issues warranting our attention. (Dimond)

GREENHOUSE VERSUS GRECO (C.A. No. 17741, W.D. LA.)

We are cooperating with University Legal Services, Washington, D.C., in this action which challenges racial segregation of parochial schools in the Roman Catholic diocese of Alexandria, Louisiana. We have participated in the preparation of pleadings and discovery and we shall help at trial, which is scheduled for December 1. The case involves some 10,000 children in 35 schools, of which all but two are practically all-white or all-black. The case is novel (a previous one like it in Louisiana ended when the schools desegregated before trial) and significant in that the schools receive substantial federal support and are segregated despite Title VI of the 1964 Civil Rights Act, and the parochial system is impairing public school desegregation by accommodating fleeing whites. (McClung)

HOOTS VERSUS COMMONWEALTH OF PENNSYLVANIA (C.A. No. 71–538, W.D. PA.)

This case, filed in 1971 by Pittsburgh Legal Services, challenges the school consolidation process in suburban Pittsburgh. It is alleged that racially identifiable districts were created, despite the availability of feasible, less segregatory alternatives. It is also alleged that the district in which the plaintiffs reside is not viable economically or educationally. Upon request of the director of the Pittsburgh Legal Services Office, we have, on several occasions, given advice on the case. In July, 1972, we met here with local counsel to discuss a proposed pretrial statement. (Pressman)

HERNANDEZ VERSUS STOCKTON UNIFIED SCHOOL DISTRICT (No. 3 CIV. 13621, SUP. CT. CALIF.)

We have been asked by California Rural Legal Assistance to file an amicus curiae brief in the California Supreme Court. The appeal urges that the lower courts erred, under California law, in denying desegregation relief, and we are asked to address certain broader desegregation considerations. We are considering participation.

ALVARADO VERSUS EL PASO INDEPENDENT SCHOOL DISTRICT (C.A. No. EP–70–CA–279, W.D. TEXAS)

This case was brought by El Paso Legal Services on behalf of Mexican-American children and involves the inadequacy of desegregation and educational programs in that system. The bilingual-bicultural programs have been substantially improved for 1972–73, and the local office is not pressing for an early trial date. We have consulted here and in El Paso concerning discovery and trial preparation. The district may go farther voluntarily on the basis of the 5th Circuit's recent *Austin* and *Corpus Christi* decisions; if not trial will be necessary.

INEQUITY IN EDUCATION

(By David L. Kirp)

INTRODUCTION: SCHOOL DESEGREGATION 1971

A casual newspaper reader might think that, 17 years after the landmark *Brown* decision, the Supreme Court had in *Swann* finally laid to rest all questions concerning the obligation to desegregate public schools. In upholding a plan which ordered extensive busing in one large Southern metropolitan school district while overturning as inadequate a more limited integration proposal, the Supreme Court seemed determined to do what it has long proposed—to eliminate racially separate schools "root and branch." The Court's tart disposition of the claimed right to neighborhood schools, and its approval of busing and non-contiguous school attendance zones as a means of promoting integration give some force to the notion that the battle over race and schools has ended.

For a number of quite different reasons, that optimistic conclusion is unfounded. The problems that persist, while less dramatic than outright refusal to comply with the law of the land, are no less important. This issue of *Inequity In Education* draws together those problems in discussions by lawyers and laymen in the field, people who know the problems first-hand.

The post-*Brown* history suggests that Court opinions remain noble statements of principle if they are not vigorously enforced, by both government and private litigants. President Nixon's recent statement on school integration, and the suit filed in Austin, Texas, indicate that the government intends in some fashion to carry out the *Swann* mandate. Yet the government's position in recent years, most notably its foot-dragging stance in *Alexander v. Holmes County* (unanimously reversed by the Supreme Court), give legitimate cause to wonder how vigorous the government will be in pressing for desegregation. J. Stanley Pottinger, head of HEW's Title VI compliance section, offers the government's position; Cynthia Brown, attorney at the Washington Research Project, takes a more skeptical view.

Yet even if school district integration is in fact accomplished, a new set of problems more difficult to address has clearly begun to emerge. As Southern school districts become increasingly integrated—as the number of black children attending racially mixed schools grows—black students are isolated within schools. So-called "ability grouping" assigns black students to the lowest tracks; school disciplinary codes are applied with particular harshness to black children; obviously antagonistic symbols such as the Confederate flag fly over the schoolhouse. Further, black teachers and administrators who had for many years worked in all-black schools find themselves demoted or fired as school districts integrate. The lame official excuse: they're not good enough to teach (white) children. Rims Barber discusses these practices in Mississippi. One can only wonder with Barber if the story will be very different for the children of those just now entering school.

As Paul Dimond's piece indicates, segregation is hardly a phenomenon confined to the South; indeed, recent data show that while schools in the South have become more integrated during the past decade, Northern school districts are more racially identifiable than ever before. The flight of whites to the suburbs is one significant cause of this increase in Northern segregation; official practices by school officials in most cities are another — and legally attackable — cause. School district boundary-drawing; optional zones; teacher assignment; student transfer provisions; school construction; all these

techniques have been employed by schoolmen to preserve the racial character of urban schools. Further, housing policies—including those of the Federal Housing Administration—have locked poor black families into the center city, aggravating racial problems. It makes little sense to describe this pattern as adventitious (*de facto*) and thus beyond judicial purview. By intent and, more importantly, by effect, such segregation is *de jure*, and warrants correction. Successful litigation in such cities as Denver, San Francisco, Los Angeles, and Pontiac suggests that judicial relief may be forthcoming; that within the next decade nominal integration may be a fact of life in the North as well as the South.

Hopefully, courts and schoolmen will learn from Southern history that nominal integration—putting black children and white children in the same schools—is but the beginning of the educational effort. *How* integration is carried out—whether black and white children are treated as "citizens," as Tinker puts it, or simply as human beings with a sense of themselves and their own history—is really the critical racial policy issue of the decade. The article by Robert Green and his associates at Michigan State University analyzes these questions by reviewing the social science research on the effects of interracial education. Alan Exelrod, attorney to the Mexican American Legal Defense and Education Fund, reviews the particular needs of the Chicano community; his comments are readily extendable to other minority groups whose native language and experience is not that of melting pot America.

By and large, the articles are sobering. They serve to remind all of us that integration is not a talismanic phrase, but an infinitely complicated and important social goal. They also suggest that humane and integrated schools—and, necessarily, an integrated society—are unlikely to exist next year, or even 10 years from now.

SWANN SONG FROM THE DELTA

(By Rims Barber)

A year ago Jerris Leonard, head of the Justice Department's Civil Rights Division, predicted that "for all practical purposes the dual school system as it has existed in the South will be eliminated by September 7th [1970]." Again this year, the *Swann* decision holds out hope of final resolution of this issue. The nagging question in the minds of Mississippians concerned with school desegregation is what next year's sayings about the end being in sight will be.

In the Summer of 1971, we are standing in the trough of a calm. We have heard the high court pronounce *Swann*, and know that 18 or 20 of Mississippi's 150 school districts will have to change by the opening of school. We know that the Justice Department has prepared motions on a dozen districts, that HEW has written comprehensive reports on another half dozen, and that the courts are preparing to issue orders on three or four more. But the school boards go about their seemingly normal preparatory duties of fixing up the schools and hiring teachers.

The calm is an anxious one. The white establishment is uneasy, awaiting what it sees as the coming next blow. Defensive and toughened by years of rearguard action, the Establishment is still prepared to fight for its institutions. The black community is anxious, hoping for the real change that never comes, wondering when the wave that finally and inalterably changes the schools will hit. Many have lost hope in the long struggle. For them, changes in the schools have meant a tougher system, not better schools for their children.

THE NEW DISCRIMINATION

The past year proved Mr. Leonard right in one respect: The dual school system—as it had existed—was eliminated. But the legacy is a *new* discriminatory system, hardly a year old, which includes the following facts:

Visible control of the schools is still white; during the past two years, more than half of all black administrators were fired, demoted, or placed in tangential positions.

Non-tenured teachers were released for a variety of reasons. The State Department of Education reports a 5% decrease in black teachers, while independent surveys show the number to be 10–12%. With changes in the law for state reimbursement of teacher units, the State Department predicts a 5½% loss of regular teachers (over 1,000 teachers) in the coming year with a disproportionate number in majority black districts.

Inside the schools are new policemen, new rules, and a new kind of documentation for minor disciplinary incidents. As a result, hundreds of black children have been expelled or suspended, all with the knowledge that their folder, containing details of each time they chewed gum or were late to a class, is waiting to be used.

Over forty percent of black school children attend segregated classes and, cordoned off by the whites, felt the impact of separate tracking.

Teacher recruitment from Mississippi colleges also changed. Black colleges placed 38% fewer certified graduates last year according to State Department figures, while white colleges increased placement 52%. These changing patterns make the future less hopeful for young would-be black teachers and the institutions to which they have gone for their higher education.

The federal government appears to approve of this grim picture. It granted more than $5,000,000 to Mississippi's schools in Emergency School Assistance funds; this in addition to the normal $35–$40,000,000 in Title I ESEA funds. Despite great numbers of complaints, no district lost any money. Everybody was eligible and everybody got.

With this legacy, the year ahead can only be looked at with concern. We must ask how long it will be before we see a wholly new system where all participate equally in the education of the community. Perhaps it will only come when this year's grandchild is old enough to be Superintendent of Education and this generation's problems have died of old age. We must also ask how new patterns of discrimination will affect those living under them. What will be the effect of a generation of discrimination in faculty hiring and assignment that lessens the chance of a black child ever having a black teacher? What will it mean to be placed in a lower track for a whole career? Will the legalism of the struggle finally bind us all? Will there be a year when we know we are on the high road to quality change? This year? No. Is there hope for 1972?

HEW ENFORCEMENT OF SWANN

(By J. Stanley Pottinger)

The Supreme Court's *Swann* decision, read in light of the specific conditions in Charlotte, North Carolina, is a relatively clear pronouncement. Attempting a general assessment of the meaning and applicability of the *Swann* decision to former *de jure* school systems, however, is another matter. The vast differences which exist among Southern school districts today defy formulation of a single definition of the desegregation problem or an approach to it. Reconciling the need for uniformity and clarity of legal standards with the equally important need for flexibility to take account of vastly different situations is a constant struggle, and one which in the end probably can never be fully or nearly resolved. In order to understand how the Court's decision is to be translated into practical results, it is necessary first to have in mind the differing characteristics of former dual systems, what has happened to them in the last few years, and the kinds of remaining problems to which *Swann* may apply.

Although there is tendency to refer to "the South" as if it were a single entity of school districts of equal sizes, shapes and rates of progress, it is as divergent and complex in its makeup as any other part of the country. Some districts, like Charlotte-Mecklenburg, are urban centers having relatively large racially-homogeneous residential patterns too broad to enable school children to walk to integrated schools. Atlanta, Memphis, Miami, Birmingham, Dallas, Richmond and Mobile are other examples. Other school districts are of medium geographic size, having a combination of urban and rural patterns, where some children attend schools near their homes and others are bused for miles. Still other school systems are predominantly rural, where 90 percent or more of the children are transported to school and always have been. School populations vary similarly, ranging from cities like Houston, Texas, with almost a quarter of a million school children, to school districts having less than 300 children.

Superimposed on these wide ranges in geographical and population differences is an equally wide range of racial composition. Contrast the small, rural district of Claiborne, Mississippi, (86 percent Negro children) and the Washington, D.C. system (95 percent Negro children) with Pickens County, South Carolina (about 12 percent black) and Nashville, Tennessee (about one-quarter Negro enrollment). The range between all-black and all-white systems is virtually unlimited, making it impossible to say, for instance, that *Swann* requires a general rule that there be no more majority black schools.

Other factors which the Supreme Court found relevant in defining a school district's constitutional duty also vary from one district to the next. School sizes and capacities are considerably different. The quality of facilities varies, with some in excellent condition (a number of black schools were built after the *Brown* decree with the mistaken hope that this would forestall integration), and others, both black and white, in deplorable shape.

Perhaps the most complicating factor of all, however, stems from the progress that has been made in school desegregation over the last couple of years. Between 1954 and 1968 it was relatively easy to identify dual systems since there had been little actual desegregation, and the duality of the schools remained largely intact. (That is not to say, of course, that there was little federal and private civil rights agency activity during this time. The historic effort to achieve freedom of choice for black children; the failure of that policy once it had been achieved; and the continuing pressure for assuring the actual desegregation of schools are well known).

DESEGREGATION PROGRESS

That there has been substantial change in the racial composition of individual schools in the South during the last two years is a matter of record, although still too dimly perceived by the public generally. When school opened in the fall of 1968, only 18 percent of the 2.9 million Negro children in the 11 Southern states attended schools which were predominantly white in their student enrollments. In the fall of 1970, that figure had more than doubled to 39 percent. Over the same time period, the percentage of Negro children attending 100 percent black schools dropped dramatically from 68 percent to 14 percent. In 1968, almost no districts composed of majority Negro (and other minority) children were the subject of federal enforcement action. It was thought up to that time, and perhaps

rightly, that the limited resources of the government ought to be focused primarily on the districts which had a majority of white pupils, where the greatest educational gains might be made, and where actual desegregation was not as likely to induce white pupils to flee the system, leaving a virtually all-black system behind. Nevertheless, this decision to reserve enforcement in these districts was a mixed blessing, inasmuch as almost 40 percent of all the Negro children in the South live in systems where blacks are in the majority. Obviously, the greater the amount of desegregation in majority black districts, the fewer will be the number of black children attending mostly white schools. Ironically, the better the results in such districts, the fewer the number of minority children who will be counted as "desegregated" under a standard which measures only those minority children who attend majority white schools.

In order to account for this recent anomaly, HEW has begun to extract from its figures the number of minority children who live in mostly white districts and who attend mostly white school. Last year, approximately 54 percent of the Negro children in the South who live in such districts attended majority white schools. Conversely, nearly 40 percent of the 2.3 million white children who live in mostly black (or minority) districts now attend mostly black (or minority) schools.

These changes do not stand alone, of course, but are a reflection of changes that have taken place generally in race relations in the South. In voting rights, in public accommodations, as well as in schools and other areas of life, progress has come only recently, but it has been substantial. Indeed, the recent census studies showing a sharp decline in the northward migration of Southern minorities can be attributed in part to a change in attitudes, behavior, and conditions. James Meredith's recent departure from New York for Mississippi, to live in what he terms a more hospitable environment for Negroes, probably should not be considered an aberration.

The purpose of recounting these advances in race relations and school desegregation in the South is not to contradict the need for further vigorous civil rights enforcement, nor is it to offer up gratuitous commendations. It is merely to point out that conditions have been altered substantially enough to complicate significantly the tasks of identifying the remaining problems and devising appropriate remedies.

DISTRICT-BY-DISTRICT APPROACH

When this general progress is examined on a district-by-district basis, as it must be for compliance purposes, the region's varying degrees of progress become obvious. In many districts, the dual system has been fully disestablished, and the communities have moved beyond dealing with *Swann*-type problems to dealing constructively with the kinds of educational problems that exist within any integrated school district, North or South. In other school districts, while most of the schools may be integrated, one or more may still retain racially-identifiable vestiges of the former dual system. And in a few districts, including the urban districts to which *Swann* is primarily addressed, although some desegregation has occurred, additional movement clearly must be made to eliminate substantial remnants of former total segregation.

In the first instance, it seems clear that *Swann* does not change the overall objective of the school desegregation effort—that is, the elimination of the dual system of schools based on race. In *Brown v. Board of Education* the Court stated the principle implicity in its holding that "in the field of public education the doctrine of 'separate but equal' has no place." In *Green v. County School District*, the Court stated the objective by holding that former *de jure* systems have an obligation to operate "not black schools, and not white schools, but just schools." And in *Swann* the Court says that, "The objective today remains to eliminate from the public schools all vestiges of state-imposed segregation." [Slip op. p. 10].

Of course, these generalizations have many practical questions unanswered. What is a "black school" or a "racially-identifiable school," and how does one go about identifying one? If a school is racially-identifiable, what is the appropriate remedy? These and a host of related questions must be answered in light of *Swann* on a case-by-case basis.

DEFINING RACIALLY IDENTIFIABLE SCHOOLS

With regard to how one identifies a racially-identifiable school, the Supreme Court in *Swann* has provided additional guidance consistent with its previous rulings. Traditionally, the focus of the school desegregation effort has been on pupil assignment policies. Nevertheless, the Court clearly indicates that all aspects of a school system must to be taken into consideration.

In *Green*, we pointed out that existing policy and practice with regard to faculty, staff, transportation, extracurricular activities, and facilities were among the most important indicia of a segregation system. 391 U.S., at 435; independent of student assignment, where it is possible to identify a "white school" or a "Negro school" simply by the racial composition of teachers and staff, the quality of buildings and equipment, or the organization of sports activities, a *prima facie* case of (a) violation . . . is shown (*Swann*, slip op., p. 14).

Our first administrative step has been to make a comprehensive analysis of all districts in the 17 Southern and border states in order to identify those districts that appear potentially subject to *Swann* relief. Since pupil assignment is the primary area of concern, we have sought to analyze districts' pupil enrollment status through a review of the information they have provided us in the National School Survey.

Having this information in a data bank, we have compiled a computer print-out revealing the names and locations of all Southern school districts having one or more schools composed mostly of local minority students.* More than 3600 Southern school districts today do not have any schools mostly black in pupil composition (or mostly white in a district composed mostly of blacks). Of the districts surveyed, about 650 were found to have one or more schools of this kind (of which only 219 were found to have had one or more schools between 90 and 100 percent local minority). Of these 650 districts about 350 were found already to be under court order or in litigation, leaving about 300 appropriately subject to further review and potential enforcement action by HEW.

Our next step has been to look at the raw data in these 300 HEW districts in order to determine, as best we can, which ones appear to be required to take additional steps in light of the *Swann* decision. A school system which is 45 percent black, and which has only one majority black school which is 52 percent black, would be eliminated from the group subject to potential enforcement. (This assumes that no other compliance problems, such as a failure to desegregate faculty, discriminatory treatment of teachers, etc., appear in the file.) Of the initial 300 districts, about 75 were eliminated on this basis alone at first review, leaving the balance for further analysis.

In making a further analysis, the task has been more complex. Some districts, of course, show a pattern of racial identifiability clearly indicating the vestiges of the former dual system. In such cases, the need for enforcement action is clear, and steps to this end are currently underway.

The vast majority of non-court involved districts, however, have only one or a few schools racially identifiable, with most of the schools in the system already desegregated. In almost all of these cases, the student enrollment information itself cannot tell the story. Hence, it becomes even more important to look at other pupil assignment factors, and other non-student factors, in order to determine whether the school is still a vestige of the dual system and capable of being desegregated further in line with *Swann*. Is the school which appears, in the words of *Swann*, to be "substantially disproportionate" in its composition a former black school? Has it always been a black schqol? If not, why has it become one?

ELIMINATING RACIALLY IDENTIFIABLE SCHOOLS

The next series of questions relates to what can be done to eliminate the racial identifiability of the schools. Is the school presently not fully desegregated because remedies were impossible in the past, and if so, in light of *Swann*, are new remedies applicable or still impossible? Is the school located geographically in a position where it cannot be paired with other schools in the system? Is it a sound facility? What capacity problems, transportation problems, or other problems are there, and are they substantial enough to deter a further remedy? If the pupil composition is not clearly racially-identifiable, but only marginally so, what other considerations are to be identified and brought to bear on a decision as to whether the school is still part of a dual system? Is the school a "second-class" school of a kind found when the dual system operated, or is it a full and equally participating member of the school community at large?

It is the gathering and analysis of information bearing on these questions which have engaged our efforts to a large extent during the summer months. In order to assist us in this effort we have sent approximately 65 letters to districts informing them that on the basis of the information on hand, it would appear that the *Swann* decision does or may apply. In some cases the district's reply will permit a prompt determination of the issues, either indicating that the dual system has been disestablished, or that further steps are clearly required. In other cases the letter is only the beginning of further inquiry. In the cases where final analysis establishes a violation, the districts are required to submit a remedial desegregation plan, or become the target for enforcement proceedings.

As for the timing of our enforcement efforts, *Alexander v. Holmes County* and the *Swann* decision require that where remedial steps are required, they must be taken immediately. As a practical matter, this translates to a deadline of the opening of school this fall. We are therefore working to analyze files, notify districts, negotiate for voluntary relief and compel compliance within this time period. We believe that it can be accomplished by Fall in most, if not all, of the district required to take desegregation steps under *Swann*.

Although the Court leaves the definition of the goal of desegregation still in general terms—i.e. the dismantling of the dual sys-

*"Local minority students" means those students who constitute less than half of the student population of the district, regardless of their race. Hence, in a majority black district, "local minority students" will be white-Anglo students. The term "minority student" without the designation "local" refers to a student who is other than white-Anglo—i.e., Negro, Spanish-surnamed, Oriental, or American Indian.

tem, the elimination of racially identifiable vestiges of state imposed segregation, or the achievement of the "greatest possible degree of actual desegregation"—the Court deals in more specific terms with methods to reach that goal. While court-order and administratively-enforced desegregation generally did not make use of non-contiguous zoning or the additional transportation typically resulting from it, the Court in *Swann* has now held that these are legitimate tools and that these devices, as well as rezoning or gerrymandering, contiguous pairings, and the effective use of existing transportation, must be used if necessary to disestablish the dual system.

Having significantly added to a school district's tool box for implementing desegregation steps, the Court has also made clear that these tools need to be used within the limits of practicability. It then leaves to schools officials, the executive branch and the lower courts the task of determining what is "practicable" in any particular case. The Court makes clear, for instance, that some all-black or virtually all-black schools, even where they are identified as the vestiges of the dual system, may continue to exist by virtue of the practical limits to be placed on non-contiguous zoning and additional transportation.

In light of the above, it should be clear that the existence of some small number of one-race, or virtually one-race, schools within a district is not in and of itself the mark of a system which still practices segregation by law. The district judge or school authorities . . . will . . . necessarily be concerned with the elimination of one-race schools. No *per se* rule can adequately embrace all the difficulties of reconciling the competing interests involved; but in a system with a history of segregation the need for remedial criteria of sufficient specificity to assure a school authority's compliance with its constitutional duty warrants a presumption against schools that are substantially disproportionate in their racial composition. Where the school authority's proposed plan for conversion from a dual to a unitary system contemplates the continued existence of some schools that are all or predominantly of one race, they have the burden of showing that such school assignments are genuinely nondiscriminatory. [*Swann*, slip op. p. 22].

Since no *per se* rule can be drawn where virtually one-race schools are proposed, what constitutes enough to satisfy the school authority's burden of showing that such schools are permissible? Having indicated on the one hand that remedies may be "administratively awkward," the Court immediately thereafter states that, "No fixed or even substantially fixed guidelines can be established as to how far a Court can go, but it must be recognized that there are limits." [*Swann*, slip op. p. 24]. Specifically, with regard to transportation, the Court also declines to be more specific than to note that transportation has been "an integral part of the public education system for years." The Court states specifically that, "The scope of permissible transportation of students as an implement of a remedial decree has never been defined by this Court and by the very nature of the problem it cannot be defined with precision." [*Swann*, slip op. p. 25]. The Court is a little more specific, (although not much) in noting that—

"An objection to transportation of students may have validity when the time or distance of travel is so great as to risk either the health of the children or significantly impinge on the educational process. District courts must weigh the soundness of any transportation plan in light of what [has been] said . . . above. It hardly needs stating that the limits on the time of travel will vary with many factors, but probably with none more than the age of the students. The reconciliation of competing values in a desegregation case is, of course, a difficult task with many sensitive facets . . ." [*Swann*, slip op. pp. 26–27].

Despite the clear thrust of the *Swann* decision, we are still left with the need to exercise discretion in defining what limitations on non-contiguous zoning and new busing are appropriate, and what in general constitutes "impracticalities" within the meaning of the Court's qualifying phrase in the *Davis* opinion. Of course, this discretion is not without bounds defined by experience. Ultimately, giving meaning to this standard requires looking at the specific facts in the district and judging its compliance obligations by what can actually be achieved, not by intentions. Transportation is a traditional and legitimate tool, and should not be regarded as otherwise simply as a method of avoiding the constitutional duty to eliminate racially-identifiable schools. At the same time, transportation can, as the Court noted be taken to an excess, to the point where the children transported, regardless of race, are unable to appreciate or function well in the schools to which they are assigned. Reconciling these competing interests must of necessity involve a case-by-case analysis of what can and must be done.

LOCAL BIRACIAL COOPERATION

Experience clearly indicates that this reconciliation is greatly aided when a biracial committee or other mechanism for bringing the communities together is in operation. When the design of a desegregation plan is influenced by honest biracial participation, its chances of working in fact, as well as on paper, are immeasurably improved. Only a few weeks ago in Jackson, Mississippi, with drama unnoticed outside that city, the black community (represented largely by the NAACP, Inc. Fund) and the white community (represented largely by the school board) were able to develop a desegregation plan of their own making and design. As a result, one can hope with at least some justification that when school opens this fall the plan will actually work. Similar kinds of community involvement appear to have had a legitimate impact on the plans recently agreed upon in Mobile, Alabama; Nashville, Tennessee; and other large districts in the South.

Implementation of the *Swann* decision may represent the last chapter in the historic effort to transform the dual school structures of the South into unitary systems. The need for consistent Federal presence continues, and will be provided until the task is complete. With the results that have already been achieved, and the constitutional mandate to culminate the process now clearer, the white and minority communities of the South can look forward to the day when the dual system and all its vestiges will be behind us, and the educational needs of children can be served without regard to race, color, or national origin.

NIXON ADMINISTRATION DESEGREGATION

(By Cynthia Brown)

The Supreme Court's landmark school desegregation decisions in *Swann* v. *Charlotte-Mecklenburg Board of Education* and companion cases,[1] appear to be viewed by the Nixon Administration as a way out, once and for all, of the political controversy over dismantling the dual school structure in the South. This is not to say, even with firm enforcement of the *Swann* standards, that the issue of federal responsibility in providing equal educational opportunity will have been resolved in the South (any more than it has in the North), but the battleground is shifting. New struggles are emerging such as establishment of private segregation academies, discrimination in faculty and staff dismissals, in-school segregation of students, and inequities in school finance. In the meantime, this article focuses on the Nixon Administration's likely implementation of *Swann*.

On April 20, 1971, the Supreme Court ruled that there is a "presumption against schools that are substantially disproportionate in their racial composition"; that the neighborhood school policy is no longer sacrosant; that segregatory school systems must be undone even by arrangements which are "administratively awkward, inconvenient and even bizarre"; and that busing is an acceptable desegregation tool. This ruling should have laid to rest the Nixon Administration's major augments, based upon its political priorites, with respect to school desegregaton.

Apparently, few in the Nixon Administration expected the *Swann* decision. More than two years of political oratory had strongly implied that school desegregation standards would be weakened in the South. Bureaucratic in-fighting involving HEW, the Department of Justice, and the White House had resulted in at least a standstill, if not a significant desegregation retreat.[2] The Administration had sustained some stinging setbacks in the courts—particularly the *Alexander* decision ordering an end to segregation "now" and requiring the desegregation of most southern districts by the fall of 1970. As a result, the Administration seemed to feel that the basic issue of segregated student assignment had been resolved. It was felt that the job was completed, especially in rural areas and medium-sized cities, and that problems accompanying physical desegregation—so-called "second generation" problems—would be worked out with minimum federal effort and low visibility.[3] The Administration apparently felt that, at worst, the Supreme Court would rule that the plans in question—the Mobile neighborhood school plan and the Charlotte racial balance plan—were both acceptable on the ground that each got a fair hearing. With two conflicting plans upheld, no matter what the accompanying language, there would be great room for administrative interpretation and no need to reopen many cases. If this was the Administration's expectation, it must have been disappointed.

The Administration's initial reaction to the *Swann* decision was terse. Ronald L. Ziegler, White House Press Secretary announced the day after the decision that—

"The Supreme Court has acted and the decision is now the law of the land and it is up to the people to obey it. It is up to local school districts and courts to carry out the court decision. The Department of Justice and HEW will carry out their statutory responsibilities."

The Administration's position was somewhat clouded a day later by HEW Secretary Elliot Richardson in a speech to an NAACP Legal Defense Fund dinner in New York City. The Secretary seemed to be falling back on the ambiguous rhetoric which had characterized the Administration:

"The awareness of the indispensable part played by individual understanding and mutual trust is at the heart of Administration policies in the field of civil rights. We are committed to the full enforcement of the requirements of the law. But we are convinced that these requirements can now be fulfilled more effectively by cooperation than by coercion, by persuasion than by force."

COOPERATION AND LOCAL RESPONSIBILITY

Word emanated from the White House that two general principles for dealing with the decision had been adopted: cooperation, not coercion, as Secretary Richardson had said, would be the approach; and the burden of new desegregation requirements would be borne mainly by southerners, not the Federal Government. There were reports that the Cabinet Committee on Education[4] and seven

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Footnotes at end of article.

State Advisory Committees on Public Education (formed last summer in Alabama, Arkansas, Georgia, Louisiana, Mississippi and North and South Carolina) would be reactivated to aid in the local effort. These were alarming signals to those concerned with bringing about total school integration. Politically motivated handholding of local officials would be one thing, but to ignore completely a clear Supreme Court mandate and turn a well-established federal responsibility over to state and local governments would be outrageous and totally unacceptable.

Further clues regarding the Administration's response to the decision were not forthcoming. This was discouraging; if meaningful action were to be required, it would have to be initiated soon because of the time required for major reorganization of large urban school systems. Then on May 13, 1971, syndicated columnists, Rowland Evans and Robert Novak reported that a major struggle was going on between HEW and the Department of Justice over implementation of *Swann*. Attorney General John Mitchell was pushing a "go slow" approach, they reported, while HEW officials were urging vigorous action. Forces in the White House were said to be equally divided. Subsequent reports raised questions about the accuracy of the Evans and Novak interpretation of federal intentions. It is now widely speculated that the Evans and Novak article was planted by the Administration to cover positive federal action.

THE AUSTIN PLAN[4]

The Administration was forced to respond one way or the other to the *Swann* decision on March 14, 1971. The Department of Justice had been ordered by a federal district judge to submit a final desegregation plan for Austin, Texas on that date. The Austin case had involved the HEW Title VI and Title IV offices and the Justice Department for several years. After prolonged but unsuccessful negotiations over plans proposed by HEW and the Austin School Board, HEW had initiated Title VI enforcement proceedings against Austin. An administrative hearing had been held January 20, 1970, and the hearing examiner ruled in HEW's favor on August 7, 1970. But Austin school officials would not budge, and with the Fall 1970 deadline for the completion of Southwide desegregation fast approaching, the Department of Justice filed suit against the district.

Austin was not a simple case. Strictly segregated housing patterns for blacks and Mexican-Americans made meaningful school desegregation impossible without substantial busing. The judge did not order a final plan to be implemented in September 1970, but instead ordered an interim plan for September and called for final plans for the following September to be submitted later. The Department of Justice did not appeal this two-part ruling because it apparently had not developed thoroughly the portion of the case dealing with Mexican-American students. Further delays by the judge and the Justice Department caused May 14, 1971 to be set as the final date for both the school board's and Federal Government's submission of plans.[5]

The HEW desergregation plan for Austin embraces the most positive principles of the *Swann* decision. It does not racially balance every school, as did Dr. John Finger's plan for Charlotte, North Carolina, but it does use several non-contiguous zones and requires extensive new busing necessitating the purchase of perhaps as many as 100 buses. Under the district's existing student assignment plan, 19 schools have over 85 percent minority student enrollment. Under the HEW plan, all high schools and junior high schools would have Anglo majorities and only eight of 54 elementary schools would remain between 50 and 60 percent black and Mexican-American combined. (All eight would involve contiguous pairing.)

If the Austin case should turn out to be the model Administration response to the *Swann* decision, "cooperation rather than coercion" refers more to the politics of desegregation than to the process itself. The HEW plan was transmitted by letter to the Austin Superintendent with a copy to the judge, rather than directly to the judge as is sometimes the case. The letter began by complementing Austin school officials on their own plan, in which HEW said they had incorporated the concepts of the *Swann* decision and outlined an educationally sound approach.[6] The HEW letter then detailed the Department's recommendations for improvements upon the district's plan.

QUESTIONS FROM AUSTIN

While the HEW-Justice Department plan for Austin seems to be a positive interpretation of *Swann*, two reservations are in order. HEW developed its plan without accurate and up-to-date pupil locator maps so that some of the boundary lines appear to be based on erroneous data. HEW officials have unofficially said they will amend the plan to correct these errors, which so far seem to have been bureaucratic in origin and not based on policy decisions. More importantly, while eight elementary schools will have enrollments of between 50 and 60 percent minority students, there are schools which are still overwhelmingly Anglo. Even though there are several non-contiguous pairing arrangements, there are 11 majority Angeo schools remaining in single school zones. Of these 11, five have over 85 percent Anglo enrollment, including one which is 100 percent Anglo. This imbalance may well lead to resegregation of some of the newly desegregated schools. The Federal Government's legal responsibility to insure that resegregation does not occur is, however, not clear.

The Supreme Court concluded *Swann* by holding that where adequate remedies for past segregation have finally been implemented, federal courts will not continue to require readjustment of attendance zones to reflect changing population patterns. The possible meaning of this is that once the last vestiges of the old system of official segregation have been eliminated, Southern school districts will be on the same legal footing as those outside the South in which subsequent racial imbalance resulting from changing residential patterns will not be attributed to the old *de jure* system. The Administration seems to be reading *Swann* as requiring the elimination of almost all, if not all, majority black schools (and Mexican-American schools, in the Austin case) without regard for the composition of the white schools. It is obviously going to use predominantly or all-white schools in non-contiguous pairings with black schools, but it is not going beyond the issue of predominantly minority schools to the combined issues of "tipping points" and racial balance assignment plans to erase the danger of resegregation. It seems to feel that in *Swann* the Supreme Court has said that elimination of identifiable minority schools is the end of public responsibility for eliminating the *de jure* system of segregated schools, and therefore, the last political controversy in Southern school desegregation. In its view, the South then becomes like the North, and the political implications of that are in the future and have decidedly different dimensions.

While the Administration has gone further than ever before, the fact remains that in the Austin case the Administration reacted defensively—from a direct order of a court outlining the necessity of some response.

NASHVILLE SOUNDINGS

The Administration has repeated its Austin posture in a second case—Nashville, Tennessee. In Nashville, the plaintiffs are represented by the NAACP Legal Defense Fund, but the HEW Title IV Office was ordered to draft a desegregation plan. On June 1, HEW submitted a plan similar to the Austin one, eliminating the racial identification of at least 28 of 29 majority black schools and calling for extensive busing. But here too it left 38 schools (25 percent of all the schools in the system) more than 85 percent white, a situation which may well result in resegregation.

Most large urban areas in the South are involved in suits brought by the NAACP Legal Defense Fund. The Justice Department has intervened in some of these cases, and judges have often called upon HEW to develop the plans. Southern judges have tended to rely more on HEW plans than private plaintiff plans, and the Department of Justice must approve all HEW plans submitted in court cases. The Nashville action is at least a precedent for future Government action to eliminate most identifiable minority group schools in cases brought by private plaintiffs in which a judge orders them to draw up a plan. Some critics, however, have said that Austin and Nashville are "one-shot deals" and do not constitute a pattern. That remains to be seen.

REOPENING OTHER WOUNDS?

Austin is a suit still before the courts but initiated long ago by the Department of Justice. The real question is whether the Justice Department will file new motions in cases now dormant, and whether HEW will renegotiate Title VI desegregation plans where they conflict with *Swann*. At least three of the HEW districts are large urban areas: Prince Georges County, Maryland, a suburb of Washington, D.C.; Columbia, South Carolina; and San Antonio, Texas. HEW and the Department of Justice have several medium-sized cities for which they are directly responsible. HEW, for example, is responsible for Marion County, Florida; Gulfport, Mississippi; Kinston City, North Carolina; Sumter, South Carolina; and Hampton and Alexandria, Virginia, while the Justice Department is responsible for Natchez and Hattiesburg, Mississippi; Florence, South Carolina; and Lubbock, Ector County (Odessa), Port Arthur, and South Park, Texas. The most certain indication that the Administration is responding in a consistent and comprehensive manner to the *Swann* decision will be its decision with respect to correcting plans with seriously imbalanced schools in small districts, many with majority black student enrollments. Two examples are Humboldt County, Tennessee and East Tallahatchie, Mississippi.

Humboldt County has approximately 2800 students, 43 percent of whom are black. Under the court-ordered desegregation plan not appealed by the Justice Department, 88 percent of black elementary school students attend a school which is 83 percent black. The other elementary schools are virtually all white. In East Tallahatchie, Mississippi, with a 2700 student enrollment which is more than 60 percent black, a consent decree was entered into by the school district and the Department of Justice. As described in *The Status of School Desegregation in the South, 1970:*

"The plan provides for a single 'attendance center' for grades 7–12, made up of the former black and the former white high school. At each grade level, some courses are offered at one school and some at the other, and students are bused back and forth between the two 'campuses.'

"At the elementary school level, the district is divided into two zones. One zone produced a school projected to be about 84 percent black, but when our monitor visited the district after school opened, the school turned out to be all-black.

Footnotes at end of article.

"The other elementary zone is served by a single 'attendance center,' made up of three schools. Each elementary student in that zone spends part of his school day at each of three schools, and of course, spends another large part of the day riding around between the schools in a school bus.

"This astonishing plan was apparently adopted in an effort to appease the local white community. White parents would not stand for their children attending formerly black schools for the whole day, but could tolerate them passing through these schools in the course of a bus shuttle tour each school day." [7]

If the Administration decides to pursue all the above types of cases consistently, one further question must be raised—when will it begin the comprehensive approach? It generally takes several months for HEW to notify a district that further change is required and to negotiate a settlement, and for the Department of Justice to file new actions, set a hearing date, develop a new plan, and get a judge to order it. School opens in less than two months. If the government does not act this summer, is it likely to act any nearer to Election Day 1972?

ADMINISTRATION PATHWAYS

All the returns are not yet in on the question of how the Nixon Administration is responding to Swann. But if its actions to date are distinguished from its rhetoric, the Administration, at a minimum, has apparently started on a positive pathway toward eliminating minority group schools—but a cynical one ignoring the dangers of resegregation. There is nothing to suggest it will deviate from that path, but bitter experience has taught caution about characterizing this Administration's intentions with respect to school desegregation. The reasons for the Administration's initial positive position regarding the requirements of Swann are not immediately apparent, but may involve the following factors:

(1) After closer examination, the Administration may have found that the problems of desegregating student assignment in many school districts has indeed been completed. The Swann decision deals with little other than the physical aspects of desegregation, and it probably has less effect on the Administration's required performance than the Alexander decision did. Furthermore, it sets forth conditions under which the Federal Government's responsibility is ended, at least as the Nixon Administration interprets it. The Federal Government has some large urban districts in the South for which it is directly responsible, but most urban areas are handled by private plaintiffs. Inaction of earlier Administrations—not so much for political reasons as for a lack of legal remedy in large southern urban areas with de jure segregated school assignment patterns reinforced by segregated housing patterns—resulted in private plaintiffs filling the litigant void. The Administration may have concluded that it could weather isolated political storms over the limited positive responses to the Swann decision.

(2) While it would be a gross overstatement to speak of a wave of liberalism sweeping the South, it is not too much to say that the blatant politics of race, as practiced throughout the South in the past, are no longer acceptable in most quarters. This must have been perceived by even the "South strategists" within the Administration. Those who have counseled that policies designed to capture the Wallace vote were essential to a second term for this Administration may not be calling the shots. Instead, the Administration may be reacting politically to some moderate straws in the wind—to the successful campaign of Governor John West in South Carolina against his racist Republican opponent, former Congressman Albert Watson; to the public acceptance of the moderate posture of Republican Governor Linwood Holton of Virginia on the race question; the election of Governor Reubin Askew and Senator Lawton Chiles in Florida, and Governor Jimmy Carter and the appointment of Senator David Gambrell in Georgia; and the reported problems of Governor George Wallace in his home state of Alabama. Much of the moderation on the race question appears to have occurred in the Democratic Party, the traditional seat of Southern racial politics. If this could happen in the Democratic Party, the Administration strategists may have reasoned, perhaps—just perhaps—the Republican Party likewise can afford to deal with issues of equal educational opportunity, discrimination in education and segregated schools on the basis of substance without suffering politically. As the conservative columnist and former Mitchell aide Kevin Phillips wrote on June 22:

"The major ingredient of President Nixon's new suburban housing policy appears to be political fakery.

"Mr. Nixon is following the same pattern he has followed in his 'defense' of the neighborhood school—a heavy opening barrage of conservative rhetoric followed by a subsequent activity in the other direction.

"Actually, Nixon officials know they will be moving in liberal directions—with a zig-zag or two—from the moment they completed their calculated conservative public relations buildup."

If indeed the Administration needs to react to race-related issues in the way suggested by Mr. Phillips, perhaps that may account—at least in part—for what appears to be a relatively positive Administration reaction thus far to court rulings on school desegregation and particularly to the Supreme Court's *Swann* decision.

(3) There are now other issues in the school desegregation/integration struggle which may be or will be causing greater administrative and political headaches for the Administration than the physical desegregation issues dealt with in *Swann*. These include (1) the government's responsibility to desegregate northern schools; (2) the growth of segregated private schools as alternatives to public education both North and South, along with the financial crisis of traditionally segregated parochial schools; (3) the signs (such as the school suit in Richmond, Virginia) of possible legal requirements that all metropolitan area schools must be integrated; (4) the destruction of black authority figures in Southern schools through the dismissal and demotion of black principals and teachers; (5) the problems of in-school segregation and of discrimination against students, especially through the use of culturally-biased tests and ability grouping; (6) the general nationwide phenomena of racial conflict and unrest in high schools; and (7) the emerging legal mandates to correct fiscal inequities, at state levels particularly, but also at the federal levels, in the financing of public schools.

With these issues facing them, the Administration may have decided to put the easier issue—physical desegregation—behind it once and for all.

FOOTNOTES

*As this article went to press July 19, 1971, Federal District Judge Jack Roberts rejected the HEW desegregation plan for Austin elementary and junior high schools, and adopted instead the local school district's plan which would establish fine arts, social science, avocation and science centers to which pupils of all races would be bused.

The Junior high plan also reassigns all black pupils to schools "that are not identifiable as Negro schools." The senior high plan, agreed to by both HEW and the local district, would close a predominently black school this year and reassign the black pupils to schools not identifiably black. Judge Roberts rejected the Government's request to give every school the same racial and ethnic mix as the city at large (65% Anglo, 20% Chicano, 15% black). [New York Times, July 20, 1971, p. 17].

The question remains whether the Justice Department will appeal this decision.

[1] *Swann v. Charlotte-Mecklenburg Board of Education*, 91 S.Ct. 1267 (1971); *North Carolina State Board of Education v. Swann*, 91 S.Ct. 1284 (1971); *McDaniel, Superintendent of Schools v. Barresi*, 91 S.Ct. 1287 (1971); *Davis v. Board of School Commissioners of Mobile County*, 91 S.Ct. 1289 (1971); *Moore v. Charlotte-Mecklenburg Board of Education*, 91 S.Ct. 1292 (1971).

[2] Through the early months of the Nixon Administration, the Federal Government attacked school segregation on two fronts—in court by the Department of Justice under Title IV of the Civil Rights Act of 1964 and the Fourteenth Amendment, and administratively by HEW under Title VI of the Civil Rights Act of 1964. Subsequently, the use of Title VI was abandoned and practically all enforcement responsibility was transferred to the Department of Justice. The NAACP Legal Defense and Educational Fund, Inc. is currently suing HEW for failure to enforce Title VI.

[3] "Underlying these problems is the mistaken belief that desegregation is simply the mixing of black and white students in schools and no more. Little attention has been paid to the way in which student assignment has been carried out or to what happens to black students and faculty in 'desegregated' schools. The latter concerns are sometimes viewed as 'second generation' desegregation problems which, it is thought, will work themselves out after the 'primary' task of mixing the bodies is accomplished." *The Status of School Desegregation in the South, 1970*, a Report by the American Friends Service Committee; Delta Ministry of the National Council of Churches; Lawyers' Constitutional Defense Committee; NAACP Legal Defense and Educational Fund, Inc.; and the Washington Research Project; December, 1970; p. 2.

[4] The Cabinet Committee on Education, originally chaired by Vice President Agnew, is now chaired by George P. Shultz, Director of the Office of Management and Budget.

[5] The judge had ordered the HEW Division of Equal Education Opportunity (Title IV Office), the technical assistance unit under Title IV of the Civil Rights Act of 1964, to draw up the plan for the Department of Justice.

[6] "Having had an opportunity to review that proposal, we note that your Board has put forth a plan of desegregation which embraces those concepts of student assignment, such as non-contiguous zoning, which have been recognized by the United States Supreme Court in the recent *Swann* decision as legitimate tools for achieving stable and educationally sound desegregation in former *de jure* school systems.

"Although we have not yet completed a definite review of your locally developed proposal, we believe it provides the basis for an educationally sound approach. We, therefore, wish to offer the following comments on your proposal which we hope will assist you and, according to its request, the Federal District Court in Austin in meeting current United States Supreme Court standards. We feel that it would be more helpful to you and to the District Court for us to start with the essentially sound elements of your plan taking into account the judgments of both your school board and the Tri-Ethnic Citizens Advisory Committee which it appointed." Letter of May 14, 1971, from Mr. Tom Kendrick, Senior Program Officer, Dallas Office of Division of Equal Educational Opportunity, U.S. Office of Education, to Dr. Jack Da-

vidson, Superintendent, Austin Independent School District, p. 1.

[7] *The Status of School Desegregation in the South, 1970*, p. 16.

SEGREGATION, NORTHERN STYLE*

(By Paul R. Dimond)

School segregation in the North is pervasive and, with the exception of a few communities which have implemented systemwide desegregation plans, it is growing.** The question facing the courts is whether this school segregation violates the 14th Amendment. This article describes recent court actions which have held that it does and explains the reasons why.

Examination of Northern school segregation decisions, and the proof underlying them, suggests that in recent years courts have revisited the issue with far greater sophistication than previously. Courts are coming to understand that for many years authorities in almost every community have assigned pupils and teachers to particular schools. School segregation, therefore, has not just "happened" and is not adventitious, but has resulted from the actions of public officials. In such circumstances, it is not surprising that school segregation, North as well as South, is viewed as "state-imposed" and unconstitutional under the 14th amendment.

The early "northern" school segregation decisions were few and conflicting. Three circuits held school segregation constitutional in Cincinnati, Gary and Kansas City,[1] while the 2nd circuit reached the opposite result in New Rochelle.[2] At the time these decisions were made, "free choice" pupil transfers in formerly dual school systems seemed permissible, and the affirmative 14th amendment obligations regularly applied to review of allegations of racial discrimination[3] had not yet been clearly applied to any school segregation.[4] *Green v. County School Board* [391 U.S. 431 (1968)] removed any lingering doubts: the traditional affirmative obligation under the 14th amendment was "in," and any form of "free choice" which did not end school segregation was "out." Since that time, a spate of decisions has consistently held school segregation actionable in many "Northern" cities: South Holland (Illinois),[5] Pasadena,[6] Las Vegas,[7] Los Angeles,[8] Pontiac (Michigan),[9] Benton Harbor (Michigan),[10] Denver,[11] San Francisco,[12] and Oxnard County (California).[13] Significantly, district and circuit judges have used a variety of constitutional theories to get around previous decisions in order to hold school segregation unconstitutional. *Swann*[14]—with its strong language on faculty assignment, equalization of facilities and resources, and school construction—only lends support to such decisions.

PROOF IN THE SEGREGATION PUDDING

In the new Northern cases, proof of a pattern of segregation has also been important to the judicial review of school segregation. This proof usually starts with statistics showing the extent of pupil segregation; the number and percentage of all or predominantly black and white schools, and the number and percentage of black and white pupils attending racially separate schools. In a hypothetical school system with 5,000 white and 5,000 black pupils, if 4,750 black pupils are isolated in schools with 250 whites and 4,750 white pupils are isolated in separate schools with 250 blacks, these figures, standing alone should speak thunder under any theory of constitutional law. Even if a particular judge is stationing to find a Grand Canyon dividing the respective black and white school populations (more than a railroad track presumably would be required), adequate justification for such a school system, dual in fact, will be difficult to find.[15]

Footnotes at end of article.

In many school systems however, the racial separation of pupils is often not that complete; where the statistics on pupil segregation do not speak so distinctly, other proof may show a constitutional violation just as clearly. School authorities have considerable discretion in assigning teachers and pupils to schools, constructing and locating schools and attendance boundaries, choosing initial student assignments, and setting transfer policies and enforcing them. Careful examination will reveal choices and practices, and their effects, which operate to segregate schools on a racial basis.

I. TEACHER HIRING AND ASSIGNMENT

Perhaps the most obvious, and telling, evidence concerns teacher hiring, and assignment. Whenever there are disproportionately few black faculty in any community's public schools, relative to the adult racial mix, there is a considerable likelihood of racial discrimination in hiring. Perhaps more telling is a pattern of black teachers being assigned primarily to schools with high concentrations of black students and white teachers primarily to schools with predominantly white student bodies. Schools are thereby identified as "black" or "white" by the faculty assignment,[16] and the inference of racial discrimination in teacher assignment is appropriate.

School authorities have little basis for asserting that "neighborhood" schools, transportation problems, or lack of control over the assignment of teachers are adequate justification for the prima facie racial assignment of the faculty.[17] Moreover, such racial patterns and practices in the hiring and assignment of faculty, over which school authorities undeniably have control, compel more careful scrutiny of patterns and practices of pupil assignment and any asserted justification therefore. [See, e.g., South Holland, Ill. and Pontiac, Mich.]

II. PUPIL ASSIGNMENT

The assignment of pupils to various schools often involves many processes. Where schools rely on geographic zoning for pupil assignment, the drawing of boundaries and the policing of the assignments, the size of schools, the grade structure, and the construction and location of new schools, additions to old ones, and placement of portable classrooms all help to determine which students attend particular schools. The pupil composition of schools is further affected by exceptions to strict reliance on geographic zoning. These include transfer policies ("optional zones," "free transfer," "free choice," "open enrollment," "majority to minority," "to promote integration at the receiving school"), transportation practices, and school plant use (i.e., practices relative to overcrowding and undercrowding at school buildings). I include plant utilization—over and undercrowding—in the set of practices which deviate from geographic zoning because administrative practices to equalize plant use may depart from geographic zoning. Manipulation of geographic attendance zones, of course, is also a possible response.

A. EXCEPTIONS TO GEOGRAPHIC ZONING

This set of practices often reveals how acts of school authorities create and perpetuate school segregation. "Optional zones" usually straddle the edges of geographic attendance zones to permit students to attend either school. Whenever optional zones exist between a predominantly black and a predominantly white school, their purpose is usually to allow whites to flee from the "black" school to the "white" one.—An identifiably "black" school is defined as a school with a disproportionately black student body and disproportionately black faculty relative to the systemwide racial mix; a "white" school has a disproportionately white student body and faculty. The almost invariable effect is that whites "choose" to attend the "white" school and blacks, with a few exceptions, the "black" school. In many instances, the constraints on choice inherent in the existence of the optional zone, and the identifiability of the schools, are further accentuated by the hostility school authorities show the few students who attempt to opt for the school of the opposite race.—Such hostility includes silent acquiescence in the pressures applied by students and their parents, especially white, to the child of one race that applies to the school of the opposite race, and simply lying about spaces available. [See, e.g., *HOBSON I*, 269 F. Supp., 401, 415–17, 499, 501; and Denver].

Similarly, "free transfer" and "open enrollment" policies—with transportation provided and space guaranteed at the receiving schools—often operate to intensify school segregation. While these policies theoretically allow any student to transfer from his school of geographic assignment to any other school in the system, purely racial reasons often can be shown to govern the transfer choices. In other instances, subtle pressure by school authorities may also promote a white flight from "black" schools, while discouraging a similar transfer by black students into "white" schools. Invariably, "free transfer" and "open enrollment" policies increase segregation: hordes of whites flee their geographically-assigned schools which are perceived as "black"; no whites transfer into "black" schools; very few blacks transfer into "white" schools; and some blacks "transfer" from "white" to "black' schools. [See, e.g., *Monroe v. Bd of Commissioners of Jackson, Tenn.*, 391 U.S. 448 (1968)]. "Hardship" and even "majority-to-minority-transfer" policies must also be closely examined, for in practice their enforcement may be honored in the breach and operate to segregate schools—Even if the only transfer policy in a school district is the constitutionally appropriate "majority-to-minority" variety with transportation and space guaranteed, *Swann* at 1281, and that policy is rigorously enforced, the results are predictably small: a few blacks elect to transfer to "white" schools and no whites elect to transfer to "black" schools—[See Pasadena and the May 22, 1971 Order of the Massachusetts Commission Against Discrimination].

BUS TRANSPORTATION AND SCHOOL UTILIZATION

Regardless of a system's transfer policies, the actual transportation of children may show how school authorities segregate schools. Black children may be bused to "black" schools past predominantly "white" schools with space available, or white students may be transported to "white" schools past predominantly "black" schools with space available. This patently "dual" transportation sometimes occurs under the guise of relieving overcrowding and maximizing the efficient use of the school plant. Only somewhat less subtle is one-way busing to "white" schools of white students who live much closer to "black" schools with available space. [See South Holland].

The pattern of school plant utilization may also provide proof of racial segregation. "Black" schools may be overcrowded while "white" schools have space. Or "black" elementary and "white' secondary schools may be overcrowded, while "white' elementary and "black" secondary schools are undercrowded. Or there may be a mix of "black" and "white" schools over and undercrowded. In each case, the equalization of school plant use could desegregate schools substantially. Under these circumstances, school authorities are faced with the choice of equalizing school plant use to integrate, or to segregate, or not to equalize plant use at all and perpetuate segregation. When over and undercrowding is clear and consistent over time, the failure to integrate by equalizing use of school plants constitutes a choice to impose segregation: it is the election of an option which intensifies segregation. [See Pasadena].

Under any of these exceptions to geographic zoning, white students will never be transferred from "white" schools to "black" schools. [See San Francisco, slip op. at 18]. That practice is an archetype of how school systems cater to the flight of whites and their hostility to association with blacks. In determining and enforcing transfer, transportation and plant use policies, school authorities diverge from what they claim may be a general policy of "neighborhood" zoning. The way they are implemented may reveal not only how school authorities have chosen to impose segregation in any particular instance, but also how the "neighborhood" schools are intended to operate to contain blacks in separate schools.[18]

B. MANIPULATION OF GEOGRAPHIC ZONES

To examine geographic zoning as a basis for school assignment is necessarily to examine the relationship between attendance areas, actual school assignments, and residential patterns. These relationships must be subjected to searching judicial scrutiny. Assertions that school segregation results "from a neutral neighborhood school policy and housing patterns over which the school board has no control" should not be blindly accepted. When courts examine school officials' actions, school composition, and housing patterns, the following practices and patterns of state-imposed segregation in the schools are likely:

SCHOOL BOUNDARIES

Contiguous school attendance zones contain black and white children in separate schools. [See e.g., South Holland, Ill.].

School boundaries track a sharp demarcation between white and black residential areas. [See, e.g., New Rochelle, South Holland, and Pasadena].

Railroad tracks (or other arguable barriers) are used as school boundary lines when only blacks live on the other side, but attendance boundaries cross the tracks freely when both blacks and whites live on either side. [See, e.g., Pontiac and South Holland].

School attendance zones generally follow residential patterns that maximize school segregation. [See San Francisco and Pasadena].

When black residential areas expand, school boundaries are altered or maintained to perpetuate the containment of blacks and whites in separate schools. [See, e.g., Pasadena; *Hobson v. Hansen* (supplemental order of Jan. 1971); *Branche v. Board of Ed.*, 204 F. Supp. 150 (E.D.N.Y. 1962)].

Where pockets of one race reside within a large area of the other race, attendance zones coincide with the pocket and students living there are assigned to a non-contiguous school of their own race or, the equivalent, a school within the pocket just large enough to serve the students living there.

Where attendance zones encompass a mixed population, schools often remain predominantly black because whites are allowed to slip into other schools. The failure to enforce zone lines strictly may make every attendance area an "optional zone" for whites who wish to escape to a "white" school. [South Holland].

Despite this variety of manipulations, the school attendance zones of predominantly white residential areas are never altered to feed into a "black" school. [San Francisco e.g.].

SCHOOL SIZE

School capacities may vary with the racial composition of residential areas in a district. Large schools may serve vast areas which are predominantly black or white, but at the edges between white and black residential areas, smaller schools may minimize interracial education. Or school size may be finely tuned to meet the exclusive needs of a particular racial pocket.

GRADE STRUCTURE

The grade structure of schools may also be varied to segregate schools. Because the area served by a school varies with the number of grades it serves, schools may be structured (e.g., K–8 and 9–12) so that all schools in an area are predominantly of one race. An alternative grade structure (say, K–6, 7–9, 10–12) might lead to substantial integration in the very same schools. [See, e.g., South Holland].

CONSTRUCTION AND LOCATION OF NEW SCHOOLS, ADDITIONS AND PORTABLE CLASSROOMS

The size and location of new schools throughout a school district—in conjunction with attendance boundaries, grade structures, and teacher assignments—frequently create schools which open and remain predominantly white or black. [See, e.g., *Swann, Johnson, Soria, Spangler*]. In view of the vast range of options available to school officials in each decision, a pattern of predominantly one-race schools is strong evidence of that "quantum" of "state-imposed" segregation which compels judicial intervention to enforce the Constitution in the face of default by public officials—"If school authorities fail in their affirmative obligations . . . judicial authority may be invoked . . . In default by the school authorities . . . a district court has broad power to fashion a remedy that will assure a unitary school system." *Swann* at 1276. [See, e.g., Pontiac, Mich.]. A careful examination of the situation at the time of each new school opening—including the underlying residential pattern and the options available to school authorities—will usually confirm the inference compelled by the pattern.]—"The construction of new schools and the closing of old ones, is one of the most important functions of local school authorities and also one of the most complex . . . The result of this will be a decision which, when combined with one technique or another of student assignment, will determine the racial composition of the student body in each school in the system . . . [C]hoices in this respect have been used as a potent weapon for *creating and maintaining a state segregated school system. . . . In ascertaining the existence of legally imposed school segregation, the existence of a pattern of school construction and abandonment is thus a factor of great weight. Swann* at 1278–79 (emphasis added).

AN EXAMPLE IN CONCRETE

An example of how the "neighborhood" school policy is used may clarify how school authorities build upon residential segregation to impose segregation in schools.

In the diagram below, A, B, C, D, and E represent existing attendance areas and their respective elemetary schools for about 30 square blocks in a densely populated section of a city. The chart shows the date of construction, capacity, and enrollment by race for selected years.

Year school opened, school and attendance area	Date	Black	White	Capacity
1930—A	1950	0	600	800
	1960	0	800	800
	1970	3	1,000	800
1930—B	1950	0	800	1,000
	1960	15	900	1,000
	1970	37	1,200	1,000
1960—C	1950	----	----	1,100
	1960	20	1,100	1,100
	1970	80	1,200	1,100
1960—D	1950	----	----	1,100
	1960	20	1,100	1,100
	1970	40	1,200	1,100
1944—E	1950	550	0	500
	1960	440	3	500
	1970	350	1	500

Schools A and B opened in 1930 and served the entire area within the dotted line, except for a few black children living in shanties in swampy area E. (They walked several miles to a predominantly black school in the inner city.) Eventually, black immigrants to the city, and others from congested downtown areas, joined the black families already in E. Real estate authorities marked off the edges of E and, with the support of neighborhood associations, encircled it by filing racially restrictive covenants, enforceable by state courts, in surrounding areas. World War II and the migration of blacks to work in factories to support the troops brought many more blacks into E.

Federal war housing authorities could not (by their own policy) build housing for blacks except in areas already occupied by them. Because E was one of the few black areas in the city with vacant land, temporary war housing for blacks was built there over the strenuous objections of whites in surrounding areas. School officials in cooperation with federal housing authorities, planned and built a 500 pupil, K–6 school for E-area blacks even though space was available in schools A and B and other nearby "white" schools. The attendance zone for the new school coincided exactly with the black residential area. The crush of black immigrant war workers and the racial restrictions on occupancy in other areas of the city, however, resulted in 700 E-area black elementary students when the school opened. Black persons were directed by both white and black real estate brokers into E. White brokers counseled whites to avoid E. Black brokers could not sell in areas not already having some black families. As a result, only 550 were transferred back to E from the downtown "black" schools they had previously attended; despite available space in A and B, the remaining black elementary children remained in "black" inner city schools. Meanwhile, enterprising whites on the eastern border of E built a brick and cement wall on the school and residential boundary of E, presumably to prevent encroachment by blacks. Both the wall and the coincident school boundary remain today.

By 1953 the temporary war housing was eliminated, and the number of black elementary and junior high students in the E area had declined to 400. In 1953, E became a K–9 school to serve these students, and 100 blacks from overcrowded inner city schools were assigned to E until 1965. During the 1950's, the white residential areas surrounding E grew rapidly, leading school officials to build two new schools to serve 1100 pupils each. The boundaries of the new schools extended away from E to permit their "full use"; the boundaries for E, of course, remain unaltered despite the ease with which E could have been paired with any of the surrounding schools, (E becoming K–2 and the paired school 3–6). The 75 black junior high students in E then could have been assigned to the "white" junior high which served A, B, C, and D.

By 1970, E became a K–6 school again with only 400 elementary students living in the area. Despite a new policy of relieving overcrowding to promote integration, no students from the overcrowded A, B, C, or D schools were transferred to E, nor were boundaries redrawn, or E paired with contiguous schools. Although transfers promoting integration were permitted, no whites transferred into E and only 50 blacks transferred out.

LESSONS FROM THE CONCRETE

At many points in this tale, school officials made choices which contained blacks and whites in separate schools. Any number of available alternatives could have integrated schools in the area.

Write large this single example of a black 'pocket" (with a few variations to fit the

Footnotes at end of article.

expansion of the ghetto and the variety of segregatory technique available to school officials) and the practice of school officials in most cities and towns where blacks attend separate schools will emerge. Add that many cities in the 1960's recommended plans for school desegregation and the removal of the racially identifiable pattern of faculty assignment and resource allocation. Add that these were adopted as general policy guidelines, but were rejected or only partially implemented in practice. [See, e.g., San Francisco]. In some cities specific desegregation plans were rejected, or adopted and then rescinded, in the face of white hostility to desegregation. [See, e.g., South Holland, Pasadena, Denver, and *Bradley v. Milliken*, 433 F.2d 897 (6th Cir. 1970).] Add that residential patterns result from all forms of public and private racial discrimination [19] and that schools do affect housing choices.[20]

In such circumstances, the state's imposition of segregation in schools is difficult to deny. The burden shifts to school authorities to justify their failure to elect alternatives and make decisions which minimize segregation. The "neighborhood" school policy underlying these practices must also be justified in light of the school segregation it creates and maintains. When adequate justification is not forthcoming, as it almost never can be, earlier Northern court decisions upholding "neighborhood" schools will be distinguished. The Sixth Circuit's opinion in *Davis* (Slip Op at 5) provides a clear example:

Although each decision considered alone might not compel the conclusion that the Board of Education intended to foster segregation, taken together, they support the conclusion that a *purposeful* pattern of racial discrimination has existed in the Pontiac School system for 15 years.

The *Davis* court evaluated the Pontiac school authority's purpose from the effect of its actions and its failures to act.[21] The court examined the options available to school authorities for pupil and teacher assignments; where they chose alternatives leading to greater racial separation, the resulting segregation was held to be unconstitutional.

INDEPENDENT APPELLATE REVIEW

The major question still unanswered after *Davis* is whether appellate courts will review records independently in order to overrule recalcitrant district judges who uphold school segregation because they find no evil intent from the racial effects. When lower courts view this pattern of facts and find no "purpose" to segregate, independent appellate review must be made if the courts are to apply the affirmative 14th amendment standard traditionally used in reviewing all other claims of racial discriimnation.[22]

ALL SEGREGATION UNCONSTITUTIONAL

When the factors underlying school segregation and the alternatives available to school authorities are subject to search scrutiny, including independent appellate review, the rights of Northern as well as Southern black school children will no longer depend on the ill will or the caprice of school authorities or district judges. The much trumpeted distinction between "de facto" and "de jure" will reach a final deserved resting place. Those labels have always been conclusions; neither is very descriptive nor analytic. By definition, "de jure" means actionable under the 14th amendment; "de facto," not actionable. If, consistent with the historic 14th amendment analysis of racial discrimination in all other areas of life, courts require school authorities to justify segregation by showing the promotion of a compelling state interest by the least onerous (segregatory) means, most Northern school segregation will fall. School authorities will be unable to bear that burden of proof of adequate justification.

The point is not that "de facto" school segregation is unconstitutional, but that all public school segregation is "de jure." That turnabout is consistent with the *Brown* court's answer to *Plessy*: "We conclude that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal." [347 U.S. at 495].

That judgment has nothing to do with achievement test scores, or any implication that black children make "black" schools inferior. It is based on the fact that segregation in the public schools, North and South, is imposed on black people by a dominant white majority which is intent on containing blacks in separate neighborhoods and schools. When that intent is fulfilled in the public schools, in which most of us, for better or worse, are compelled by law to attend for over a decade, the minimum objective remains, as the Supreme Court said in *Swann*, "to eliminate all vestiges of state-imposed segregation."

FOOTNOTES

* "Northern," I mean places where racially dual schools were not mandated by explicit statements of public policy as was the case in many places on which I bestow the under-inclusive appellation "Southern." (After all, *Brown I did* include cases from Kansas and Delaware.)

** In the Continental United States 68.0% of all blacks attempted 80–100% minority schools in 1968; in 1970 it had dropped to 49.4%. But in the 32 Northern and Western states, 57.4% of all blacks attended 80–100% minority schools in 1968; and in 1970 it was still 57.6%. Table 2–A, *HEW NEWS*, June 18, 1971. The large urban areas in these states have even greater segregation.

[1] *Deal v. Cincinnati Bd. of Ed.*, 369 F.2d 55 (6th Cir. 1966), cert. den., 387 U.S. 935, on remand, 419 F.2d 1387 (6th Cir. 1970), cert. den. because petition untimely filed, 91 S.Ct. 1630; *Bell v. School of Gary*, 324 F.2d 209 (7th Cir. 1963), cert. den., 377 U.S. 924; and *Downs v. Kansas City*, 336 F.2d 988 (10th Cir. 1962), cert. den., 380 U.S. 914.

[2] *Taylor v. Bd. of Ed.*, 294 F.2d 36 (2d. Cir. 1961), cert. den., 368 U.S. 940 [hereafter referred to as New Rochelle].

[3] See, e.g., *U.S. ex rel. Seals v. Wiman*, 304 F.2d 53, 65–66 (5th Cir. 1962); *Avery v. Georgia*, 345 U.S. 559, 561 (1963).

[4] *Brown I, Cooper v. Aaron, and Griffin v. Prince Edward County*, of course, required affirmative action. But the invention of "all deliberate speed" in *Brown II* and the slow progress of desegregation made many believe, or hope, that somehow the 14th amendment was to be read with a malign neutrality for purposes of review of school segregation.

[5] *U.S. v. School District, 151*, 404 F.2d 1125 (7th Cir. 1969), on remand, 301 F. Supp. 201 (N.D. 111. 1969), aff'd as modified, 432 F.2d 1147, cert. den. [hereafter referred to as 151 or South Holland].

[6] *Spangler v. Pasadena Bd. of Educ.*, 311 F. Supp. 501 (C.D. Cal. 1970) [hereafter referred to as *Spangler* or Pasadena].

[7] *Kelley v. Brown*, Civ. No. LV–1146 (D. Nev. Dec. 2, 1970).

[8] *Crawford v. Bd. of Educ.*, Civil No. 822854 (Los Angeles Super. Ct. May, 1971).

[9] *Davis v. School Bd. of City of Pontiac*, 309 F. Supp. 734 (E.D. Mich. 1970), aff'd F.2d (6th Cir. 1971) [hereafter referred to as *Davis* or Pontiac].

[10] *Berry v. School District*, Civ. No. 9 (W.D. Mich., Feb. 17, 1970) [hereafter referred to as *Berry* or Benton Harbor].

[11] *Keyes v. School District No. 1*, 302 F. Supp. 279 (D. Colo. 1969), 313 F. Supp. 61 and 90 (D. Colo. 1970), aff'd in part and rev'd in part, F.2d (10th Cir. 1971) [hereafter referred to as *Keyes* or Denver].

[12] *Johnson v. San Francisco Unified School District* (N.D. Cal. April 28, 1971) [hereafter referred to as *Johnson* or San Francisco].

[13] *Soria v. Oxnard School District Bd. of Trustees*, Civil No. 70–396 (C.D. Cal. May 12, 1971) [hereafter referred to as *Soria*]. In addition, at the close of plaintiffs' proof in *Bradley v. Milliken*, Civ. Act. No. 35257 (E.D. Mich. June 16, 1971) (Detroit) the district court held that plaintiffs had established a prima facie case and issued an injunction, *pendente lite*, on all school classroom construction—new buildings, additions, and portables.

[14] *Swann v. Charlotte-Mecklenberg Bd. of Ed.*, and companion cases, 91 S. Ct. 1267 et seq. (April 20, 1970) [hereafter referred to as *Swann* or Charlotte].

[15] In Mobile, the Supreme Court found use of a major public highway as a barrier to school desegregation an inadequate justification for continuing school segregation. *Davis v. Board of School Commissioners of Mobile*, 91 S.Ct. 1289. Compare the conclusion of the district court in South Holland, Ill.:

[S]tandards and procedures pursuant to which pupils are assigned to schools, which are alleged to be racially discriminatory and which have resulted in exclusively white student bodies in regular classes in certain of a district's schools alongside almost exclusively Negro student bodies in the district's remaining schools, are subject to the most intensive judicial scrutiny . . . [301 F. Supp. 201, 230].

[16] Usually, any doubts on this score can be clarified by the past practice of assigning no black teachers to all white schools or removing any black teacher assigned to such schools when white parents protest the invasion.

[17] "In its assignment of faculty, a school district is burdened with none of the impediments otherwise present in a desegregation plan. The limiting effect of attendance zones and difficulties of transportation are not present in this area to any substantial degree." *U.S. v. Bd. of Education, Tulsa, Oklahoma*, 429 F.2d 1253, 1260 (10th Cir. 1970); "Defendants and their predecessors undeniably had actual and legal control . . . with respect to the racially patterned allocation of faculty and staff during the pertinent period. . ." *U.S. v. School Dist. 151*, 301 F. Supp. 201. Nor have labor contracts to the contrary ever been recognized as being of any weight, let alone controlling, for purposes of analysis under the 14th amendment.

[18] Proof of resource disparities between predominantly black and white schools may serve a similar function. Yet equality of objectively measurable facilities between black and white schools may also be a belated attempt to buy off desegregation at the price of resource equalization.

[19] The involvement of public officials in the patterns of housing segregation is startling. The F.H.A. and its predecessor agencies long encountered developers and owners to use racially restrictive covenants and to create racially homogeneous neighborhoods. To this day, the F.H.A. has not taken adequate precautions to insure that new housing is open in practice to all races; nor has the F.H.A. taken any affirmative action to alter the racially separate residential patterns it helped to create. Discriminatory real estate marketing and advertising practices, undertaken by licensees of the states, are notorious and pervasive. Public housing authorities everywhere built racially separate projects and still refuse to build racially mixed projects in white residential areas. This litany of public and private housing discrimination could go on; the discrimination and its long persisting effects certainly do.

Upon viewing such facts, post-*Green* courts have consistently held that a neighborhood school policy neutral on its face is an impermissible imposition of segregation in the schools. See, e.g., *Brewer* v. *School Bd. of City of Norfolk*, 397 F.2d 37, 41–42 (4th Cir. 1968); *Henry* v. *Clarksdale Municipal School District*, 409 F.2d 682, 687–689 (5th Cir. 1969); *Spangler* v. *Pasadena City Bd. of Ed.*, 311 F. Supp. 734, 742 (C.D. Cal. 1970);

U.S. v. *Tulsa*, 429 F.2d 1253 (10th Cir. 1970). In such circumstances, any neighborhood school policy may serve to contain blacks and whites, already resident in separate neighborhoods by "state action" in racially separate schools.

[20] "People gravitate toward school facilities. . . . The location of schools may thus influence the patterns of residential development of a metropolitan area and have important impact on composition of inner-city neighborhoods." *Swann* at 1278. By identifying schools as primarily black or white, school authorities are, at least in part, responsible for racially separate housing patterns.

[21] "The purpose of legislation is to be determined by its natural and reasonable effect, and not by what may be supposed to have been the motives upon which the legislature acted," *New York* v. *Roberts*, 171 U.S. 658, 681 (1898) (Harlan, J., dissenting).

[22] See e.g., *Coleman* v. *Alabama*, 339 U.S. 22, 32 (1967).

THE SOCIOLOGY OF MULTIRACIAL SCHOOLS

(By Robert L. Green, John H. Schweitzer, Donald S. Biskin, and Lawrence W. Lezotte)

The ideas discussed in this article reflect the authors' commitment to multiracial schools, nondiscrimination, and equitable treatment for minority students and school personnel after desegregation. Based on our experiences as social scientists and educational researchers, and as expert witnesses and research consultants in three major school desegregation cases,[1] our philosophy of multiracial schools rests on three assumptions: (1) that multiracial schools provide optimal conditions on which to build an egalitarian multiracial society; (2) that school segregation is detrimental to the educational and psychological development of majority and minority children; and (3) that multiracial schools are effective settings for teaching attitudes and behavior essential to dissolving and reducing racial tension. We also believe that multiracial schools are obtainable if the nation will commit itself fully to pursuing the basic principles of the American Constitution.

Although we are committed to multiracial classrooms, we are aware of the negative ramifications they may have for the black community. A recent Race Relations Information Center [2] report, for example, indicates some negative effects of desegregation on black teachers in the South. A black male with 25 years of experience as a principal was assigned to teach social studies and history to seventh graders. A woman with nine years experience scored two points below B certification and did not receive a new contract from her school. A home economics teacher of 23 years was fired for "incompetence" five days after signing her new contract to teach second grade. As these examples illustrate, court actions pressing for multiracial classrooms are not enough. Social scientists must help develop systems to protect minorities from becoming victims of intense racial discrimination in a new system of multi-racial education.

This problem is complicated by the fact that there is no readily-identifiable standard to which school desegregation efforts can be directed. Theoretically, it makes little differenec whether desegregation activities rest on a specific majority-minority student ratio or upon proportional representation. What is important is that the results reflect non-extreme racial composition. The numbers (quota) "game" may become a quagmire which deters rather than facilitates multiracial school efforts. Consequently, the only helpful general recommendation is that every attempt be made to eliminate the racial identifiability of schools.

Footnotes at end of article.

UNIRACIAL SCHOOLS HARMFUL

We believe that racially identifiable schools (white as well as black) have harmful effects on the achievement, self-concepts, and attitudes of all students. While the exact proportion of minority and majority children is not as important as the perceptions of the administrators, teachers, parents and children, any racially identifiable school carries artificial connotations of inferiority or superiority with negative impact on school programming and attitudinal development.

The concept of racially identifiable schools is relative. In one school district a school with 40% black students might be perceived as multiracial, while in another district it would be racially-identifiable. The effect of being perceived as racially distinguishable, however, is not ambiguous: the white educational establishment is able to set minority youngsters aside in isolated educational settings and deny them the full range of cognitive and affective educational experiences.

White parents often change their children's school because they believe that education at predominately black, Mexican-American, or Puerto Rican schools is inferior. Minority parents believe, often justifiably, that minority school resources are less adequate and the teaching personnel less experienced and trained than they are in majority schools. In *Berry*, for example, (and many other cases),[3] teachers with fewer credentials were shown to be assigned to the black schools. A report on Chicago schools [4] showed that inner city schools employed 36% full-time substitutes while no other Chicago schools averaged more than 14%. Eighty-two percent of all Chicago substitutes taught in inner city schools. And the median years of teaching experience in the inner city was four, compared to 19 in upper income schools, 15 in middle income schools, and nine in lower income schools elsewhere in the city.

These facts undermine many minority parents' belief that the educational system works in the best interest of their children. And children, both minority and majority, are quick to internalize their parents' perceptions of the schools they attend. Minority students soon develop resentment, hostility, and resignation because they perceive, and often know, that their education is inferior. White children, on the other hand, often develop feelings of superiority which the educational system fails to counter. They develop a need to keep a distance between themselves and minority children, and the education system reinforces this directly. A vicious cycle resulting in greater separation, both physical and psychological, develops, and the self-fulfilling prophecy of inferior minority schools is continued.

That school segregation is detrimental to the educational and psychological development of both majority and minority children is a well-documented fact. Racially isolated schols do not and cannot promote the attitudes necessary for functioning in a multiracial society. If they did, there would be no need to modify many existing education systems. But since they do not, they must be changed into multiracial learning environments.

MULTIRACIAL CLASSROOMS NEEDED

Merely attaining a multiracial composition within a school is not sufficient to eliminate racial isolation. A mix within each classroom is necessary to eliminate the deleterious effects of racial isolation. Many Southern school districts have blatantly violated the spirit of desegregation orders by creating all-black classrooms within nominally integrated schools. Recently classroom segregation was discovered, for example, in 125 districts.[5] In the North this kind of segregation is produced by "tracking": homogeneous "ability" groupings usually produce predominately black and predominately white classrooms within multiracial schools.[6] Although no evidence proves that tracking improves either the quality of instruction or achievement, there is compelling evidence that the creation of racially identifiable classrooms has grave negative consequences.[7] One researcher,[8] using data originally gathered for the Coleman Report, found that minority students do not benefit from attendance at multiracial schools if they remain in segregated classes. In fact, racially identifiable minority classrooms within a majority white school were found to be *more* detrimental to minority student achievement than were racially identifiable minority schools within a majority white school district. Undoubtedly, the dynamics of negative perceptions toward black schools are also at work in predominately white schools in the development of perceptions regarding black classrooms and artificial views of superiority. The whole system of white education, from administration through the classroom level, is a prototype of the racially exclusive and biased conditions in the greater society, and must be changed.

EFFECT ON WHITE ATTITUDES

The damaging consequences of racially isolated classrooms and schools extend beyond the academic performance of black school children and the subsequent impairment of their ability to compete economically and occupationally with whites. Racial isolation in the schools fosters attitudes and behavior that perpetuate isolation in other important areas of life. Whites who attend racially isolated schools develop unrealistic self-concepts, hate, fear, suspicions, and other attitudes that alienate them from minorities. They tend to resist desegregation efforts in areas such as housing, employment, and schools. Highly trained black university graduates frequently are faced with the same barriers that affect the black high school dropout. Multiracialism is important, therefore, so that whites who attend suburban high schools and predominately white universities will not erect further barriers to minority university graduates, high school dropouts, or minority people who are victims of the welfare system.

Whites who have attended multiracial schools tend to seek racially mixed situations, have a greater probability of having black friends, appear more interested in having their children attend multiracial schools, and more frequently indicate that they would go out of their way to obtain housing in a multiracial neighborhood, than whites who attend racially isolated schools.

Multiracial schooling produces similar attitudes in blacks who express a greater willingness to reside in a multiracial neighborhood and to have their children attend multiracial schools.[9] For both races, behavior validating these attitudes has been observed. Blacks and whites who have attended multiracial schools more frequently have children who attend multiracial schools, live in multiracial neighborhoods, and have close white or black friends than those who have attended segregated schools.[10] However, the most important result is that non-discriminatory whites will not place barriers before minorities and inhibit their progress in all facets of American life.

THE GOAL OF MULTIRACIALISM

The development of multiracial schools, a national policy and national law, is an American objective. But we cannot have a conflict-free multiracial society unless two prerequisites are met. Minority group people must have an equal opportunity to acquire skills that will enable them to compete successfully with members of the dominant group; attitudes that foster multiracial interactions must also be developed. The fulfillment of both these prerequisites can be greatly facil-

itated by the schools. Segregation has prevented either from being fully accomplished, and we are not optimistic about the future. The federal government has not yet assumed as active a role as it should in attempting to eliminate segregation. The President refuses to respond to the increasing segregation of large northern cities and restrictive housing practices in the suburbs.

We believe that a multiracial society is something more than an optimistic goal which the nation might move toward gradually over generations. The Kerner Commission warned in 1968 of the development of two societies, one white, one black. During the three intervening years we feel that divisions have increased. The situation is becoming critical, and social scientists, to respond effectively to this crisis, must abandon ivory tower neutrality. Colleges of education, for example, must begin to develop teacher training programs to prevent white youngsters from responding to people in racially motivated ways, and must retrain teachers for newly developed multiracial systems.

In speaking for the elimination of racially identifiable schools within the boundaries of the urban units, we do not blind ourselves to the fact that this is only the first step toward the eventual goal. This must be followed by cutting the white suburban noose that is strangling the cities. A multiracial school system is but one step toward eliminating the inequities and creating a healthy society.

FOOTNOTES

[1] *Berry v. School District of the City of Benton Harbor*, Civ. No. 9 (W.D. Mich., Oral Op. Feb. 17, 1971); *Northcross v. City of Memphis Board of Education* (W.D. Tenn. 1970); *Bradley v. Milliken*, Civ. Act. No. 35257 (E.D. Mich. June 16, 1971).

[2] Robert W. Hooker, "Displacement of Black Teachers in the Eleven Southern States," Race Relations Information Center, Nashville, Tennessee (December 1970) p. 1.

[3] Cf., for example, *Swann v. Charlotte-Mecklenburg Bd. of Education*, 91 S.Ct. 1267, 1277; *Hobson v. Hansen*, 269 F. Supp. 401 (D.D.C. 1967), and Order of May 25, 1971,— F. Supp.—(D.D.C.).

[4] Robert J. Havighurst, "Education in Metropolitan Areas" (January 1967).

[5] American Friends Service Committee; Delta Ministry of the National Council of Churches; Lawyers' Committee for Civil Rights Under Law; Lawyers Constitutional Defense Committee; NAACP Legal Defense and Educational Fund, Inc.; and Washington Research Project, *The Status of School Desegregation in the South, 1970*, p. 31.

[6] See *Berry* [note 1].

[7] Findlay, *et. al.*, "Ability Grouping: 1970," Report Prepared for HEW.

[8] James McPartland, "The relative influence of school desegregation and of classroom desegregation on the academic achievement of ninth grade Negro children," Interim Report (September 1967).

[9] U.S. Commission on Civil Rights, *Racial Isolation in the Public Schools*, Vol. 1 (1967).

[10] Meyer Weinberg, "Desegregation research: An appraisal," *Phi Delta Kappan* (1968).

CHICANO EDUCATION: IN SWANN'S WAY?

(By Alan Exelrod)

Although *Swann* and its companion cases address themselves to the desegregation of black and white schools in the South, they provide some basis for an attack on a whole range of educational practices in the Southwest, which could have a profound effect on the quality of Chicano education. This challenge would be based not on the use of the particular remedies prescribed by the Supreme Court, but on the decision's implication that the constitutional principle of racial equality is invested with new vigor and strength for brown as well as black. This article will first discuss the question of how *Swann* will affect the desegregation of Chicano school children, and then speculate on *Swann's* use as a constitutional basis for effecting curriculum and methodology changes in Chicano education.

I. DESEGREGATION

Chicanos themselves are ambivalent about the desirability and value of an integrated education.[1] While there is a tendency today to think that Chicanos, wherever located, share the same educational goals, this is not the case. In rural areas and small urban centers, integration is sought because segregated education invariably means inferior facilities for Chicano schools, as well as psychological feelings of second-class citizenship. In large urban areas, such as Los Angeles (with 1.2 million Chicanos), Denver, and San Francisco, however, there is little desire for integration. The leaders of these "barrios" [2] resist education policies which undermine community control of schools and retard the enactment of bilingual/bicultural education. In the May 1971 Denver school board election, for example, the La Raza Unida Party (a militant Denver Mexican-American political action group) opposed busing despite a court order to integrate.[3] In San Francisco, shortly after *Swann* was announced, a federal district judge ordered the submission of desegregation plans on a black/white basis.[4] From conversations with leaders of the largely Chicano Mission District, it is apparent they do not want to be a part of that plan because the community is achieving a significant voice in its schools for the first time and fears a reduction in the existing bilingual/bicultural programs.[5] In analyzing *Swann*, therefore, it must be understood that many urban Chicano communities will abandon their neighborhood schools only if desegregation is accompanied by bilingualism and biculturalism.

Where the Mexican-American community does seek desegregation, *Swann* offers real benefits. Unlike the South, where segregation of blacks was accomplished by state legislative enactment, segregation of Chicanos in the Southwest (and the North where many Chicanos have migrated) has come about on a district basis by subtle, as well as blatant, means—The proof and law to challenge the segregation of Chicanos is the same as that used in any Northern school segregation suit. [See Dimond article, p. 17.] Ironically, then, a suit challenging Chicano segregation in Texas, for example, will be a "Northern" school case in the "South." And there can no longer be any doubt that segregation of Chicanos, as with discrimination against any racial and ethnic group on the basis of national origin, is suspect and subject to close judicial scrutiny under the 14th amendment. See, e.g. *Korematsu* v. *United States*, 323 U.S. 214, 216 (1944); *Hernandez* v. *Texas*, 347 U.S. 475; *Cisneros* v. *Corpus Christi Independent School District*, 324 F. Supp. 599, 606 (S. D. Tex. 1970); *Alvarado* v. *El Paso Independent School District* (W. D. Tex. 1971), rev'd (5th Cir., June 16, 1971) (No. 71–1555): "This [is a] class action by 14 Mexican-American parents on behalf of themselves and children, and all other children and parents in the El Paso, Texas Independent School District. . . . In our view the complaint clearly states a cause of action."

Because one problem in Chicano desegregation suits is proving discriminatory actions, *Swann* helps by broadening the definition of segregation. The Court made specific reference to school site selection policies, recognizing that "choices in this respect have been used as a potent weapon for creating or maintaining a state-segregated school system." Throughout the Southwest, school boards have built schools which serve single ethnic group neighborhoods, rather than fostering integration.[6] Often "colonias" [7] were built outside the city limits of towns in order to avoid building codes and other city regulations.[8] The school district would build a school to serve the "colonia" and thereby insure that most Chicanos would attend primarily Chicano elementary schools. *Swann* holds that such a pattern of school construction constitutes "a factor of great weight" in identifying legally imposed school segregation. From the strong language in Chief Justice Burger's opinion, it is likely that proof of a discriminatory pattern in school construction would itself be enough to establish the maintenance of a dual school system and hence, a violation of equal protection.

The Court also broadened the definition of segregation by placing on the school district the burden of explaining one-race schools. "Schools all or predominately of one race in a district of mixed population will require close scrutiny to determine that school assignments are not part of state-enforced segregation." In other equal protection cases, application of the "close scrutiny" test requires the state to provide compelling reasons to justify its policies.[9] In the Chicano context it means that school districts must carry the burden of persuasion and explain why ethnically isolated schools exist within their district. Many Southwestern school districts will not be able to meet this burden.

RESIDENTIAL SEGREGATION AS PROOF

The Chief Justice also implied in *Swann* that acts of governmental discrimination by persons other than school officials, which result in school segregation, would be relevant in proving the existence of a dual school ssytem. Near the end of the decision he suggests that attempts by nonschool governmental officials to "fix or alter demographic patterns to affect the racial composition of the schools" would require federal court intervention in school student assignment. The critical issue for the Chicano community is whether "other governmental action" includes discrimination in housing caused by state action.

Throughout the Southwest, attempts to procure public housing for Chicanos in middle-class areas have been stymied through various forms of governmental action. In Union City, California, a referendum changed a zoning ordinance to prevent the construction of low cost housing.[10] In San Antonio the City Council vetoed a public housing program it had earlier approved, which would have provided single family residences in middle-class neighborhoods primarily for poor Chicanos.[11] *Gautreaux* v. *Chicago Housing Authority* [12] reveals the federal government policy of constructing low cost housing in barrios and ghettos. These actions have resulted in segregated neighborhoods and, consequently, segregated schools. The Chief Justice's statement would be without significance unless it is interpreted to include these types of governmental practices. In proving a case of school segregation, data on housing discrimination, at least by state, would be relevant and should afford a basis for relief. The question of housing discrimination and residential patterns generally raises the issue of whether all school segregation is unconstitutional. Although Chicanos are more able to escape the barrio than blacks the ghetto, Chicanos continue to be concentrated in identifiable areas of cities.[13]

UNEQUAL RESOURCE ALLOCATION

Even a holding that such school segregation is not "state-imposed" does not necessarily foreclose finding a 14th amendment violation and even requiring integration in many Southwestern communities. In *Keyes*, the Denver school case, the court found that such isolation in the schools was not state-imposed. But relying on differences in pupil

Footnotes at end of article.

achievement, per pupil expenditures, and teacher abilities, the court held that students in minority schools were not receiving an equal educational opportunity. Evidence was presented that integration was necessary to end the denial of equal educational opportunity, and an order was entered employing the equitable remedies outlined by *Swann*. Although the 10th circuit reversed that part of the remedy, the possibility of such remedy will remain until other circuits and finally the Supreme Court speak. Whether Chicanos want the remedy of integration for such denials will depend on the circumstances of each particular community.

Although the issues discussed in the previous paragraphs apply to future litigation, the courts are faced with the immediate remedial problem of what the contents of a desegregation plan should be when more than one minority is involved. In many Southwestern cities there are significant numbers of blacks, Chicanos, and in some places, Asians. One important question is whether placing Chicanos and blacks into schools without Anglos serves to create a unitary school district. Another is the extent to which a desegregation plan must take account of the differing educational needs of non-English speaking children.

Does Black + Brown = Integration?

The Houston Independent School District is currently facing the first problem in a fourteen year old desegregation suit, *Ross v. Eckels*.[14] At no time during the suit have Chicanos (whose barrios adjoin the black ghetto) been recognized as a separate, identifiable group even though they comprise fifteen percent of the school population, their native language is Spanish, and they have been racially isolated. Because Chicanos have been considered white throughout the litigation, the pairing of "black" and "white" schools means in practice that the two minorities will be desegregated with each other. Recently, an attempt by Chicano plaintiffs to intervene was denied. This denial seems clearly wrong. The placing of two historically identifiable, disadvantaged groups together cannot satisfy equal protection. The purposes of desegregation are to improve minority schools, eliminate the psychological stigma attached to segregation, and remove the vestiges of the dominant Anglo's containment of minority children in separate schools. The continuation of minority black and brown schools does not serve these purposes. In *Alvarado v. El Paso Independent School District*, the Fifth Circuit, by holding that Chicanos were a recognizable minority for the 14th amendment discrimination and segregation claims, concurred in this view. *Cisneros v. Corpus Christi Independent School District* held, similarly, that "Mexican-American students are an identifiable ethnic minority class sufficient to bring them within the protection of *Brown*," and "placing Negroes and Mexican-Americans in the same schools does not achieve a unitary system as contemplated by law." [Cites in note, p. 25]. And even more recently, an Austin, Texas district court, while finding no de jure segregation of Chicanos, ordered the parties to submit a tri-ethnic integration plan: "There will be little educational value in a plan which merely integrates one socially and economically disadvantaged group, the blacks, with another, the Mexican-Americans." [15]

PRESERVING CULTURAL IDENTITY

San Francisco Unified School District is currently facing the second problem, preserving cultural identity in integrated schools. In San Francisco, the district court was only presented evidence of the racial isolation of blacks, although all desegregation plans took into account the city's multiethnicity. The danger is that Chicano and Chinese minorities will be so dispersed they will lose or fail to receive needed educational programs. The solution is to view identifiable minority groups—black, brown, yellow and red—as separate and distinct classes for purposes of equal protection analysis and equitable relief.

Integration should be accompanied by curriculum modifications, teacher re-training and other programs which recognize the particular educational needs of these minority groups. If courts find that Chicanos do not comprise a large enough percentage of the school district population to warrant district-wide substantive educational program changes, integration plans should contain schools with large enough proportions of Chicanos to justify special programs which meet Chicano educational needs. This solution recognizes that integration is but one aspect of equal educational opportunity. In multiethnic communities, flexibility is necessary to insure that the rights of all minorities are protected.

In sum, *Swann* offers the Chicano new means of proving discrimination and, of course, powerful remedies to correct it. Because many communities are often multiracial and multiethnic, *Swann* creates new challenges to the courts to insure that desegregation takes into account the needs of all groups.

II. EQUAL EDUCATIONAL OPPORTUNITY

Our past methods of educating children suffering linguistic handicaps in English have clearly been ineffective. The chief reasons for this seem to be that we have not taken advantage of the child's best instrument of learning—his mother tongue—and that we have failed to create in him a sense of dignity and confidence. In a word, we have not put first things first: We have thought it more important from the outset to teach the non-English speaking child English rather than to educate him. We have in short been more interested in assimilating than education.[16]

Swann offers Chicanos an opportunity to correct this situation through the constitutional principle of "equality of educational opportunity." No one expected this principle to die a sudden death in the *Swann* group of desegregation cases, but weak opinions would certainly have minimized judicial scrutiny of the "undereducation" that is taking place in Southwestern schools.

The optimism about "equal educational opportunity" stemming from *Swann* rests on four bases: the specific references to *Brown v. Board of Education* in the opinion; the court's remarks requiring equality of facilities; the powerful remedies given to federal courts to correct desegregation; and the statement in the final paragraphs of the opinion that the federal court's task was only completed when "the affirmative duty to desegregate has been accomplished and *racial discrimination through official action is eliminated from the (school) system.*"

Equal educational opportunity for Chicanos means the implementation of programs compatible with their language and cultural needs. Often this will mean bilingual/bicultural education. Many persons have a misconception of bilingual education, and confuse English as a Second Language (ESL) programs with it. ESL is designed solely to teach English to non-English speaking children and is not meant to preserve a culture, improve knowledge of the mother tongue, or help English-speaking students to learn the community's other language. True bilingual education includes all these goals. As the Draft Guidelines for the Bilingual Education Program state: "Bilingual education is instruction in two languages and the use of those two languages as mediums of instruction for any part of or all of the curriculum. Study of the history and culture associated with a student's mother tongue is considered an integral part of bilingual education.[17] With this definition in mind, the question is, what legal theory will support it?

SECOND CLASS SCHOOLING

The Chicano child brings to the school a different culture and language than that of the Anglo. When he comes to the school he is often forbidden to speak his native language and his cultural traditions are ignored. Often the school he attends is inferior to the school just down the road attended primarily by Anglos. He sees few Chicano teachers and fewer Chicano administrators. His academic life is tainted with the prejudice and the indifference of Anglo teachers who see little prospect for his academic success. He sees his brothers and sisters shunted into mentally retarded classes even though these same siblings care for the whole family when the parents are working. The end result is alienation from school, and eventual dropping out, a process completed in the Chicano's early teens. The high dropout rate reflects the psychological damage done to the child by the school.

AGENDA FOR CHANGE

The Chicano child requires a program compatible with his needs and experiences. Research suggests that a method of instruction combining Spanish and English is the best way to teach Chicanos while preserving essential parts of their culture.[18] The curriculum should contain Chicano contributions to history, art, and literature. None of this can be accomplished without a teaching staff that is sympathetic to a multiethnic approach. The goal of this agenda for change is to develop Chicano students able to recognize their own worth and to succeed in school.[19] Many Chicano leaders, especially in urban areas with large barrios, advocate Chicano community control of identifiably Chicano schools as the most politically feasible and best way to effect the needed change.

THE LAW IN BRIEF

Translated into legal terms, the Fourteenth Amendment argument proceeds as follows. Presently the schools are treating the Anglo and the Chicano children identically. The method of instruction and the curriculum are not geared to satisfy Chicano needs. Achievement test results, dropout rates, the large percentage of Chicanos in classes for the mentally retarded, the lack of Chicano teachers and administrators, all point to this fact. The schools are attempting to change Chicano children rather than accepting the fact that Chicanos bring to school a different background than Anglos. This sameness of treatment between intrinsically different groups, to the educational detriment of one, cannot be justified. It can satisfy neither the compelling interest test nor the rational relationship test used to determine violations of equal protection.

This article is too brief to include a thorough analysis of the applicable case law. Much of what has been said goes beyond what any court has ordered. However, there is precedent for judicial analysis of methodology and curriculum in *Hodson v. Hansen*,[20] *Keyes*, and for compensatory education, *United States v. Jefferson County Board of Education*.[21] In addition, the HEW Office of Civil Rights has issued a Memorandum regulation which requires school districts to make provisions to insure that non-English speaking children participate fully in the school program. Currently, new regulations are being discussed that will state in detail the obligations of school districts in regard to bilingualism.

Needless to say, many issues are not considered in this article: To what extent must Anglos participate in a bilingual program? Does the constitutional right to a bilingual program depend on the strength with which the Chicano community in a particular school district has held onto their language

Footnotes at end of article.

and culture? Are there manageable judicial standards which can be developed to govern this problem?

Bilingual/bicultural education is a reality in several school districts in this country—Edgewood Independent in San Antonio, United Consolidated outside of Laredo, and Dade County, Florida.[22] Some of these districts have seen bilingual education as their obligation and pay for it out of local revenue sources. Most, however, rely on money from the Bilingual Education Act [20 U.S.C. § 880], which supplies funds only for pilot programs. A constitutional requirement of bilingual education will require that local school districts share with the federal government responsibility for the development and implementation of schools for all our children.

This article has attempted to highlight some of the educational problems facing Chicanos in the Southwest. In the final analysis, the problem centers around both a valid constitutional definition of equal educational opportunity and reform of the schools. Desegregation, clearly, is an important aspect of equal educational opportunity. But for the Chicano, because of his unique educational background, linguistically and culturally, it is not the only solution. For the Chicano, desegregation is the superstructure of the building of the principle of equal educational opportunity; bilingualism is its foundation.

FOOTNOTES

[1] These observations are based on several years experience litigating educational problems for various Chicano communities throughout the Southwest.

[2] Spanish noun meaning "neighborhood" or "ghetto."

[3] *Keyes v. School District Number One*, 313 F. Supp. 90 (D. Colo. 1970), aff'd in part, rev'd in part, —— F. 2d —— (10th Cir. 1971). The district court recognized that Chicanos opposed extensive moving of children to achieve integration.

[4] *Johnson v. San Francisco Unified School District*, No., C–70–1331 SAW (N.D. Cal. 1970).

[5] The Superintendent of Schools proposed a cutback for these programs after a court order was entered. This reaction, of course, is not necessarily a response to desegregation and need not be a part of any desegregation plan. Nor do many "neighborhood" schools provide Chicanos either a voice or a bicultural and bilingual education.

[6] See *Cisneros v. Corpus Christi Independent School District*, 324 F. Supp. 599 (S. D. Tex. 1970); *Perez v. Sonora Independent School District*, No. CA 6–224 (N. D. Tex. 1970); *Keyes v. School District Number One, Denver, Colorado*, 313 F. Supp. 61, 69 (D. Colo. 1970).

[7] Spanish noun meaning a housing subdivision generally in the outskirts of town.

[8] See generally Grebler, Moore & Guzman, *The Mexican American People*, p. 273 (The Free Press, N.Y.).

[9] *E.g., Harper v. Virginia State Bd. Of Elections*, 383 U.S. 663, 670 (1966); *Kramer v. Union Free School District No. 15*, 395 U.S. 621, 628 (1969).

[10] *SASSO v. City of Union City*, 424 F. 2d 291 (9th Cir. 1970). After protracted litigation, the suit was finally settled and some low cost housing constructed.

[11] San Antonio Evening News, Oct. 9, 1969, p. 1.

[12] 296 F. Supp. 907 (N. D. Ill. 1969).

[13] See *e.g., Grebler, et al.*, note 8, p. 271 *et. seq.* Although *Swann* in conclusion suggests that a district need be "unitary" at only one point in time, the Court's discussion of school construction suggests that close judicial scrutiny of all school segregation will continue to determine whether it is "state-imposed." [See Diamond Article, p. 17].

[14] The most recent decision is reported at 434 F. 2d 1140 (5th Cir. 1970).

[15] *U.S. v. Texas Education Agency*, No. A–70–CA–80, Memo. Opinion and Order (W. D. Tex. June 20, 1971).

[16] Anderson and Boyer, *Bilingual Schooling in the United States*, Vol. I, p. 147, Southwest Educational Development Laboratory, Austin, Texas (1970) (available through U.S. Gov't. Printing Office).

[17] Draft Guidelines for the Bilingual Education Program under the Bilingual Educational Act.

[18] H. J. Johnson and W. Hernandez, *Educating the Mexican American*, Judson Press (1970).

[19] Sanchez, "History, Culture and Education," in *La Raza-Forgotten Americans* (1966).

[20] 269 F. Supp. 401 (D. D. C. 1967), aff'd sub nom. *Smuck v. Hansen*, 408 F. 2d 836 (5th Cir. 1966).

[21] 372 F. 2d 836 (5th Cir. 1966) But cf. *McInnis v. Shapiro*, 293 F. Supp. 327, aff'd sub nom., *McInnis v. Ogilvie*, 394 U.S. 322 (1969). See also, Comment, 49 Tex. L. R. 337 (1971).

[22] Massachusetts is considering a statute which would mandate bilingual programs for school districts which have 20 or more students whose native language is not English. Copies of this bilingual education statute are available at the Center for Law and Education.

NOTES AND COMMENTARY

This section of inequality in Education features reports on research, litigation, government action, and legislation concerning education and the law. Readers are invited to suggest or submit material for inclusion in this section.

LOSE A BATTLE, WIN THE WAR: BOSTON RETARDED CHILDREN WIN HEARING RIGHT BEFORE EXCLUSION FROM SPECIAL CLASSES

Flaherty v. Connors, 319 F. Supp. 1284 (D. Mass. 1970).

In this suit, a retarded child sought a temporary injunction ordering his readmission to a special school, and a permanent injunction on behalf of all other retarded children similarly excluded from school. The District Court ruled that the case presented an individual complaint and could not be prosecuted as a class action; intimated that the plaintiff had failed to exhaust his state administrative remedies; found that he had not profited from two years attendance in the special school, because he had become progressively more disruptive over that period; and found that there had been no showing of irreparable harm. Accordingly, it denied the application for a preliminary injunction.

The nub of the complaint, however, was a denial of due process: plaintiff's suspension from school without an adequate hearing. The District Court suggested that the plaintiff had waived the hearing offered by the defendant Boston school authorities, but that he was free to follow the hearing procedure provided by Massachusetts law and regulations of the Boston School Committee.

Negotiations to provide the plaintiff a satisfactory school program, and to promulgate satisfactory hearing procedures, continued until June 21, 1971, when the plaintiff agreed to a dismissal of his law suit for two reasons:

Plaintiff enrolled in a satisfactory school program, and was accorded a full hearing before the Assistant Superintendent; and

The Boston School Committee promulgated a regulation affording students and their parents the right to a hearing prior to exclusion from special classes. The hearing includes the right to notice, to call witnesses, to cross-examine witnesses, and to appear with counsel.

The plaintiff is represented by Michael Altman of the Boston Legal Assistance Project, 474 Blue Hill Avenue, Roxbury, Massachusetts 02121.

THERE JUDGE COURT APPROVES FULL HEARING BEFORE CHANGE IN MENTAL RETARDATION EDUCATIONAL STATUS

Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania, Civ. No. 71–42, (E. D. Pa. June 18, 1971).

This complaint on behalf of all Pennsylvania mentally retarded children attempts to secure (1) a full hearing before exclusion from school or assignment to special education, (2) mentally retarded children's right to some publicly supported education, and (3) compensatory education for the period of wrongful exclusion of any mentally retarded child from any educational opportunity. Because a vindication of these rights would require that several state-wide statutes be declared unconstitutional, the convening of a three-judge court was necessary.

District Judge Masterson found that the questions raised by the complaint were not insubstantial and convened a three-judge court. Pursuant to stipulation of the parties, the three-judge court approved and ordered a detailed plan which insured that no Pennsylvania child aged 5½ to 21, who is thought to be mentally retarded by any school official or the parent, would be subjected to a change in educational status (or denied any educational assignment) before being afforded notice and the opportunity for a full due process hearing at which the local school district, not the parent, shall bear the burden of proof.

Trial before the three-judge court on all other issues raised by the complaint will proceed in August. Copies of the plan are available from the Center for Law and Education. Plaintiffs are represented by Thomas Gilhool, Room 1300, 1 N. 13th Street, Philadelphia, Pennsylvania, and Paul Dimond of the Center for Law and Education.

STUDENT RIGHTS: NINTH CIRCUIT UPHOLDS LIMITS ON STUDENT HAIR (WHILE BERKELEY POLICE LET THEIRS GROW WILD)

King v. Saddleback Junior College District, No. 26,452; *Olff v. East Side Union High School District*, No. 25,132,— F. 2d— (9th Cir. June 25, 1971).

The same week that the Berkeley City Council voted to allow policemen to wear long hair and beards, the United States Court of Appeals for the Ninth Circuit upheld the legality of student dress codes in two nearby California cities which deny students the same choice. The ruling overturned two lower federal court decisions which had prevented the enforcement of the regulations.

Although finding that "in neither case was there any evidence that length of hair led to any disruption among students," Circuit Judge Trask defined the issue as being "the right of school authorities to develop a code of dress and conduct best conducive to the fulfillment of their responsibility to educate . . . without unconstitutionally infringing upon the rights of those who must live under it." The court found no infringement upon first amendment freedoms analogous to the Supreme Court's finding in *Tinker v. Des Moines Community School District*, 393 U.S. 503 (1969); nor, distinguishing *Griswold v. Connecticut*, 381 U.S. 479 (1965), as a "marital privacy" case, any invasion of the "right to be left alone;" nor a denial of equal protection; nor, because the codes were part of the "regulations necessary for the day to day operation of schools, classes, and the general educational processes," any denial of due process.

Relying on affidavits by school officials, and upon their "professional experience that extreme hair lengths of male students interferes with the educational process," the court concluded: "We are satisfied that the school authorities have acted with consideration for the rights and feeling of their students and have enacted their codes, including the ones in question here, in the best interests of the

educational process. A court might disagree with their professional judgment, but it should not take over the operation of their schools. *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968)."

Contrary decisions include: *Crews* v. *Cloncs*, 432 F. 2d 1259 (7th Cir. 1970); *Griffith* v. *Tatum*, 425 F. 2d 201 (5th Cir. 1970) (partially invalid); *Richards* v. *Thurston*, 424 F. 2d 1231 (1st Cir. 1970); *Breen* v. *Kahl*, 419 F. 2d 1034 (7th Cir. 1969), *cert. denied*, 398 U.S. 937 (1970); and *Crossen* v. *Faisi*, 309 F. Supp. 114 (D. Conn. 1970), (unconstitutionally vague).

DRUGS: N.W.R.O. ASKS F.D.A. TO EXAMINE RITALIN

N.W.R.O. has petitioned the F.D.A. to reconsider and repeal its rulings approving Ritalin as safe and effective for use in the treatment of "minimal brain dysfunction" ("hyperkinetic behavior disorders"). The petition charges that Ritalin is misbranded and, on the basis of new evidence of its potential for abuse and its possible linkage to a blood vessel disorder, unsafe.

The petition describes (1) the extreme difficulty of accurately defining and diagnosing "hyperactivity;" (2) the likelihood that environmental deprivations create similar symptoms whose appropriate treatment does not include drugs; (3) the potential for dependence and adverse side effects from long-term use; (4) the mushrooming and inappropriate use of Ritalin, pressured by school officials looking for a quick cure for their own shortcomings and accommodated by doctors too quick to diagnose and prescribe; (5) the false, misleading and overbroad advertising of Ritalin by its manufacturer; and (6) given such circumstances, the inevitable failure to regulate Ritalin's use to enable parents and doctors to make informed choices to use the drug appropriately and safely.

The attack is broad and seeks to eliminate all use of Ritalin on children with "minimal brain disorder" or "hyperkinesis" (or whatever other label is placed on the ill-defined "syndrome"). The only exception would be for investigational use under strict controls similar to those applied to methadone maintenance programs.

The attack raises issues which are important and subject to a variety of views. [See *Inequality in Education*, Number Eight]. Hopefully, N.W.R.O.'s petition will permit a thorough and enlightened review of "hyperactivity" in school children and amphetamine treatment for it.

N.W.R.O. is represented by The National Legal Program on Health Problems of the Poor, 2477 Law Building, University of California, 405 Hilgard Avenue, Los Angeles, California, 90024.

TITLE I: TITLE I CLOTHING GRANTS FOUND TO IMPROVE STUDENT SELF-IMAGE AND SCHOOL ATTENDANCE

For some time proponents of the use of Title I money for clothing have been saying that sufficient quantities improve children's self-image and school attendance. This assertion is beginning to receive substantiation.

Last year, responding to the demands of the Rhode Island Fair Welfare Rights Organization (NWRO), Title I officials in Providence instituted a $96,000 Supplementary Clothing Grant (SCG) program. Providence is one of the first school districts in the country to use substantial amounts of Title I money for clothing. A recent study evaluating the results of the program give evidence that it is indeed fulfilling its objectives of improving children's self-image.

A study of the Providence Clothing Grant Program, conducted by members of the Brown University Sociology Department in cooperation with Title I parents, explored the attitudes of children and parents receiving the clothing grants under the Providence Title I program. The Brown sociologists reported that 96% of the children felt that poorly-dressed children feel differently about going to school than well-dressed children ("inferior," "made fun of," or "left out"), and 88% felt that poorly-dressed children were treated differently by other children. A smaller percentage (63%) felt that teachers treated them differently because they were poorly-dressed, but 72% said that poorly-dressed children were likely to make lower grades than well-dressed children. The Brown study also reported that an overwhelming majority of children (84%) sometimes felt like not going to school because their clothes were poor, and 74% have actually stayed home for this reason.

The Brown study also found that parents' perceptions were similar to their children's. 78% of the parents felt that poorly-dressed children were treated differently by other children, and all felt that teachers treated poorly-dressed students differently. (Some parents also felt that a few teachers gave special attention to poorer children.) 70% of the parents reported that their children were sometimes reluctant to attend school or take part in school activities because of poor clothing. Although agreeing that clothing grants were helpful, all felt that the $48.00 per child allowance needed to be increased substantially "so that a greater positive effect on the children might be made." The Brown study concludes that Title I clothing grants should be continued, but with an increased allowance.

Preliminary results of another study of the relationship between a clothing program and absences have been released. The results show that recipients of clothing grants reduced their absences, compared to a matched control group which did not receive grants. Because some recipients also received other Title I services, some of which were designed to improve attendance, the contribution of clothing grants to absence reduction cannot be separated from the contribution of other Title I programs. Inequality in Education expects to publish complete findings of this study when the final report is released.

These studies should be useful evidence for other lawyers and community groups seeking clothing grants out of Title I funds. What was once an unverified assertion has become accepted as fact in Providence—and the superintendent of schools has agreed with Rhode Island Fair Welfare to extend the Title I Supplementary Clothing Grant Program for another year.

CENTER FOR LAW AND EDUCATION,
HARVARD UNIVERSITY,
Cambridge, Mass.

SCHOOL DESEGREGATION 1954

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. . . . Such an opportunity . . . is a right which must be made available to all on equal terms.—*Brown* v. *Board of Education*, 347 U.S. at 493 (1954).

BUSING IS NOT THE ISSUE

(By Reubin O'D. Askew [1])

Ralph Waldo Emerson once said that "This time, like all times, is a very good one, if we but know what to do with it." I am not sure what must be done to bring out the good in today's times. But I am convinced that sitting and waiting for the inevitable is not the answer.

For this reason, I want to say a few things with which many will disagree, things which are decidedly unpopular, but things which I feel must be said in the interest of the American people—all of them. In doing so I am not attempting in any way to judge nor place labels on anyone who disagrees.

Two questions with nationwide repercussions for school desegregation were added to our Florida Presidential primary ballot for March 14th. They were

1. Do you favor an amendment to the United States Constitution that would prohibit forced busing and guarantee the right of each student to attend the appropriate public school nearest his home?

2. Do you favor providing an equal opportunity for quality education for all children, regardless of race, creed, color or place of residence, and do you oppose a return to a dual system of public schools?

Many people feel strongly about these subjects, and rightly so. Many Floridians (and many throughout the nation who wish for a similar way to express their sentiments) feel that a constitutional amendment prohibiting busing is a wise and necessary measure. But I feel that it is wiser for people to vote "No" on the anti-busing amendment, and "Yes" on equal educational opportunity.

I strongly oppose a constitutional amendment to outlaw busing—but not because I like it or think it is a panacea for our problems. On the contrary, I recognize and regret the inconvenience, disruption and hardship it often creates for many parents and children. I am not without feeling for them, and I do not think anyone is. Busing is an artificial and inadequate instrument of change. It should be abandoned as soon as we can afford to do so.

VALUE OF BUSING

Yet, by the use of busing (and other methods), we have made real progress in dismantling a dual system of racially segregated public schols in this country. And I believe that until we find alternative ways of providing an equal opportunity for quality education for all, regardless of race, creed, color or *place of residence* (and that last part is important); until we are sure that ending busing will not bring a return to segregated public schools; until we have those assurances, we must not unduly limit ourselves—and certainly not constitutionally.

We must not risk seriously undermining the spirit of the Constitution, one of the noblest documents produced by man. We must not risk returning to the kind of segregation, fear and misunderstanding which produced the very problem that led to busing in the first place. Instead, we must all work together to find ways other than busing to guarantee that no American is denied an equal opportunity to grow and develop in a nonsegregated society.

That is what the present clamor is all about. Nobody is really committed to busing as an end in itself. It is the purpose for which we bus that is all-important. That goal is to put the divisive and self-defeating issue of race behind us once and for all. It is a goal worthy of vigorous pursuit by anyone who believes that all people should live together in peace, justice and harmony.

I believe we are closer to this goal now than ever before. I believe we are closer than any civilization in history to achieving a society in which all races, creeds and religions cannot only live with their differences, but thrive upon them, and learn from them as well. I think we are well within reach of understanding one another, caring for one another, and affirming our commitment to the principles of justice and compassion which made this country what it is today. How sad it would be to turn back now, not only for minority children but for all of us.

Of course we do not want our children to suffer unnecessary hardships. That goes without saying. But neither do we want them to grow up in a world of continuing racial discord, racial hatred and, above all, racial

[1] Reubin Askew is the Governor of Florida.

violence. But I fear that this is what we will have if we do not work now to solve our racial problems. This is surely what we will have if we continue to thwart every attempt to bring us together.

Ignorance is the father of cruelty. But we are beginning at last to overcome the ignorance which has kept us divided for so long, the ignorance which has been responsible for so much cruelty between the races. This is true especially of the South.

THE BUSING SMOKESCREEN

Because of our persistent preoccupation with race related issues, we have all too frequently neglected the real economic and environmental problems of the people, black and white alike. In this way, we have not been fair to ourselves. When people are divided against themselves on racial grounds, they have no time to demand a fair shake on taxes, utility bills, consumer protection, government services, environmental preservation, and other problems. In this session of the Florida legislature, for example, proposals for reform of education, environmental controls, and utility regulation have taken a back seat to a straw vote on busing which, in the final analysis, does not really accomplish anything. Believe me, while the legislature and news media were focusing attention on the busing debate, lobbyists and special interests were hard at work undermining programs that would put money into people's pockets, that would help protect people and the other living things which make Florida a worthwhile place in which to live.

This is probably the greatest reason why the South has been lagging behind other regions on issues such as wages, distribution of the tax burden, health, medical care, and aid to the elderly and others in need. So often when someone attempts to do something about people's basic needs, the race issue is resurrected in one form or another. Interestingly enough, I asked the legislature to put those other kinds of issues on the ballot along with busing. And they refused.

POLITICAL MATURITY

I hope that we are moving beyond racial appeals here in Florida, throughout the South, and the rest of the nation as well. It is time to say that we are not caught up in the mania of stopping busing at any cost, that we are maturing politically, that we know the real issues when we see them, that we will no longer be fooled, frightened and divided against ourselves. This is how we gain a better understanding of what this country is all about.

For many years now, the rest of the nation has been saying to the South that it is morally wrong to deprive any citizen of an equal opportunity in life because of his color. I think most of us have come to agree with that. But now the time has come for the rest of the nation to live up to its own stated principles. Only now are the other regions themselves beginning to feel the effects of the movement to eliminate segregation.

I say that the rest of this nation should not abandon its principles when the going gets tough. I do not say this to be vindictive, I say it to be fair. The rest of the nation has sought to bring justice to the South by mandate and the court order. Now perhaps it is time for the South to teach the same thing to other regions in a more effective way—by example. I certainly hope we will.

Regardless of how people feel about busing or segregation, a constitutional amendment to change things is neither necessary nor desirable. It is dangerous to tamper with the United States Constitution under emotional circumstances, and I have been heartened by the reports that President Nixon and Vice President Agnew have reservations about amending it in this way, that the Senate leaders in both parties are against a constitutional amendment. As one key member of the Nixon administration put it, these proposals "could have the effect of actually under cutting and rolling back the measures that have been taken to dismantle the dual school system."

I hope we can say to those who would keep us angry, confused and divided, that we are more concerned about justice than about transportation, and that while we are determined to solve both, we are going to take justice first.

It never has been my feeling that the majority of the people who oppose busing are racially motivated. On the contrary, I believe that most people who are disturbed by the inconvenience, disruption and hardship of busing, are nevertheless just as concerned that we put an end to segregation, and assure equal opportunity for all. Busing is one way of doing that. Perhaps it is the least desirable way, but it is effective nonetheless.

OTHER DESEGREGATION PATHS

Now is the time for Americans of good faith to search for other effective ways. One way, as I have said before, would be to work at the community level to overcome economic barriers and change our housing patterns—so that every neighborhood school would be a *desegregated* school (not necessarily one with an exact racial balance, but one in which the proper emphasis is on our real goal of quality education for all).

It is regrettable that education has had to shoulder a disproportionate share of the burdens of overcoming the effects of segragation. We can and should put greater emphasis on employment opportunities and fair housing practices as well as education. But we can also put greater emphasis on pre-school education for all children so that they start on an equal footing as early as possible. We can assure that no schools are so lacking in facilities, discipline and properly trained personnel that parents are legitimately fearful for their child's safety, health, development and well-being. For if such schools harm one child, they harm all children and should not be tolerated. School buildings can also be placed to ease the necessity of busing. There is much more we can do, I am sure, and I hope we will.

Then we can put an end to busing without setting the stage for a racial discord such as we have never before imagined. Then we can get on to those other problems which we've neglected for far too long.

In closing, let me say that we should be working together to free ourselves of the fears and divisions of yesterday, and to seek a better tomorrow. If I seem presumptuous in taking this opportunity to say so, I apologize. It is not my intention to impose my will on anyone. But it is my intention to give people cause for sober reflection, so that they are very sure of what they are doing before they encourage an amendment to the United States Constitution, one that would reverse our efforts to make that great document a living testimony to the pursuit of freedom, equality, and justice for all.

Pupil Transportation: A Brief History

(By Paul V. Smith)

Throughout America, the evolution of the public school system has shared three characteristics: (1) smaller districts (with one-room schools) have been consolidated into more comprehensive regional schools (often grouping students from different civic jurisdictions); (2) state aid has supplemented the school finances raised by the local property tax; and (3) students have been transported from their home neighborhoods to the more comprehensive, state-supported schools.

This third device, transportation, has attracted the greatest acrimony. One list of objections includes:

1. Bad roads and irregular distribution of public highways.
2. Uncertainty about expense.
3. Loss of the *home* school.
4. Fear that land on the border of enlarged district will depreciate in value.
5. Central school might build a new, large building and the discontinued schools might wish to return to the old regime.
6. Many teachers would be thrown out of employment.
7. Would build up a central school in a rival district. (Jealousy).
8. Disbelief that pupils can be transported comfortably and safely.
9. Doubt whether a graded school is better than an upgraded school.
10. Children would have to leave home too early and could not get back in time to do chores.
11. The evil influences would be much greater, particularly if children are transported to village or town schools.[1]

These arguments were listed by L. D. Harvey, Wisconsin Superintendent of Public Instruction, at a time when the controversy was nearing one of its peaks—1902. When the problem surfaced again, in 1937, the Arkansas Department of Education compiled a new list:

1. Consolidation destroys community life.
2. The consolidation of districts takes away local control of the schools.
3. The opposition of teachers and principals who may lose their positions.
4. The selfish interests of certain individuals.
5. Objections to transportation.
6. The school will be too far away.
7. Religious and denominational interests.
8. Social distinction between rural and urban pupils.
9. Failure to see the advantages of large schools.[2]

Similar arguments are occasionally heard today.[3]

Past controversies, of course, were resolved in favor of consolidation, state aid, and pupil transportation—much to the general satisfaction of the populace thereafter. (Indeed, this was the course recommended by both state departments of education, although the resolution was probably easier in Arkansas since the school bus had been invented by 1937). There may be a point, nonetheless, to a brief review of school district consolidation and pupil transportation in America. As Professor M.C.S. Noble, Jr. observed in 1939:

When evaluating such objections, it is well to remember that the school is an agency of society; hence any objections raised by the people must be met in a proper spirit and school receive careful and respectful consideration.[4]

IN EARLIEST TIMES

Schools have been agencies of society in the United States since before the nation existed. The Boston Latin School, founded in 1635, began receiving public funds in 1647 when Massachusetts passed the first law authorizing public secondary schools. The first pupil transported at public expense to an American school is unknown, but was almost certainly an Indian attending Harvard College, back when that venerable thicket of learning was an Indian school. (In those days, ministers were paid from the public purse to transport promising Indian children to the school. Throughout the colonial era, town subscriptions for the transportation and tuition of candidates for the ministry were common.)

The first documented suggestion that pupils attended formal, state-supported schools distant from their homes appears in *New England's First Fruits*, published in 1643. Speaking of the founding of Harvard College (as a college, after the Indian school had

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Footnotes at end of article.

been abandoned), the first public money for education is mentioned:

And as we were thinking and consulting how to effect this great work ["to advance learning"], it pleased God to stir up the heart of one Mr. Harvard (a godly gentleman and a lover of learning, there living amongst us) to give the one-half of his estate (it being in all about £1700) towards the erecting of a college, and all his library. After him, another gave £300, others after them cast in more, and *the public hand of the state* added the rest.

And by the side of the College, a fair grammar school, for the training of young scholars and fitting of them for academical learning . . .

Harvard's earliest Rules and Precepts (No. 6) provided: ". . . Nor shall any, without his tutor's leave or (in his absence) the call of parents or guardians, go abroad to other towns." [5] It is logical to surmise that many candidates in both the college and grammar school came from these "other towns."

Through the eighteenth and early nineteenth centuries, American public education gradually came into being. New England public school districts were based upon township lines, and were financed largely by local taxes (sometimes wealth rather than real property taxes). In the South, school districts were based on county and parish lines and supported by state or county-wide taxes (often commodity or sumptuary taxes). Because the nation was thinly settled and the population largely rural, "neighborhood schools" were impractical. Children journeyed to school by any means available:

From pioneer days until shortly after the close of the war between the States, transportation facilities were decidedly limited. The child who lived more than a walking distance from school, journeyed to and from school by whatever means his family or his neighbors could provide. In the main, transportation meant a long and tedious ride in a rough wagon which had been provided by some family in the neighborhood. However, in many instances the child mounted his horse and rode to school; in other instances, a canoe or rowboat served as a means of travel.[6]

The longest and most arduous school journeys during this period were those of our Southern Black persons who ventured, by Underground Railway,[7] to schools as far away as New England and Canada. Individuals made these efforts, however, but once or twice (and rarely more than a half a dozen times a lifetime) in order to secure the advantages of public education for themselves and their descendants.

INTERNATIONAL PICTURE

Transporting pupils to schools in sparsely settled areas was hardly unique to America. In 1883:

Nearly every Australian school [had] a stable attached in which boys who rode to school put up their horses during school hours. It is most amusing to watch half a dozen "fellows" galloping their ponies up the avenue, not to be late for first school, just as we used to scurry across quad to chapel of a morning! [8]

Nor were the occasional use of such strange vehicles as canoes and rowboats solely American. Indeed, England provides an example of the employment, by fervent pupils, of tubs and stilts:

In a meadow upon the skirts of the town, adjoining the road leading to Exeter, stood the grammar-school, from which the famous Bampfield Moore Carew, king of the gypsy tribe, eloped, when a schoolboy, to join his gang of vagabonds. Here, in the good old days, "when George the Third was king," my father being a freeman of the town, I enjoyed the advantage of *hic-haec-hoc*-ing it for a couple of years.

[The students were fond of school.]

As a proof of this I may mention that upon one occasion, when the school was inaccessible, the meadow that divided it from the road being flooded by the heavy rains, many of the boys got across the water in tubs or on stilts . . . .[9]

MODERN TIMES IN AMERICA

The modern period in the United States, beginning about 1840, is dense with change and improvement in the means of school finance, consolidation, and transportation. Table I below offers Professor Noble's admirable summary of this period.

TABLE I

Period.—Major Historical Developments.

1840–1880.—The principle of centralization of schools established in urban communities, extended to other independent districts, and inaugurated in rural sections. Two states enacted transportation statutes.

1880–1894.—Gradual extension of the consolidation and transportation ideas.

1894–1910.—A period of marked increase of interest in rural schools; a general rapid enactment and betterment of consolidation and transportation laws.

1910–1925.—A period of more united effort in bringing about consolidation, determining its value, and working out the best ways to make it effective. Scientific studies initiated to develop improved methods of distributing state aid for transportation and consolidation, and determine factors affecting transportation costs. Transportation by bus succeeded transportation by horsedrawn vehicles as the predominating mode of pupil transportation.

[Adopted from M. C. S. Noble, Jr., *Pupil Transportation in the United States* (1940), p. 33]

SCHOOL FINANCE

The methods by which schools are financed is intimately related to the question of pupil transportation. Until Civil War times, tuition, philanthropy, state aid, and various local funds supported public education. Then, as settlements grew into towns and modest cities, local governments developed the real property tax as the chief instrument of school finance. This trend was not unopposed:

The idea of permitting the stronger, wealthier sections to make more rapid progress with their schools did not meet favor in some cases. In Indiana and Pennsylvania definite attempts were made to keep all the schools at about the same level and to give none any great degree of independence. A Supreme Court decision in Indiana prohibited local school taxes from 1854 to 1867 on the ground that if such taxes were levied the schools would not be general and uniform.[10]

The local property tax prevailed, nonetheless, in New England and in inland areas settled upon the New England model. In the South, local taxes never found root because of the county government system, so property taxes were county-wide and their income was distributed to schools on a per-pupil basis.

Objectors to the local property tax system of school finance were not completely silenced, however. In 1918 the United States Bureau of Education spoke out: "the chief reason for discontent with the local district is that it has become an almost insurmountable obstacle to the type of school organization required by a modern rural population. As a tax area it causes untold injustice and inequity." [11] In 1925, opposing voices were sharper:

The evils of the district system and the hopelessness of endeavoring to equalize educational opportunity and school burdens, as long as the district is maintained as the chief and dominant source of school revenue, have been pointed out by every leading authority on the organization and support of public schools for the last one hundred years.[12]

Property tax critics soon turned from direct attacks upon the system to proposals that would circumvent its injustice. They suggested school consolidations and broadened pupil transportation plans which equalized fiscal support and conferred other advantages. The Arkansas Department of Education praised the county-wide school district in 1930:

This district is controlled by one Board of Education elected by the people exercising powers similar to those exercised by school boards under the local district system. Under the county unit system all the resources of the county are pooled for the education of all the children of the county.[13]

In New York State, statutory provision for district centralization was celebrated in 1937:

But one further important step was needed to perfect our school system, a step to assure equality of opportunity for all children in the rural districts and smaller villages, on a parity with children in centers of population. Hence the centralization act was added to the Education Law to round out and complete the obligations imposed by the fundamental law of the State. In conformity therefore with the mandate of the Constitution, centralization is the capstone of the State Educational System.[14]

Professor Noble's 1939 analysis extended the consolidation idea to include areas larger than single counties, and cited the U.S. Bureau of Education for support:

Furthermore, it is desirable to conduct such reorganization programs on either a county-wide or state-wide basis.

Facilities which provide safe and economical transportation are most readily established as the result of reorganization studies of local school units, when such studies are conducted on a county-wide and (or) a state-wide basis.[15]

This suggests that many citizens may have accepted local taxes for school finance because the taxes were expected, in conjunction with school consolidation and pupil transportation, to make equal education available to all:

He [the rural citizen] has faith in the ideas of American democracy, believing it possible that some day his own son might occupy the White House. Holding that faith, he wants an educational offering for his child equivalent to any in the land. Any attempt to institute a caste system of education in which his children cannot become bankers, lawyers, doctors, or enter any profession, occupation, or vocation arouses his most bitter opposition. He is realizing that if his children are educated in a community with a one-room rural school, taught by an incompetent teacher, with no high school facilities, that they will be unable to compete with their urban colleagues. So at a time when the favorable margin between the farmers' buying and selling dollar is growing narrower and narrower, they are still voting consolidations by overwhelming majorities, they are transporting at their own expense and paying tuition of thousands, . . . and they are demanding accredited high schools, which will give varied curricula and which will prepare them for entrance into the best colleges and universities in the nation.[16]

Such is the faith upon which our modern school—nay, our very nation—is founded.

SCHOOL CONSOLIDATION

School consolidation began as an urban phenomenon, where the limitations of neighborhood schools (often a single room with a single teacher) were clearly seen:

The movement to provide better educational advantages than are offered by the

Footnotes at end of article.

one-room school in which a small number of children are taught by some one untrained for the work began in New England. Out of it have come our present-day city school systems, independent and special districts of various kinds, district, union, township, and county high schools, union graded schools, rural and state graded schools, consolidated and centralized schools, and other public schools.

Consolidation of schools was first effected in the cities and more densely populated towns, usually under special laws or acts of incorporation.[17]

While state statutes were important, consolidated (or union) districts often preceded the formation of larger cities. New York City is the most prominent example. (In fact, school district boundaries often coincide with municipal boundaries only because the municipal boundaries were first drawn along school district lines.)

The town or township as the unit of local school administration was compulsory throughout New England and New Jersey except for special districts, and these were gradually uniting again with the towns from which they had withdrawn. Under optional township plans township districts were forming steadily in Michigan but slowly or not at all in Wisconsin.[18]

Table II shows the dates of the earliest state statutes which allowed, encouraged, or financed school consolidations. Massachusetts had the first statute in 1838, but Connecticut made the first actual consolidation, in Farmington, in 1839.

The first Massachusetts consolidation occurred in Greenfield in 1869, but the Montague and Concord consolidations of 1875 and 1879 respectively were more interesting. In 1893, Seymour Rockwell wrote of the Montague consolidation:

For 18 years we have had the best attendance from the transported children; no more sickness among them, and no accidents. The children like the plan exceedingly. . . . We encountered all the opposition found anywhere, but we asserted our sensible and legal rights and accomplished the work.[19]

W. L. Eaton, the Superintendent of Schools at Concord, added:

TABLE II

States	Date of 1st consolidation law or school	Consolidated schools	Percent of total number of schools	Districts (D) or schools (S) discontinued by consolidation	Pupils enrolled in consolidated schools	Percent of State enrollment	Teachers employed in consolidated schools	Percent of State teaching corps	Value of consolidated school property	Percent of State school property
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
Continental United States		11,890			389,783	[1] 9.3	[1] 11,106	[1] 7.3		
Alabama	1910	328	4.0		37,000	6.5				
Arizona	1907	29	1.8							
Arkansas	1911	170	2.5				[2] 600	5.7	$1,151,200	7.4
California	1901	59	.8							
Colorado	1909	[3] 146	4.2	[3] S 425	[3] 29,000	13.1	[3] 1,078	15.4	[3] 6,003,671	24.9
Connecticut	1839									
Delaware	1861	14	2.9	S 26	6,387	19.1	263	21.2	1,050,000	
Florida	[4] 1889									
Georgia	1911	315	3.7		[5] 18,122	2.6	631	3.9		
Idaho	1900	41	2.2							
Illinois	1905	78	.5							
Indiana	1873	1,040	14.4							
Iowa	1873	288	2.2		[5] 68,619	13.3				
Kansas	1896	118	1.2	[6] D 270	[5] 11,839	[5] 2.9	[5] 590	[5] 3.5		
Kentucky	1908	258	3.1							
Louisiana	1902	[7] 808	22.0		[7] 107,731	30.4	3,538	38.1		
Maine	1854	117	2.4							
Maryland	1904	[8] 180	7.4							
Massachusetts	1838	[8] 126 [10] 2,169	62.3							
Michigan	1843	211	2.3							
Minnesota	1901	255	2.7							
Mississippi	1910	470	6.5		61,821	10.9	2,049	17.0		
Missouri	1901	168	1.6		28,368	4.2	905	4.2		
Montana	1913	69	1.8		12,127	9.5	491	7.9		
Nebraska	1889	101	1.3							
Nevada	1913	15	4.4							
New Hampshire	[11] 1870									
New Jersey	1886	92	3.7							
New Mexico	1907	129	9.0							
New York	1853	354	2.7	[6] D 830						
North Carolina	1885			D 157						
North Dakota	1899	457	8.9							
Ohio	1846	800	5.3							
Oklahoma	1903	262	3.3							
Oregon	1903	61	2.4							
Pennsylvania	1901	137	.8	S 503			682	1.5		
Rhode Island	1898									
South Carolina	1898	[3] 300	6.2	D 288 S 323						
South Dakota	1913	139	2.3		8,778	5.9	288	3.6	1,685,896	9.6
Tennessee	1903	309	4.2							
Texas	1893	635	5.7							
Utah	1896									
Vermont	[11] 1872									
Virginia	1903	[3] 258	3.8							
Washington	1890	274	7.7							
West Virginia	1908	145	2.1							
Wisconsin	1856	80	.9						2,450,000	5.8
Wyoming	1913	11	.7							

[1] Based on returns from 11 States.
[2] Estimated.
[3] Data for 1921.
[4] Giving county boards power to locate schools.
[5] In State-aided schools only.
[6] Number of districts affected.
[7] Data for 1922.
[8] Data for 1918.
[9] Towns of less than 10,000 population having most of the schools consolidated.
[10] Buildings of 2 or more rooms.
[11] Permissive adoption of town system. Note p. 11.

Source: Reprinted from U.S. Bureau of Interior Bulletin No. 41 (1923) p. 56.

The apprehensions of the owners of real estate that a depreciation of values would result if the local schools were closed have proven to be groundless. The natural reluctance of parents to send their young children so far from home and for all day, to attend the center school, has vanished. The children are conveyed in comfortable vehicles fitted up for their accommodation. They are in charge of trusty drivers en route, and at noon they are under the special care of one of the teachers, who has extra compensation for the service. . . . The attendance of the children conveyed is several percent better than that of the village children, and it is far higher than it was in the old district schools. This is not strange when one reflects that the children are taken at or near their own doors and conveyed to schools without exposure in stormy weather and with entire comfort in cold or snowy weather. Discipline in the carriages is maintained readily, as the driver has authority to put out any unruly child.[20]

It is clear that transportation has played an essential and beneficial part in school consolidations.

Footnotes at end of article.

TABLE III

States	Date of 1st transportation law	Date of 1st available data on amount spent for transportation	1st reported amount spent for transportation	Amount spent for transportation in 1920	Percent of total current expense of the schools	Number of children transported, 1920	Percent of the average daily attendance of the State	Percent of total enrollment in consolidated schools	Cost of transportation per pupil per year
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
Continental United States				$14,514,544	[1] 1.8	356,401	[2] 5.6		
Alabama	[3] 1915	[4] 1918	$9,770	171,925	2.2	7,058	1.9	19.0	[5] $3.33
Arizona	1912								
Arkansas	1911					1,032	.3		
California	1901	1918	272,782	630,797	1.6				
Colorado	1909					[6][7] 11,400	7.5	39.3	
Connecticut	1893	1898	11,416	314,340	2.2	6,030	2.9		
Delaware	1919	1920	68,401	71,444	4.6				
Florida	[8] 1899	1901	3,225	216,691	3.6	7,996	4.8		27.20
Georgia	1911	1911	19,339	69,477	.8	9,499	2.03	52.4	12.40
Idaho	1913	1914	35,000	301,345	4.5	1,526	1.8		
Illinois	1911	1912	16,987	163,254	.2				
Indiana	[9] 1899	1904	[10] 590	1,921,035	6.6	60,142	13.1		
Iowa	1897	1907	25,758	1,354,051	4.1	34,743	8.5	50.6	
Kansas	1899					[6] 4,000	1.3	33.7	[10] 16-0.23
Kentucky	1912	1914	15,222	95,785	1.3				[10] 10-.19
Louisiana	[11] 1916	1909	45,808	471,059	5.1	18,229	7.1	16.9	26.00
Maine	1880	1896	47,739	296,651	4.9	8,889	7.6		33.37
Maryland	1904	1905	[12] 508	64,734	.8				
Massachusetts	1869	1889	22,118	858,840	2.1	[13] 25,935	5.0		[10] .20-.24
Michigan	1903	1914	49,497	155,116	.4				
Minnesota	1901	1904	4,258	976,475	3.4	[7] 20,450	5.1		
Mississippi	1910	1911	[6] 345	246,078	5.5	30,772	11.8	49.7	[5] 3.18
Missouri	1907								
Montana	1903	1914	26,636	297,796	2.9	3,293	3.5	27.1	[14] .33
Nebraska	1897	1920		[6] 127,500	.7	[7] 3,517	1.5		
Nevada	1915	1920		34,115	2.8				
New Hampshire	1885	1906	38,527	195,127	5.3				
New Jersey	1895	1901	4,421	749,895	2.1	21,727	4.5		
New Mexico	[14] 1917	1918	20,855	136,881	3.8	5,119	8.6		
New York	1896	1913	65,445	470,485	.4				
North Carolina	1911					7,936	1.6		
North Dakota	1899	1906	28,896	876,876	7.0	21,153	16.4		
Ohio	1894	1915	473,470	1,651,157	2.9				
Oklahoma	1905	1920		[15] 228,397	1.2	8,420	2.3		
Oregon	1903	1920		2,286	.02	[7] 2,029	1.4		[10] .35
Pennsylvania	1897	1913	425	83,962	.1	[7] 4,520	.35		
Rhode Island	1918	1918	21,633	32,490	.7				
South Carolina	[16] 1912	1914	11,927	[17] 25,121	.4	[17] 1,723	.51		[17] 13.29
South Dakota	1899	1913	54,399	211,947	2.3	2,388	2.4	27	
Tennessee	1913	1915	18,920	88,883	1.4	5,870	1.2		[6] 1.00-9.00
Texas	[18] 1915	1917	29,631	70,088	.2	2,683	.3		
Utah	[19] 1905	1916	93,091	170,286	2.7	5,000	5.1		
Vermont	1876	1893	9,133	228,532	6.5	4,467	8.8		
Virginia	1903	1906	2,102	153,796	1.5	[7] 8,885	2.5		
Washington	1901	[20] 1911	[20] 44,523						
West Virginia	1908								
Wisconsin	1897	1912	36,468	225,699	.9				
Wyoming	[21] 1919	1918	29,255	74,128	2.3				

[1] Computed on returns of 40 States.
[2] Computed on returns from 31 States.
[3] Permitted in Mobile County at an earlier date.
[4] Mobile County only.
[5] Per month.
[6] Estimated.
[7] Data for 1921.
[8] Assumed in powers of county boards.
[9] Transportation was carried on under general powers of township boards as early as 1888.
[10] Per day.
[11] Transportation also dates to 1902 under general powers of parish boards.
[12] Baltimore County.
[13] Data for 1919.
[14] Not a specific authorization. County boards created.
[15] Special report for 98 schools.
[16] Permitting State aid for transportation.
[17] Data for 1918.
[18] A law of 1905 was also construed as permitting transportation.
[19] In powers of county district board.
[20] Special report.
[21] Not specific; assumed in powers of district board.

Source: Reprinted from U.S. Bureau of Interior Bulletin No. 41 (1923) p. 58.

SCHOOL TRANSPORTATION

The success of school consolidation; students' increased comfort, safety, and scholarly diligence; protection against the inequity of property tax inequities in school finances: all depend upon adequate school transportation. While it has been available in the United States from earliest times, its provision by the state is a latter-day improvement.

The first state act providing for state-aided pupil transportation was passed by the Great and General Court of Massachusetts in 1869. As Table III indicates, other New England states rapidly followed suit, followed shortly by states throughout the midwest.

Interestingly, two states required no specific authorization for the reimbursement of transportation. In Florida and Utah, the act that entailed public transportation was the same act that set forth the powers of the county school boards. In Florida, the statute allowed ". . . all acts reasonable and necessary for the promotion of the educational interests of the county and the general diffusion of knowledge among the citizens." [21] In Utah, C.H. Jensen, the State Superintendent, explained:

It is rather fortunate that the law which consolidated the schools in Utah . . . placed in the hands of school boards, among other powers, the power "to do all things needful for the maintenance, prosperity, and success of the schools and the promotion of education." Boards have interpreted the above law liberally, whenever they have felt that the welfare of the pupils could be best served by so doing.[22]

By 1934, twenty-three states had made pupil transportation mandatory under certain conditions, to be judged by the local school board.[23]

It is unclear what authority allowed school boards to compel students to attend schools located a distance from their homes. Fortunately, traditional American respect for education as an agency of society has been so profound that the question never arose in practice. Compulsory attendance laws exist in almost every state, as does the precedent of mandatory boarding schools. As Monahan reported in 1914: "Maine, Vermont, Minnesota, South Dakota, and Oregon permit payments for board and room for pupils in homes convenient to the schools where the cost of so doing does not exceed the cost of transportation." [24] The Maine act provides that school committees may authorize their superintendents of schools "to pay for board and room at a suitable place near any established school instead of providing conveyance, when it can be done at an equal or less expense." [25] Nobel reports that a 1922 U.S. Bureau of Education bulletin mentions the existence of 225 dormitories "established in connection with the public secondary schools of 21 states." [26] When pupils can be required to board away from home in order to advance educational opportunities, is it any wonder that school officials' powers to mandate daily transportation are seldom questioned?

METHODS OF TRANSPORTATION

The basic plan for public school transportation was outlined by Monahan in 1914:

Usually the school wagon follows a definite route and children meet it on the route. The wagons are required to run on schedule and leave fixed points at set times. In a few cases wagons go to the homes of the children. Ohio requires the wagon routes to be arranged so that no child will have to walk more than one-half mile to take the wagon; South Dakota, so that no child will have to walk more than five-eighths of a mile. Iowa prohibits the wagons from leaving the public highways to receive or discharge occupants, and provides that children living "unreasonable" distances from school or wagon routes may be

Footnotes at end of article.

transported by parents or guardians, who receive compensation for so doing.

While the wagon is the usual form of conveyance furnished at most schools, many children are transported in all parts of the country by steam railroads or electric roads. In Massachusetts and California, and undoubtedly in other states, automobile buses are coming into use. In Virginia, on one route, a gasoline launch is used.[27]

By 1940, the types of vehicles in use included: railroads (14 states had legal provisions regarding these), trolleys, taxis, private and public passenger cars, steamboats, and sleighs.[28] Belmont Farley, in his amusing 1938 essay, *Willingly to School*, discovered dog sleds, snowmobiles, motor boats, and even a cable basket in Lemhi County, Idaho.[29] The Superintendent of the Northwestern School District of Alaska, in 1921, accompanied his charges to school on a reindeer-sled.[30]

Monahan adds a pointed warning against reimbursing families for transporting their children to school privately:

One of the principal disadvantages is the expense. It does not require a larger expenditure of school funds, but the total expended by the school patrons is much greater. A large amount must be invested in horses and vehicles, and stabling and feed for the horses provided. If the children themselves drive, the horse is not available for other work on school days. Another disadvantage is that it does not assure the regularity of attendance and the freedom from tardiness resulting from the use of transportation wagons or of public electric or steam railroads.[31]

Against this must be set the remarkable success of the North Carolina system where, to this day, pupils drive the school buses.

EXTENT OF PUPIL TRANSPORT

Table IV summarizes Massachusetts state contributions to pupil transport from 1889, when the State Board of Education began collecting statistics, until 1912.[32] By 1910, fourteen states were collecting information on transportation expenditures, as reported in Table V.[33] By 1920, the percentages of all pupils who were transported were available; they appear in Table III. The growth of pupil transportation can be traced by comparing the national expenditures gathered by *Bus Transportation* magazine from 1926 to 1938.[34] During this period, the total increased by 180 percent. (Table VI presents these totals.)

TABLE IV.—*Cost of pupil transportation in Massachusetts from 1888–89 through 1912–13*

School year:	Transportation expense
1888–89	$22,118
1890–91	30,649
1895–96	91,136
1900–01	151,773
1905–06	236,415
1910–11	329,857
1912–13	384,149

TABLE V.—*Expenditures on Pupil Transportation in 14 States Reporting in the year 1909–10*

State:	Transportation expense
Connecticut	$72,077
Florida	24,133
Indiana	155,390
Iowa	25,434
Louisiana	54,000
Maine	114,795
Maryland	5,210
Massachusetts	310,422
Minnesota	63,253
New Hampshire	57,993
New Jersey	145,737
North Dakota	104,150
Vermont	92,019
Virginia	46,908

TABLE VI.—*Cost of School Bus Transportation in the United States, from 1926 to 1938*

Year:	Total cost
1926	$23,430,195
1927	24,659,598
1928	27,256,738
1929	30,119,302
1930	34,044,138
1931	40,696,398
1932	48,759,730
1933	50,533,603
1934	48,562,565
1935	52,621,881
1936	55,280,496
1937	61,032,340
1938	66,011,592

TABLE VII.—PERCENT OF AVERAGE DAILY ATTENDANCE TRANSPORTED TO SCHOOL AT PUBLIC EXPENSE IN THE SCHOOL YEARS 1920–21, 1937–38, AND 1970–71, BY STATE

State	Percent transported		
	1920–21	1937–38	1970–71
Alabama	1.9	26.3	47.6
Alaska			41.1
Arizona		17.5	29.7
Arkansas	.3	14.6	52.2
California		8.2	19.7
Colorado	[1] 7.5	8.3	[2] 35.3
Connecticut	2.9	11.1	[3] 57.0
Delaware		24.6	60.7
Florida	4.8	[3] 18.9	34.6
Georgia	2.3	16.8	56.4
Hawaii			
Idaho	1.8	20.3	52.2
Illinois		1.5	32.8
Indiana	13.1	30.0	56.6
Iowa	[1] 8.5	11.0	44.0
Kansas	1.3	3.9	35.7
Kentucky		11.8	63.1
Louisiana	7.1	28.8	64.4
Maine		14.2	65.9
Maryland	7.6	17.8	58.1
Massachusetts	[3] 5.0	7.1	[3] 44.5
Michigan		3.7	[3] 36.5
Minnesota	[1] 5.1	22.2	48.2
Mississippi	11.8	23.0	54.7
Missouri		6.4	63.9
Montana	3.5	9.5	30.1
Nebraska	[1] 1.5	1.0	19.9
Nevada		8.9	39.6
New Hampshire		15.2	[3] 60.8
New Jersey	4.5	10.8	[3] 30.5
New Mexico	8.6	20.2	[4] 43.3
New York		5.4	[5] 45.6
North Carolina	1.6	32.6	62.2
North Dakota	16.4	[3] 16.3	40.3
Ohio		20.2	50.9
Oklahoma	2.3	15.6	[3] 39.3
Oregon	[1] 1.4	12.0	[3] 56.5
Pennsylvania	[1] .4	5.3	57.4
Rhode Island		3.8	[3] 50.5
South Carolina	.5	13.3	56.0
South Dakota	2.4	4.6	32.7
Tennessee	1.2	17.3	52.6
Texas	.3	21.2	23.0
Utah	5.1	21.0	32.9
Vermont	8.8	8.4	65.2
Virginia	[1] 2.5	22.6	62.4
Washington		[3] 23.8	49.4
West Virginia		22.2	70.1
Wisconsin		4.6	50.2
Wyoming		21.2	34.7

[1] Data for the subsequent school year.
[2] Percentage based on total school enrollment rather than average daily attendance.
[3] Data for the preceding school year.
[4] Percentage based on average daily membership rather than average daily attendance.
[5] Large cities omitted in some cases. (New York State excludes New York City only.)

As Table VII demonstrates, the percentage of pupils transported to school increased steadily from 1920 to 1970.[35] This increase occurred throughout the country, and especially in the midwest where the early New England type school district disappeared only slowly. Although the percentage of students riding to school continues to increase, as Table VIII shows, the rate of increase has been gradually declining since the 1920's, particularly since 1954.[36]

TABLE VIII.—*Percent of total enrollment transported at public expense from 1920 to the present*

School year:	Percent transported
1920–21 *	5.6
1929–30	7.4
1931–32	9.2
1933–34	10.6
1935–36	12.3
1937–38	14.5
1939–40	16.3
1941–42	18.3
1943–44	19.4
1945–46	21.7
1947–48	24.4
1949–50	27.7
1951–52	29.0
1953–54	32.8
1955–56	35.0
1957–58	36.5
1959–60	37.6
1961–62	38.1
1963–64	38.7
1965–66	39.7
1967–68 **	41.3
1969–70 **	42.8

* Percentage based on average daily attendance and not enrollment, for 31 states, some having data only for the preceding or following year.

** Percentage based on average daily attendance and not total enrollment, for 36 states.

COST OF PUPIL TRANSPORTATION

The per pupil cost of school transportation has grown considerably over the years. The first available figures (from Concord, Massachusetts in 1887) report annual wagon transport costs of $19.44 per child.[37] In 1967–68, for the United States as a whole, annual per pupil costs had risen to $23.06.[38] This increase is doubtless due to the dollar's declining purchasing power, only partly offset by the fact that modern motor buses do not require fuel during idle periods.

A more relevant comparison is the per child cost for transported pupils only. Table IX shows the 1911–12 figures for several states. They range from $10.03 (Georgia) to $28.72 (Vermont).[39]

TABLE IX.—*The cost, per pupil, per year, of pupils transported to school at public expense, for several States in the school year 1911–12*

State:	Cost per pupil transported
Connecticut	$23.69
Georgia	10.03
Indiana	19.04
Iowa	20.70
Minnesota	21.70
Ohio	15.00
Oklahoma	13.12
Vermont	28.72
Washington	25.00

Table X shows national figures for 1929 through 1966.[40] During that span of nearly 40 years, the cost per transported pupil has nearly doubled (while the costs of aluminum, electricity, and celluloid have actually declined).

TABLE X.—*Cost, per pupil, per year, of pupils transported to school at public expense, for the years 1929–30 through 1965–66, for the United States*

School year:	Cost per pupil transported
1929–30	$28.81
1939–40	20.10
1949–50	30.88
1959–60	39.78
1965–66	50.68

As the cost of motor transport shot up, total school expenditures on all aspects of education also increased (although not quite

Footnotes at end of article.

as quickly). In 1921–22, 1.7 percent of school operating expenditures were committed to pupil transport.[41] By 1935–36 the percent had more than doubled to 3.8.[42] In the next 30 years, the percentage increased another one-fifth of one percent (to 4.0) by 1967–68.[43] Perhaps this shows that, as pupil transportation proves its value, schools commit ever increasing proportions of their resources to its employment.

REASONABLE LIMITS ON PUPIL TRANSPORT

There is considerable interest in establishing a reasonable standard for the amount of time children may be expected to spend getting to school. E.E. Ramsey of the Indiana State Department of Education said, in 1923:

I believe that the amount of time that pupils should spend in transit to and from school is one point that might be standardized. It occurs to me that if a pupil spends two hours per day going to and from school, that this is as much time as should be allowed for such purpose.

In some of the better portions of Indiana, another condition has arisen in the last 20 years, of which full advantage has not been taken. I refer to the interurban system which is to be found in many parts of central and northern Indiana. Transportation is possible for much greater distances over the interurban lines than in any other way. Fifteen to twenty miles would not be an excessive distance for transportation by such a method. It happens, however, that the unit of administration for rural schools in this State is such that it renders this desirable means almost wholly inoperative. The township unit of administration usually means that pupils will not be transported outside their own school unit.[44]

Other states established different standards, but none less than that proposed by Mr. Ramsey.[45]

A 1924 survey of 260 consolidated school systems reported the lowest average one-way travel time to be 10 minutes; the greatest was 100 minutes; the median 35 minutes.[46] Because these are system-wide averages of all the transit times, it is clear that many systems exceeded the one-hour one-way standard proposed by Mr. Ramsey. By 1940, however, the one-hour one-way standard was generally accepted, although not always adhered to because of cost considerations.[47] One way routes more than 2 hours long still exist in some parts of North Carolina, for example.

TRANSPORTING BLACK CHILDREN

The benefits of attending larger, more socially mixed schools have long been noted. R. F. Gaither, principal of the Mays Lick Consolidated School in Mason County, Kentucky, explained the effect on black children in 1914:

Everyone knows of the inspiration that comes from numbers. We have all felt the difference between plodding along alone and being carried on by the sweeping current of the crowd. The child feels it perhaps more sensibly than the adult. The Southern Negro, who is more nearly the child of Nature than the white man, feels it to such an extent that he is almost gregarious. This love of the crowd is in almost all normal people. It is one of the influences that draw boys and girls to the city. Its effect is as great in school as it is elsewhere.[48]

Principal Gaither also noted a second effect:

The benefits accruing to the country pupil from consolidation can hardly be estimated. It gives him a broader life, widens his vision, and affords him an opportunity to more nearly fill up his life to the full measure of its possibilities. In the consolidated school the pupil has a wider circle of acquaintances and learns to estimate his own value. He has a better opportunity to realize that he is really one of the units of an active world. He does not have to come into middle life before it dawns on him that he should be one of the active agents in shaping the trend of affairs, political and otherwise.[49]

Some black children who have attended consolidated schools will doubtless attest to this latter point.

Whatever the benefit of attendance at consolidated schools, many black children became intent upon possessing it. Leo M. Favrot, Louisiana State Agent for Negro Schools, pointed out in 1923:

Even our Negro population realizes the advantages of a large central school to such an extent that the Negro child is willing to walk great distances to attend a school of this type and demands a school of this type in preference to a one-teacher school.[50]

Mr. Favrot was acute in stressing the black child's willingness to walk. In 1936–37 the proportions of black and white children who were transported to school were quite different in the twelve Southern states. As Table XI indicates, the proportion of whites transported to school at public expense was nine times as great as the proportion of blacks.[51]

TABLE XI.—THE PROPORTIONS OF THE WHITE AND BLACK TOTAL ENROLLMENT TRANSPORTED TO SCHOOL AT PUBLIC EXPENSE IN 12 SOUTHERN STATES DURING THE SCHOOL YEAR 1936–37

State	Percent of total enrollment transported to school, by race	
	White children	Black children
Alabama	38.9	1.7
Arkansas	18.4	3.0
Florida [1]	25.1	1.6
Georgia [1]	25.6	1.0
Louisiana	45.2	.5
Maryland	20.4	7.3
North Carolina	43.9	6.7
Oklahoma	16.2	8.6
South Carolina	24.4	.1
Tennessee	20.5	2.0
Texas	24.2	5.7
Virginia	28.9	5.4
Total	27.3	3.2

[1] For the preceding year.

An explanation for this discrepancy was offered in 1923 by J. T. Calhoun, State Rural School Supervisor of Mississippi:

In Mississippi we have very few consolidated Negro schools because Negroes, as a rule, live in colonies or on large plantations in such great numbers that it is not necessary to transport them in order to make a school large enough to do efficient work.[52]

He also pointed out that "The western portion of Mississippi is in the Delta, where the land is rich, the tax valuation is high, and the white children are a considerable distance apart." [53]

The proportion of black children transported to school at public expense can be expected to increase substantially, however, as ever greater numbers of blacks relocate to cities. This is because, as Noble observed:

There are many factors which cause cities to make provisions for the transportation of normal children. Among such factors are: (a) Distance; (b) State laws; (c) the consolidations of schools; (d) poverty; (e) segregation of races; and (f) safety.[54]

Indeed, as the Bureau of Education's survey of city school systems makes clear, cities were making rapid progress in the provision of transportation to children in 1921–22.[55] New York was spending $333,000 annually, Chicago $143,000, Philadelphia $49,000, Cleveland $27,000, Newark $15,000, Los Angeles $29,000, Boston $10,000, and Detroit spent $9,000. By 1938, 71 percent of the largest 327 cities were busing children to school.[56] As blacks move increasingly into larger cities, a greater proportion of them can be expected to benefit from school transportation provisions at public expense.

VOICE OF THE PEOPLE

Research on pupil transportation has grown energetically from the very beginning of the modern period. Only a small portion can be presented here.

One of the most frequent forms has been the public opinion poll. In 1898, Mr. G. T. Fletcher made a public inquiry for the Massachusetts Board of Education which "showed the attitude of the public toward the policy of consolidation as seen by the school authorities—70 percent of the people approved the policy and 30 percent opposed it." [57]

In 1913, 120 Connecticut townships reported these results of a pupil transport poll: [58]

Satisfactory to parents	Beneficial to schools	Number reporting
Yes	Yes	95
No	Yes	9
No	No	4
No	No report	4
No report	do	8

The effect of pupil transportation on the attitudes of parents can be most marked. In 1914 Professor A. B. Fraham of Ohio State University discovered that in Ohio: [59]

80 percent of the parents report that their children attend more regulary under transportation than they did previously.

90 percent report their children are more interested in school than before.

95 percent think their teachers show more interest in their work.

100 percent practically agree that the social and educational interests of the township consolidated have greatly improved.

75 percent of those who were formerly opposed to consolidation and transportation are now in favor of it.

PUPIL SAFETY

The National Safety Council has determined that motor buses are substantially safer than horse drawn conveyances for pupil transport.[60] In fact, school bus safety is generally very high: "pupil transportation has been conducted with few serious accidents. During the five-year period 1931 thru 1935 only nine school bus accidents were reported in the columns of the New York Times." [61]

Compared to private modes of transportation, school bus travel is exceptionally safe: in 1968, the National Safety Council found school buses 4 times safer than ordinary buses, and 40 times safer than private cars.[62] This is certainly one reason why suburban parents are turning to school buses in preference to driving their children to school, because, as *School Management* magazine reported: "Accidents seem to be caused most often by the use of vehicles not designed as carriers of children and by allowing children to stand in aisles." [63]

It is very difficult to compare motor bus transportation with walking because children who walk to and from school so often engage in unsupervised activities, or enter dangerous areas, that their accident and injury rates are far higher than those of children who go to school by any other means.[64] As E. W. Hausser found, in his unpublished 1938–39 study, *Effect of Pupil Transportation on Pupil Health in Spencerville, Ohio*, children who were transported to school benefited in several respects.[65] His conclusions are summarized in Table XII, which shows that transported pupils had fewer absences, and fewer illnesses, and fewer days lost due to personal illnesses.

Footnotes at end of article.

TABLE XII.—INCIDENCE OF ABSENCE AND ILLNESS AMONG TRANSPORTED AND WALKING PUPILS, IN SPENCERVILLE, OHIO, PUBLIC SCHOOLS DURING THE SCHOOL YEAR 1938-39

Rate per pupil	Among transported pupils, per year	Among walking pupils, per year
Days absent	11.2	11.9
Cases of illness	2.3	3.4
Days of illness	5.5	6.6
Number of pupils	202	140

The only study of the psychological consequences of pupil transport shows ". . . no significant medical or psychiatric 'harm' or 'injury' as a result of the travel or change."[66]

Transportation of younger children is a special question because they, of course, cannot be expected to travel as great distances as secondary students can. A 1938 survey of 250 school superintendents recommended a median maximum busing distance to school of 12.25 miles for elementary students, although older students were allowed a maximum of 19.4 miles.[67] With today's better roads and faster buses these distances could perhaps be extended slightly.

IN CONCLUSION

Methods for improving the school as a social agency move in cycles. At first, school consolidation and pupil transportation were confined to cities where they brought about the first modern school systems (and in some cases, modern cities). Then the focus shifted to the countryside, where much of the rural population was congregated. There, school consolidation and pupil transportation transformed the lives of country children, although questions about the equity of the property tax basis for school financing never quite died.

By the 1920's and 30's, attention shifted back toward the cities, and urban transportation and school consolidation grew apace. Because a growing proportion of the black school population was located in the cities, they attained the benefits of school transport "by the hand of the state" in large numbers for the first time.

Today perhaps requires another cycle. New concentrations of suburban country people are growing up in areas of our nation that once were rural. For the benefit of their children, one more extension of school consolidation and pupil transportation can finaly bring about the goal proposed by Monahan in 1914:

The larger school brings its pupils into contact with several teachers and a larger group of children than in the small school, who come from many different kinds of homes and from a wider territory than those in the single district. This contact with many children widens their visions and gives to them a breadth of view impossible in the small district. There is a disappearance of much of the shyness and bashfulness often particularly noticeable in the country child, a trait which often proves a handicap to him in affairs of his later life. He not only has contact with a large group of children, but he associates with them, measures himself against them, and forms a more correct estimate of himself and his ability than is possible otherwise. He learns to take his part in their activities, to cooperate, a lesson sadly needed in American country life.[68]

FOOTNOTES

[1] L. D. Harvey, *Consolidation of School Districts and Transportation of Rural School Pupils at Public Expense*, Bulletin of Information No. 7, State Dept. of Public Instruction (Madison, 1902) p. 16.

[2] Arkansas State Dept. of Education, *Study of Local School Units in Arkansas* (Little Rock, 1937) pp. 110–13.

[3] *New York Times*, 1972, *passim*.

[4] M.C.S. Noble, Jr., *Pupil Transportation in the United States* (International Textbook Company, Scranton, Pennsylvania, 1940) p. 45.

[5] *New England's First Fruits* (London, 1643).

[6] Noble, footnote 4, pp. 1–2.

[7] F. Douglass, *Life and Times* (Park Publishing Company, Hartford, Conn. 1881) Chapter 14 and *passim*.

[8] R.E.N. Twopenny, *Town Life in Australia* (London, 1883) p. 141–42.

[9] C. M. Smith, *The Working Man's Way in the World* (William and Frederick Cash, London, 1853) p. 3.

[10] J. F. Abel, *Consolidation of Schools and Transportation of Pupils*, Dept. of the Interior, Bureau of Education, Bulletin No. 41 (Washington, D.C. 1923) p. 6.

[11] United States Bureau of Education, *The Educational System of South Dakota*, Bulletin No. 31 (Washington, D.C. 1918) p. 28.

[12] F. H. Swift, F. K. del Plaine, O. L. Troxel, *Studies in Public School Finance, the Middle West—Illinois, Minnesota, South Dakota*, Educational Series 3, University of Minnesota (Minneapolis, 1925) p. 80.

[13] H. A. Dawson, G. C. Lloyd, H. A. Little, and D. M. Hirst, *Larger School Units for Arkansas Consolidated Schools and School Units*, State Dept. of Education (Little Rock, 1930) p. 13.

[14] F. H. Wood, *Central Schools and the Centralization of School Districts in the State of New York* (Carl W. Clark, Publishers, Cortland, 1938) p. 3.

[15] Noble, footnote 4, pp. 68, 92. His authority: United States Office of Education, *Handbook for Planning the Reorganization of Local Schools*, Circular No. 156 (Washington, D.C. 1936).

[16] R. L. Johns, *State and Local Administration of School Transportation*, Teachers College Contributions to Education No. 330 (Columbia University, New York, 1928) pp. 6–7.

[17] Abel, footnote 10, p. 5.

[18] *Id.*, p. 17.

[19] A. C. Monahan, *Consolidation of Rural Schools and Transportation of Pupils at Public Expenses*, Bureau of Education, No. 30 (Washington, D.C. 1914) p. 7.

[20] *Id.*, p. 8.

[21] *Florida Statutes*, Chapter 3, 872, 20, 11 (1889).

[22] C. N. Jensen, *A Study of Transportation in the Schools of Utah*, State Dept. of Public Instruction (Salt Lake City, 1928), p. 4.

[23] J. C. Eddleman, *The Regulation of Pupil Transportation in the United States*. Bulletin of the Bureau of School Service, VI. No. 3 (University of Kentucky, 1934) p. 14.

[24] Monahan, footnote 19, p. 27.

[25] *Id.*, p. 37.

[26] Noble, footnote 4, p. 45.

[27] Monahan, footnote 19, p. 45.

[28] Noble, footnote 4, pp. 25–26, 132.

[29] B. Farley, *Willingly to School*, National Education Association (Washington, D.C. 1938).

[30] United States Bureau of Education, *Report of the Work of the Bureau of Education for the Natives of Alaska*, 1912–1913, Bulletin No. 31 (1914) p. 24, plate 6.

[31] Monahan, footnote 19, p. 45.

[32] *Id.*, p. 12.

[33] Abel, footnote 10, p. 18.

[34] Noble, footnote 4, p. 11.

[35] Data for 1920 from Abel, footnote 10, p. 58. Data for 1936–37 from Noble, footnote 4, pp. 178–79. Data for 1970–71 from HEW Office of Civil Rights.

[36] Data for 1920 to 1965 from *The Digest of Educational Statistics, 1968*, United States Office of Education, p. 37. Later data from HEW Office of Civil Rights.

[37] Monahan, footnote 19, pp. 10–11, computed by this author.

[38] G. Kahn, *Analysis of Financial Statistics of Local Public School Systems, 1967–1968*, HEW National Center for Educational Statistics (Washington, D.C. 1970) p. 25.

[39] Figures variously computed from Monahan, footnote 19, pp. 14, 16–26, 50–54.

[40] United States Office of Education. *The Digest of Educational Statistics, 1968*, p. 37.

[41] Computed from F. M. Phillips, *Statistics of State School Systems, 1921–22*, Bureau of Education, Bulletin No. 31 (Washington, D.C. 1924) Tables 24 and 25.

[42] Noble, footnote 4, p. 28.

[43] Kahn, footnote 38, p. 24.

[44] In J. F. Abel, *Consolidation and Transportation Problems, Report of the Second National Conference on Consolidation of Rural Schools and Transportation of Pupils, Cleveland, Ohio, February 26, 1923*. Dept. of the Interior, Bureau of Education, Bulletin No. 39 (Washington, D.C. 1923) p. 12.

[45] *Id.*, passim.

[46] J. F. Abel, *A Study of 260 School Consolidations* Department of the Interior, Bureau of Education, Bulletin No. 32 (Washington, D.C. 1924) p. 33.

[47] J. E. Butterworth, and V. Ruegsegger, *Administering Pupil Transportation* (Educational Publishers, Minneapolis, 1941) p. 8.

[48] Monahan, footnote 19, p. 76.

[49] *Id.*, p. 75.

[50] Cleveland Conference Report, footnote 44, p. 20.

[51] Noble, footnote 4, p. 182.

[52] Cleveland Conference Report, footnote 44, p. 13.

[53] *Id.*

[54] Noble, footnote 4, p. 121.

[55] F. M. Phillips, *Statistics of City School Systems, 1921–22*, Dept. of the Interior, Bureau of Education, Bulletin No. 34 (Washington, D.C. 1924) Table 2.

[56] Noble, footnote 4, p. 121.

[57] Monahan, footnote 19, p. 12.

[58] *Id.*, p. 49.

[59] *Id.*, p. 50.

[60] *Time*, Feb. 28, 1972, p. 15.

[61] Noble, footnote 4, p. 437.

[62] "Facts About School Buses," *School Management* (Magazine), April 1971, p. 11.

[63] *Id.*

[64] *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 91 S. Ct. 1267 (1971), Appendix to Brief for Petitioners, No. 281, at Br. A16.

[65] *National Survey of School Bus Transportation, 1938–39*, Teachers College, Columbia University, cited in Noble, footnote 4, pp. 425–28.

[66] R. Coles, "Northern Children Under Desegregation," 31 *Psychiatry* 1 (1968) p. 14.

[67] Noble, footnote 4, p. 435.

[68] Monahan, footnote 19, p. 65.

WHITE PARENTS' FEARS

(By Patricia M. Derian)

(NOTE.—Pat Derian is a doctor's wife and the mother of three children.)

Most white parents, raised on the myths of black indolence, ignorance and immorality, fear school desegregation on a basic, if sometimes unconscious, gut-level. This is one white mother's view of what happened to those fears when school desegregation came to Jackson, Mississippi in the late 1960's: what they were and how they were overcome.

From the beginning, most white parents believed that great harm would befall their children at the hands of black teachers and pupils. Poor and working class whites thought, and said, that their children would catch syphilis from sharing toilets with black children. If they escaped this, they feared knifings or other physical assaults. In Mississippi, the Ku Klux Klan and white Citizens' Council promoted these fears.

WHITE-GLOVED CALM

Even in the early sixties, (when supportive whites spoke only of school "desegregation"), small groups of white-gloved, middle class women were trying to allay these fears through "respectable," low-key, non-threatening organizations. With little money, and

caution from community leaders, they held coffees, talked to other mothers, spoke in small public meetings, and bought television spots and a handfull of billboards. Like the little boy in the Emperor's New Clothes, they answered "nonsense" politely and quietly, but very firmly, to a hundred years of racism. They reproached white society with their "goodness" and "bravery." And they were not destroyed by the Klan or the "all powerful" white Citizens' Councils. This was the extent of the effort during the middle-sixties, the years of freedom-of-choice, when few black and white children attended the same schools.

The advent of "massive" desegregation in 1969 brought a regrouping. Some women who had worked through dangerous times gave up their advocacy of integration. Some tired of cajoling the middle class, some missed the romance of standing alone against heavy odds. Others (most) thought that massive desegregation was too much, a mistake. They had reached their limit.

THE SECOND COALITION

A new coalition of "respectables" waited in the wings. It included recently arrived yankee parents, stunned chamber of commerce types who knew that no new business would come to a place without public schools, the morally upright whose religions finally declared that racism was a wicked sin—and some outright integrationists. This coalition had its limits too: it was all-white, and an abortive effort to have a bi-racial parent group failed because white parents' worries differed from black parents' concerns. Nor did it include poor whites; it was entirely middle class, chiefly from one geographic location.

Although unwilling to articulate it, middle class people fear loss of approval more than anything else. The new coalition was large enough for the parents to take comfort and courage from each other, and to feel some disdain for friends and neighbors who had stampeded to private segregation academies. Nonetheless, some anxiety remained.

It was widely believed that few black teachers were adequately trained, for who had not heard stories of northern colleges handling out degrees to Southern blacks just to spite the whites? Parents feared that their children would not be able to get into college. They rarely voiced, but still held, fears that their children would not be safe in school. Finally, they worried about their children's isolation in two ways: in schools where whites constituted a small minority, and in white society, because most children and most social organizing had moved to segregation academies.

THE GREAT WHITE BUS

Many working class parents, still feeling desegregation was "wrong," separated themselves from the racist bigot image by attacking the new villain: forced busing. One group even held classes for their children in a parked bus, proclaiming angrily that they were not opposed to school integration. It was a curious sight indeed: counterparts of those contorted faces of Little Rock and New Orleans solemnly affirmed their fidelity to the "traditional" way of school integration. Some borrowed money and cut back expenditures to put their children in white Citizens' Council schools (to which they rode in school buses painted white). Others kept their children out of school a semester, a year, or for years. But most poor and working class whites—without support from the schools, community, or political leaders—simply bit the bullet and sent their children into the unknown because there was no alternative. The result was a large number of white children attending massively desegregated public schools for the first time.

PARENTAL SUPPORT

At this point the middle class parents, organized to meet their own needs, began to have a community-wide impact. Parents popped up in all the schools, tutoring, helping in a thousand ways, adding to the white faces, watching with as much good will as they could muster. They manned telephone rumor centers and tracked down every hysterical story of bombings, rapes and knifings that had not taken place. They spoke to civic clubs, advertised, and visited other white parents door to door so that their children would not remain a small minority.

Parental pressure on school officials began to change the teaching system, radically and fast, to help black children from poorly equipped, understaffed, substandard schools to catch up and keep up. Parents supported school efforts to get every available federal dollar. They joined groups that had formerly been all-black or civil rights oriented, to get community ESAP grants to aid the desegregation process.

Parents also sent their children to school and told them to keep quiet, mind their own business, and stay out of trouble.[1] As a result, most white children were wary of contact with black classmates during the first year of integration. School officials obliged by tracking white children only into classes where there was at least a small group of whites, and whites bunched together cautiously.

Because rabidly anti-black children of rabidly anti-black parents had been removed from the public schools, the segregation academies have served as safety valves, leaving public schools cool and relatively placid. As a consequence, white kids have relaxed enough after two years to make tentative overtures to black kids, which were met in kind. At the junior high level, and above, they are beginning to work across the old myth. Elementary school children are going to be incredulous when they grow up enough to learn how it was in the olden days.

NO UTOPIA

This is not to say that utopian ideals will be realized. Racial hatreds and fears, and the brawls and incidents that spring from them, are not going away. But many American children will have different experiences in these multi-racial classrooms, and they will exert further pressure for improvement and reform. They are learning that class differences outweigh racial differences, and they may become determined to eliminate poverty.

In summary: white parents start with irrational fears about health and safety. Most parents move along, with the uneventful progress of their children, to a guarded acceptance of full integration and busing. But they remain cautious and feel ever-ready to pull their children out of the newly-desegregated schools if things go wrong. About grade ten or eleven another middle-class parental crisis occurs: parents fear that the schools are not good enough and that their children will not be admitted to a decent college, or will be unready for the college load. Most Southern schools have needed improvement at least twenty years, so this worry was valid before any one spoke unpleasantly to white school administrators (who were busy preserving segregation). But facts have little to do with how people handle anxieties.

In schools where whites are now in the minority, a large scale white student return to public schools must occur or the system is likely to lose whites consistently until it becomes all black. In places where whites have remained the numerical school majority, schools should improve so long as parents maintain their interest and insistence. If Jackson's experience is any example, white fears will gradually diminish in the face of cumulative evidence that black and white boys and girls attend school together every day, safely.

BLACK PARENTS' HOPES

(By Roger Wilkins)

(NOTE.—Roger Wilkins, former Director of the Justice Department Community Relations Service and Ford Foundation program officer, has recently joined the Washington Post editorial board.)

Blacks who can remember being bused for the maintenance of segregation find the current heated debate over busing both bemusing and infuriating. We feel the same way about politicians and pundits who seem sure they know that black parents don't want busing any more than white parents do. It puts one in mind of the old white Southerners who used to assure Northerners that, "our darkies are happy down here," and would then trot one out to prove it. Well, this one's not very happy about the whole busing debate.

My first educational experience was in a one room segregated school in Kansas City, Mo., where I was allowed to come and sit in the back of the room at the age of four because all my older friends were there. The next year, that school was closed and my friends and I were bused many miles to a black school in a blacker part of town. Apart from a keen daily sense that the whites were terribly selfish for hogging the newer and prettier school near our homes, I remember the bus rides as generally convivial and sometimes pretty hilarious. My next stop was Harlem where you learned a lot if you were in an upper track and paid for it with lumps dealt out in the school yard or in the street by resentful lower trackers.

And then on to high school in a midwestern city. If I wasn't the first black in the school, I was the only "ones" there then and my family and I were the only "ones" in the neighborhood, in the classroom it was fine with the algebra and the English, but on the street it was tougher than Harlem. Somebody always seemed to have had to clear a clogged throat right on the furry cover of my bicycle seat. Rather than face the humiliation of cleaning it off in view of the passing crowds thronging out of the school, I would often ride home standing up and sometimes through a gauntlet of stones, apple cores and teenage racial epithets.

But it turned out all right. I learned enough in that school to get into college. And I learned some other things too. Things I couldn't have learned in my Kansas City schools nor in my Harlem schools. They were things about white people and things about myself. I learned that whites are not the superior people they were made out to be. Some of them were smarter than I and some not as smart. Some could pump in baskets from the corner better than I and some couldn't make the team at all. And eventually, over time, I came to learn that they and I could deal in human terms across racial lines. And they learned things from me too, about blacks that they could never have learned in an all-white school. Yesterday's coon turned out to be a contemporary kid and tomorrow's man. Though it hurt me a lot in the beginning, it was worth it—for all of us. People don't learn to function very well in multiracial societies when they do all their learning in uni-racial schools.

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[1] Sometimes fate conspires to frighten us all. After the Jackson State killings, a 7th grade girl came home recounting a school conversation about what to do if police came shooting into their school. Her parent's reassurance that that would not happen was answered with an understanding: "Oh, they only shoot college students."

My mother's judgments about my education were based partially on the circumstances of her life and partially on her desire that her child receive the best education her resources could provide. She did not seek an all white high school for me, but she was certainly not displeased that the one I attended was the best school in town. She knew to a moral certainty that she didn't want her son to be an illiterate or an emotional cripple hobbling through the last five or six decades of his life. She figured that knowing how to read was essential, but that learning something about white people was useful too. Inadvertently, I suspect, her decision helped a lot of white kids too.

The choice, then, is not "to bus or not to bus" but to teach children to read and to live among the wide variety of people with whom they will spend their lives. We can either integrate—sometimes using buses as a tool—or we can choose to create a future generation of cripples, savages and bigots.

Years after my mother had made her choices for me, I had to begin thinking about the same kind of choices for my own children. When it became clear by my daughter's fourth year in a largely black school that she was reading at least two years below grade level, my wife and I took her out of her neighborhood school, and put her, on a bus headed for a much better school ten miles from home, which also happened to be integrated. When my son became five, he joined his sister on that same bus headed for the same integrated school where they could learn in a gentler way than I had two decades earlier how to live in an integrated world. They both began to read. And that was the essential point.

Does Busing Harm Children?

(By Robert Coles[1])

(Note.—Robert Coles, a psychiatrist at the Harvard University Health Service, is the author of Children of Crisis.)

I speak as a child psychiatrist who has worked with black and white children in the South as well as the North, in rural as well as urban areas. I also speak as a physician who has been studying what happens to children when they attend desegregated schools, and in that connection, one who once spent over a year and, later, smaller amounts of time (weeks and months) riding with children on school buses as they went from their homes to newly integrated schools.

In this regard, it is possible for me to say a number of negative things, and I had best do so immediately: I never saw children get sick because they were being bused; I never saw children become emotionally disturbed because they were bused; I never saw childrens' school work suffer because they were bused. Physically, psychologically, educationally, the experience of busing was, in fact, neutral.

What mattered was where the children felt themselves going, where their parents felt the bus was taking their children (to what school, for what purpose) and also, very importantly, what went on in the bus. Was the driver friendly or cold? Did he talk with children or ignore them? Were there others aboard who pointed out and explained things to the children? Often enough this turns a bus ride into an important psychological and educational experience in its own right: a different neighborhood looked at, talked about, comprehended in an altogether new way.

Busing is neither new nor rare in this country. Children ride buses every day, usually with the enthusiastic encouragement and support of their parents, their community, and no doubt, their elected Congressmen (not to mention the President). I have watched boys and girls day after day on those buses, black children and white children, and I have not seen them get sick, or disturbed, or apathetic. I have not been called upon to practice medicine or child psychiatry. I have not seen violence or disorder. Nor have I often seen time wasted. The children have been awake, alert, vastly interested in what they see of their city (although children who never board a bus often find themselves bored when they sit in certain classrooms).

The issue of busing, I say from personal observations over a long period, is not a medical one. It is not *per se* a psychiatric one. It may well not even be an educational one (except that some parents actively seek out busing for their children—even pay to have them bused long distances to private schools). Busing as a political issue ought to be argued openly with everyone's cards on the table. It does not even help to talk about "time wasted busing." Children can and do learn all sorts of things on buses—and can and do fail to learn while sitting solidly in classroom chairs for hours on end.

I have no doubt that we will continue to hear about the "harm" busing does to children, and I can only hope that more clinical observers will go out and see for themselves whether such harm can be documented. I fear, however, that our clinical observations are not going to be heeded, that they are not really what people are waiting for or have any interest in.

Race and Learning: A Perspective on the Research

(By Patricia M. Lines)

(Note.—Pat Lines is a staff attorney at the Center for Law and Education.)

The resurgence of school desegregation as a national controversy is forcing a new look at the ideas which permeate popular opinion on racial balance in the schools. Widespread, adamant resistance to "busing"—the code word for affirmative programs designed to promote school racial balance—has sprung up as desegregation efforts extended to the North, and became more than token enforcement in the South. At times this resistance has bordered on hysteria at other times it is clothed in rationality, and included arguments premised on educational effects. Without attempting to analyze all aspects of the busing controversy, this article discusses the supposed educational effects of desegregation. It notes that the evidence supports neither the advocates nor the detractors of desegregation, and concludes that basic decisions affecting school desegregation should rest on legal and moral grounds rather than scientific research, regardless of what the research says.

Desegregation theories

Social scientists have forwarded a variety of theories to explain why racially balanced schools should aid or retard learning. Each has different implications. Most focus on school resources, arguing that predominantly white[1] schools are better endowed with some resource or another, and that equal educational opportunity would require giving minority pupils equal access to these superior resources. These may include pupil-teacher ratio, experienced teachers and diversified facilities (the conventional measures), or it may include the presence of advantaged children who "teach" their less advantaged peers (the "peer group learning" theory), or higher expectations and better morale among teachers in white schools.

The social science research now available fails to show a relationship between conventional resources and achievement. The teacher expectation theory is also tenuous since teachers are able to distinguish poor, minority kids (usually black) from middle-class, white ones, and hold different expectations for each. Thus, by process of elimination, the "peer group learning" theory is most popular among busing advocates while the "teacher morale" theory is supreme among white anti-busing teachers. If any of these resources increase achievement, two-way busing schemes would, according to the theory, dilute resources available to whites while increasing those available to black children, with a consequent improvement in test scores of black pupils and a decline for whites.

Other theoretical explanations can also be postulated. If black pupils feel stigmatized by an all-black school, for example, removal of the stigma would boost their educational attainment without having an adverse effect on whites. If combining two or more cultures in a single school produces a lively and exciting atmosphere unattainable among homogeneous children, everyone might gain.

Although decisions seem to be made on the basis of these theories, none have been proven. No experiment has compared test scores of various racial groups, rich and poor, as classroom racial and socioeconomic composition was systematically varied. Analysis has had to rest instead on surveys, and studies of desegregation efforts. These have led to inconsistent conclusions—or none at all.

Coleman report

The Coleman Report, based upon an examination of data collected in HEW's 1965 Equality of Educational Opportunity Survey, lends some support to the "peer group learning" theory. It noted a small relationship between pupils' achievement test scores and the percentage white in the school, and a stronger relationship between test scores and socioeconomic backgrounds.[2] Coleman concluded:

"The higher achievement of all racial and ethnic groups in schools with greater proportions of white students is largely, perhaps wholly, related to effects associated with the student body's educational background and aspirations. This means that the apparent beneficial effect of a student body with a high proportion of white students comes not from racial composition per se, but from the better educational background and higher education aspirations that are on the average found among white students."

Research results often depend, however, on how the data are handled. Christopher Jencks of Harvard's Center for Educational Policy Research, using the same data as Coleman, compared first and sixth grades in schools in the urban North which were 50 to 75 percent white. Black first graders in these schools scored below the national average for black children; black sixth grades scored above. White first graders scored below their peers elsewhere, while white sixth graders in the same school scored very close to the white national average. This analysis must be received with reservations: first grade children might have had different socioeconomic characteristics than sixth grade children in the same schools, the tests administered to the first and sixth grade children were different and the first grade test was not reliable.[3] Nonetheless, the analysis offers tentative support for maintaining that racial balance increases both black and white pupils' test scores. It also undermines the "peer group learning" theory since white pupils expe-

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[1] This brief communication can only be a summary of what I have tried to present elsewhere: "Bussing in Boston," The New Republic, October 2, 1965; "Northern Children Under Desegregation," Psychiatry, February, 1968; Teachers and the Children of Poverty, The Potomac Institute, 1970; The South Goes North (Volume 3 of Children of Crisis), Atlantic-Little, Brown. 1972.

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rienced no loss on attendance at schools 25 to 50 percent black.

Several other surveys of more limited populations have produced mixed results.[4]

STUDIES OF DESEGREGATION PROGRAMS

Studies of actual desegregation reveal more confusing results. Reviews of the research by Meyer Weinberg, Nancy St. John and Robert O'Reilly report mostly statistically insignificant results.[5] However, of the 30-odd studies reviewed, most report a few significant differences in minority pupils' test scores in predominantly white and predominantly minority schools, at some grade levels on some tests.[6] More often than not, the differences show higher scores for minorities attending majority white schools. White kids' scores are reported less frequently, and significant findings are scarcer.

More recent studies of cities implementing desegregation plans—i.e., Ann Arbor,[7] Riverside,[8] Chapel Hill,[9] Evanston,[10] Sacramento [11] and New Albany, Mississippi [12]—have produced similar results. Usually minority pupils in some grades posted small gains on some tests; in a few cases they regressed. Usually the results were statistically insignificant. Changes in white test scores were even more difficult to find. White Ann Arbor pupils improved slightly, but the change was statistically insignificant. White Chapel Hill fifth graders made significant gains in math courses. New Albany, Mississippi also reported a small improvement in white test scores; but statistical significance was not reported. In Evanston both black and white eighth graders scored lower. Usually white test scores were virtually unaffected.

In sum, analysis of surveys and desegregation efforts fail to "prove" any of the theories outlined at the outset of this article. Since school desegregation takes place under a variety of radically different conditions, one school might do well, while another of the same coloration would fail. Breaking the research down more finely might explain the frequent lack of results, suggest a more likely theoretical base, and suggest better methods of achieving desegregation.

THE ABSENCE OF DESEGREGATION

In some studies, a closer analysis has revealed the absence of real desegregation, that is, classroom desegregation. The widespread use of ability grouping, or tracking, in perhaps 75 to 90 percent of all schools [13] sometimes results in studies of "desegregated" youngsters who were actually separated from middle-class whites and isolated in their classroom. After the two years of "desegregation" in Riverside, California, for example, someone noticed that most minority students had been grouped together or placed with low achievers; of course, this group continued to perform below norms. The most able minority-group children, however, were placed in majority-white classes and experienced increases in test scores.[14] The study, in effect, reveals nothing about the effects of desegregation on minority-group pupils generally.

Desegregation may also be too shortlived to be real. A few days in an integrated school are unlikely to produce a long lasting or measurable educational change, and even a full school year may be insufficient. One study of a city-to-suburb busing program, Hartford's Project Concern,[15] noted a cumulative effect after the program had been underway for three years. Children who had been in the suburban system all three years scored consistently higher than children who participated only one or two years. No statistical analysis was made of the data, however. Coleman also reported a small positive relation between the number of years minority students spent in white schools and improvement in their achievement test scores.[16] This relation remained when the socioeconomic stutus of the school was held constant. Similarly, according to surveys in Boston [17] and Pittsburgh,[18] black children in whiter schools for two years scored higher on arithmetic tests than did their peers in such schools only one year. An Indiana study [19] reported black first graders were at roughly comparable levels in segregated and desegregated schools, but by the third grade, those in integrated schools moved ahead. Their advantage continued into the sixth grade. Similarly, a comparison of majority white and majority black schools in an upstate New York town [20] revealed no significant differences in achievement test scores, but a cumulative advantage appeared for black students experiencing at least two years in majority schools. The long-term effect on white test scores has not been adequately measured. Until there are more studies of long-term classroom desegregation, it will be impossible to attempt proof of any theory.

AGE AND THEORY

A closer look at the research might also suggest another theory. Many integration studies suggest, for example, that integration in the early grades may be the decisive element in improving achievement scores of minority children. A Nashville study of 75 black children enrolled in desegregated schools found, for example, that those who entered the desegregated schools in the early grades scored higher on academic achievement tests than peers from the same neighborhoods who remained in segregated schools; in the fifth and sixth grades, however, the segregated children performed better than their black peers in the white schools.[21] A study of 87 low income blacks in a suburban New York town reported similarly that the youngest children showed the greatest test score improvement in achievement after transferring to upper income white schools.[22] In New Rochelle, only kindergarten children showed a significant gain when transferred from all-black to white schools.[23] An Ann Arbor study also found that transferred kindergarten pupils (minority-to-majority) showed the greatest I.Q. gains, but because of the small number, the researcher was unable to conclude that the gain was statistically significant.[24] Hartford's Project Concern reported test score gains for participating children in grades K–3; the first grade children were above grade level, but by the fourth grade, the difference between the scores of children in the suburban schools and children remaining in Hartford schools (80% black) had become less noticeable. By the fifth grade scores evened up.[25] In Sacramento, desegregated children in grades 1–4 surpassed their peers in reading and arithmetic scores. Still segregated fifth graders, however, "beat" desegrated children on the reading test; desegrated fifth graders came out ahead in arithmetic scores, but the margin was slimmer than it was for the younger children.[26] In Evanston, elementary school pupils apparently made small gains following desegration, while eighth grade pupils did not, although other factors may have caused backsliding among older students.[27] Less data is available for analyzing the effects of desegregation on white scores, since many of the desegregation programs studied placed only a few black children in white schools, leaving its racial composition virtually unchanged; or the differences were insignificant.

* * * children lends some support to a theory based on the effects of some stigma attached to a predominantly black school. If racial isolation, for example, produces a sense of inferiority, children probably acquire it early and find it difficult to shake. Disparate responses of younger and older children are inexplicable within the other theoretical frameworks.

PROCEDURAL DEFECTS

This discussion of the research findings demonstrates what little basis supports beliefs about educational gains or losses resulting from busing. The crudity of the techniques is yet another reason for rejecting arguments based on social science research. First, the research usually defines educational attainment by ability or intelligence tests, a wavering and uncertain measure which varies over time for an individual, and for whole groups of children. Moreover, because it is so unclear what it is society really wants schools to do, there is no guarantee that tests measure the right things. At best, test scores provide a somewhat reliable and objective measure of a child's acquisition of specific, limited skills.

But this is not the only defect in the techniques. Some of it, such as the Coleman Report, is based on survey data. Yet, surveys do not "prove" causality. Moreover, where several factors are bound together in a statistical relationship, it is difficult to determine which relates to which. A variety of interpretations may also be extracted from the same data. The close associations of affluence, parental achievement, class status, good health, school quality, and higher test scores, for example, make it difficult to assess the impact of any isolated factor.

Both surveys and studies of actual integration efforts are further plagued by the absence of adequate comparison, or control groups. They are also extremely sensitive to the statistical procedures followed. Thus, in order to evaluate fully the conclusion made in the research, it would be necessary to reexamine data, procedures, statistical methods, and even arithmetic. The list of potential defects is long enough to obscure the results and make it foolhardy to put much faith in any single study or report.

RESEARCH AS A CAPRICIOUS GUIDE

Even if the research tools could be improved, and it would be possible to "prove" desegregation benefited one racial group at the expense of another (or benefited no one), it is nonetheless inappropriate to determine desegregation requirements on the basis of such proof. The fact is the Constitution requires desegregation as a remedy for past wrongful segregation.

Given the present state of the research, allowing it to guide basic desegregation decisions would require absurd results. The research suggests, for example, that it is most beneficial to desegregate younger children. To pursue this logically, without reference to moral standards, would lead governments to desegregate the early grades, but not the older children. The arbitrariness of this should be obvious. The research suggests even more absurd results. Some researchers believe they have detected a difference in male and female responses to integration. Based on her own, and a few other studies, Nancy St. John, for example, has observed a tendency for black boys to benefit more than black girls in recently desegregated schools.[28] If this analysis is followed among blacks, boys, but not girls, would be assigned to schools with white pupils. (Since there is some evidence that white girls fare better than white boys following desegregation, one might also suggest placing them with black boys, while maintaining separate schools for the black girls and white boys.)

Pursuing the research as a guiding star leads into even thicker morasses. The EEOS data show a strong trend in southern metropolitan areas toward higher test scores for children in totally black schools; a similar, but weaker relationship exists in the rural South; in the North it is negligible.[29] If a rise in test scores were the only justification for desegregation, the metropolitan South should be exempted: black pupils would be placed in 100 percent black schools. Profes-

Footnotes at end of article.

sor Armor, who examined a sample of black ninth graders, found upper ability males in the Northeast were more likely to plan for college if they attended desegregated schools, and the reverse in the Midwest.[30] This would suggest desegregation for black upper ability males in the Northeast, but not for lower ability peers, or male black students elsewhere in the country. Moreover, it is likely that the groups which benefit will change from time to time. Allowing the evidence of educational benefit to guide desegregation policy leads inevitably to capricious results.

HISTORY AS A GUIDE

To cite research findings as an argument for or against desegregation is to lose sight of the history of race relations in America and the fundamental legal and moral imperatives which compelled the Supreme Court to order desegregation. Even the most dispassionate recital of the history of race relations in the United States makes the point clear: the enslavement of black people was tolerated well into the first half of this country's history. Attempts to justify this lack of humanity extended even to the Supreme Court which, on reviewing the case of Dred Scott, a man classified as slave in one state and freeman in another, declared that black people were "of an inferior order, and altogether unfit to associate with the white race. . . ." [31] and refused to extend the protection of the United States Constitution to black people. After a bloody civil war over the issue, the passage of the Thirteenth, Fourteenth, and Fifteenth Amendments explicitly repudiated this outrageous principle. Yet, even after this, the nation acquiesced in the rapid growth of an officially sanctioned caste system. Black Americans were burdened with Jim Crow laws explicitly circumscribing their role in every conceivable aspect of human activity. Nothing was done to correct this situation until this century, when a new civil rights movement began attacking this humiliating and dehumanizing caste system.

Progress was slow. *Plessy v. Ferguson*,[32] a now infamous turn-of-the-century Supreme Court decision, haunted the schools. In *Plessy* the Supreme Court decided that a state law requiring separate accommodations on railroads did not deny equal protection of the laws, or any other right created in the post-Civil War amendments. While the Court reasoned that laws requiring separation do not imply inferiority, Justice Harlan—in a dissent later hailed as the clearest and only justifiable analysis of the Constitution—noted that laws requiring separation of the races were basically "unfriendly." He regarded them as inimical to the rights guaranteed in the Constitution, particularly in the context in which they were written:

"Everyone knows that the statute in question had its origin in the purpose, not so much to exclude white persons, from railroad cars occupied by blacks, as to exclude colored people from coaches occupied by or assigned to white persons."

In Harlan's view, the separation of the races was not done by mutual consent of the parties involved, but was required by the majority which saw the minority as inferior; the most scrupulous equality in the accommodations would never provide the equality among men required by the Constitution.

After *Plessy*, the Supreme Court became more responsive to the civil rights movement, but rights gained in court were limited nonetheless to narrow, specific situations.[33] Small gains towards equal educational opportunity were made in a series of cases from 1838 to 1950, in which the Supreme Court ordered the admission of black students to all-white graduate schools.[34] In 1954, however, most of the Jim Crow laws were still in effect in the South, where skin color could legally affect a man's birthplace, schooling, marriage, occupation and burial. Racial segregation (but not racial discrimination) was ended in only a few limited areas.

In education the "separate but equal" doctrine was still in force. Southern schools were segregated by law. Even colleges and universities which were opened to black applicants (because the Supreme Court found universities for "coloreds" were too poorly endowed) continued to practice another blatant and ridiculous form of segregation. A graduate student, for example, was placed alone in a separate section of the classroom, and surrounded by a rail. (Later he was simply assigned a separate row.) He was required to eat at a separate dining room table and to use a special library table. In 1856 *Dred Scott* belief still stalked the land: blacks were "unfit to associate with the white race." The Supreme Court rejected the separatist policy, but implicitly accepted the *Plessy* doctrine by examining the training available. (They found he required free discussion with fellow students.)[35]

LEGAL IMPERATIVES

The *Plessy* doctrine was at last rejected in *Brown v. Board of Education*, where the Supreme Court explicitly noted that the case should not turn on the equality of educational facilities. Instead, it found that education could never be equal so long as some children were required to attend separate schools:

"To separate [minority children] . . . from others of similar age and qualifications because of race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone." [36]

Quoting at length from a lower court opinion, Justice Warren observed that:

"Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of law; for the policy of separating the races is usually interpreted as denoting the inferiority of the Negro group. A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law, therefore, has a tendency to [retard] the educational and mental development of Negro children and to deprive them of some of the benefits they would receive in a racial[ly] integrated school system."

The Court apparently replaced a test based on equality of resources (inputs) with one measuring educational effects (outputs). Yet this language relating to vaguely defined educational results is hardly an invitation to allow desegregation decisions to turn on test scores. In the first place, the authority cited by the Court was mostly general and theoretical.[37] Second, immediately after deciding *Brown*, the Court invalidated segregated schools in Washington, D.C. without any reference to any educational effects. The Court found that segregation itself violated the due process clause of the Fifth Amendment:

"Segregation in public education is not reasonably related to any proper governmental objective, and thus it imposes on Negro children of the District of Columbia a burden that constitutes an arbitrary deprivation of their liberty in violation of the Due Process Clause." [38]

Conceivably the Court was thinking of educational outcomes, but it appears more likely that *Bolling* represented a moral, rather than an educational, decision. Moreover, the Court did not have to choose between an educational or a moral theory, since both argued for the same result.

Where social scientists and moralists disagree, the issue becomes more clear. The EEOS survey, for example, suggests that children from lower-income families benefit educationally from exposure in school to substantial numbers of children of upper socioeconomic status. Because whites are richer than black families in many school districts, it is arguable that every school must have a majority of white pupils in order to maintain a middle class milieu, and hence, a better educational potential. This thesis was raised in *Brewer* v. *School Board*,[39] in testimony by Dr. Thomas Pettigrew of Harvard University. The Norfolk City School Board sought to keep white students in 60 to 70 percent white schools. Since this would have left many other schools virtually all-black, the Fourth Circuit found the plan insufficient. The question reappeared in *Brunson v. Board of Trustees*,[40] where the white school population was less than 10 percent of the total. The school board sought to concentrate the whites in a predominantly white school, again citing the Pettigrew thesis, and arguing that there was no educational advantage in having schools which had more than 35 to 40 percent black students. The court again rejected this plan. In a separate opinion, Judge Sobeloff wrote a lucid and persuasive opinion explaining why a moral and not an educational decision must be made. Sobeloff reviewed *Dred Scott*, *Plessy* and *Brown* and concluded that:

"*Brown* articulated the truth that *Plessy* chose to disregard: that relegation of blacks to separate facilities represents a declaration by the state that they are inferior and not to be associated with." [41]

Observing that the scientific argument required a majority of whites at a school, Sobeloff retorted:

This idea, then, is no more than a resurrection of the axiom of black inferiority as justification for separation of the races, and no less than a return to the spirit of *Dred Scott*. The inventors and proponents of this theory grossly misapprehend the philosophical basis for desegregation. It is not founded upon the concept that white children are a precious resource which should be fairly apportioned. It is not, as Pettigrew suggests, because black children will be improved by association with their betters. Certainly it is hoped that under integration members of each race will benefit from unfettered contact with their peers. But school segregation is forbidden simply because its perpetuation is a living insult to the black children and immeasurably taints the education they receive. This is the precise lesson of *Brown*. Were a court to adopt the Pettigrew rationale it would do explicitly what compulsory segregation laws did implicitly.

* * * * *

This is no mere issue of expert testimony. It is no mere question of "sociology and educational theory." There have always been those who believed that segregation of the races in the schools was sound educational policy, but since *Brown* their reasoning has not been permitted to withstand the constitutional command. When the underpinnings of the white majority proposal are exposed, they seem to constitute a direct attack on the roots of the *Brown* decision. The minority's readiness even to entertain the idea reflects, I respectfully submit, a profound misunderstanding of the social and constitutional history of this nation and the Negro people.[42]

In short, the Constitutional argument is clear and logical. Where public officials have denied equal protection to a class of citizens, redress must be made. Where the wrongdoing took the form of school desegregation, the effects of this wrong must be eliminated and schools must be desegregated.

SPIRIT OF THE CONSTITUTION

The moral arguments should be equally clear, although the supporters of a Constitutional amendment apparently see it in another light. A response to these proposals is best grounded in morality and practicality

Footnotes at end of article.

rather than educational theory. A good example is that propounded by Representative William McCulloch, announcing his opposition to an anti-busing amendment:

"Never before to my knowledge have we amended the Constitution to change a practice which is itself only temporary. A social issue of such great controversy as this cannot be illuminated by statements of opposition to 'unnecessary' busing or busing to overcome racial imbalance. Such statements create the impression that Federal judges are arbitrarily ordering massive, crosstown busing without any justification other than the racial composition of a particular public school does not reflect the racial composition of the entire school system.

"But the truth is that every court order operating today is predicated on a finding that the Constitution has been violated by agents of the state discriminating on the basis of race. In view of the facts, such statements are highly inflammatory and most irresponsible." [48]

His statement recognizes the apparently forgotten fact that this nation has not yet paid off past debts. The memory of the nation must be short indeed, if citizens can overlook these past wrongs so soon, when men live whose parents were chattels, and when people, who are yet young, can recall a childhood of forced attendance at schools labeled by state law as for "colored" only. The wrongs were serious. It takes time and inconvenience before those debts are paid.

FOOTNOTES

[Portions of this article are adapted from work done for the Report on the Massachusetts Racial Imbalance Act (February 1972) under a contract between the Center for Law and Education and the Massachusetts Department of Education.]

[1] "White," as used here, refers to the HEW census term "other whites;" it excludes, for example, Spanish-speaking whites.

[2] U.S. Office of Education, *Equality of Educational Opportunity*, p. 29 (1965) [hereafter referred to as *Coleman Report*]. A summary and critique of the report and subsequent major reports on the EEOS data is found in R. O'Reilly, *Racial and Social Class Isolation in the Schools*, pp. 160–91 (Praeger, New York, 1970).

[3] C. Jencks, Memorandum to colleagues at the Center for Educational Policy Research, Harvard Graduate School of Education (Feb. 12, 1971).

[4] A review of these studies appears in N. St. John, *Desegregation and Minority Group Performance*, 40 R. of Educ. Research 111, 116–19 (1970). She reviews 12 pre-Coleman surveys, some of which attempted to follow black students for a period of years, and concludes that integration does have a positive effect, and that this might be attributed to factors which co-vary with integration.

M. Weinberg, *Desegregation Research: An Appraisal*, 44–82 (Phi Delta Kappa, Bloomington, Ind., 1970) reports over 30 formal studies which attempt to assess the effect of integration on pupil achievement. Most of the studies failed to control for socioeconomic or other factors, although a possibility existed that the high scoring black pupils were a select group.

In the few studies where some attempt was made to control selectivity factors, results were very mixed. A study of 1388 black ninth graders in Pittsburgh, for example, revealed a positive relation between arithmetic achievement and percentage of whites in the schools, after controlling for sex, and for individual and neighborhood socioeconomic status. N. St. John and M. Smith, "School Racial Composition, Aspiration and Achievement' '(mimeograph, 1969). The Dumbarton Research Council, in a survey sample from Oakland, included children with comparable parental income, educational and occupational status. The researchers found that the high scoring blacks had significantly higher status if family size, stability, and home ownership were taken into consideration. Dumbarton Research Council, "Race and Education in the City of Oakland" (unpublished draft, 1966), reported in Weinberg, pp. 44–56. The results of another survey were not even this encouraging. The researcher reported no relation between attendance at an integrated school and black pupil achievement. R. Klein, "A Comparative Study of the Academic Achievement of Negro 10th Grade High Schools in Metropolitan Areas of the South" (doctoral dissertation, Univ. of So. Car., 1967), reported in Weinberg, pp. 70–71. See also D. Long, "Educational Performance in Integrated and Segregated Elementary Schools" (doctoral dissertation, Yeshiva Univ., 1968), reported in Weinberg, pp. 73–74.

[5] These reviews are described in footnotes 4 and 2.

[6] Of the 14 studies reported in O'Reilly, for example, only one reported *no* significant differences between integrated and nonintegrated students at any grade level. This one imposed the strictest controls for socioeconomic status and school quality. Students in grades K–2 were matched for intelligence and social class and attendance at schools with comparable facilities, personnel and programs. D. Long, "Educational Performance in Integrated and Segregated Elementary Schools" (doctoral dissertation, Yeshiva Univ., 1968), reported in *Dissertation Abstracts* 412 (1968).

[7] P. Carrigan, "School Desegregation via Compulsory Pupil Transfer: Early Effects on Elementary School Children" (Report for the U.S. Office of Education, Bureau of Research, Sept. 1969). The transfer group (all the children from a segregated school which was closed) included 132 blacks, 31 whites and two other minority pupils. At the end of the first year 34 pupils had been lost from the group [p. 22]. The non-transferring group attended a school which was 48 percent black, and therefore comparisons are not of highly segregated *versus* integrated pupils [p. 23]. Moreover, the non-transferring children may have received more supportive services than the transferring group.

Some significant gains were made for the following black pupils; fourth grade non-transferring boys, third grade transferring and non-transferring girls, and fifth grade transferring and non-transferring girls. However, significant gains were also made by non-transferring and receiving white pupils in these same grades [pp. 101–05].

[8] I. Hendrick, "The Development of a School Integration Plan in Riverside, California: A History and Perspective," pp. 34–40 (published by the Riverside Unified School District and the Univ. of Calif., Riverside, 1969); H. Singer, "Effect of Integration on Achievement of Anglos, Blacks and Mexican-Americans" (University of California, Riverside, mimeograph, Mar. 1970); M. Purl, "The Achievement of Elementary Pupils in Integrated Schools, Riverside Unified School District" (Mimeographs, March 1970 and 1971, reading scores only); "Construction and Interpretation of the Achievement Study Baseline, Riverside School Study, A Progress Report," pp. 71, 106 (published by the Riverside Unified School District and the University of California, Riverside, Aug. 31, 1967).

[9] P. Prichard, *Effects of Desegregation on Student Success in the Chapel Hill City School*, Integrated Education, Vol. 7, No. 6, p. 33 (Nov.-Dec. 1969).

[10] Jayjia Hsia, "Integration in Evanston, 1967–71: A Longitudinal Evaluation," (Educational Testing Service, Evanston, Ill., Aug. 1970).

[11] E. Morrison, "A Summary of the Assessments of the District's Integration Program," (Research Report No. 9, Sept. 28, 1971); *Boston Globe*, Sept. 23, 1971, p. 5, col. 4; *National Observer*, Oct. 2, 1971, p. 6, col. 1.

[12] *New York Times*, Oct. 18, 1970, p. 1, col. 4.

[13] A 1962 survey of 3,418 school districts of over 2,500 in population reported that 77% of the elementary schools and 90.5% of the high schools were ability grouped to some degree. National Education Association, Research Division, *Ability Grouping* (Research Memo 1962–69, Washington, D.C., 1962). Most of those who reported no ability grouping were planning to institute grouping in the future. See also, Cohen, Pettigrew and Riley, "Race and Outcomes of Schooling," in Mosteller and Moynihan, eds., *On Equality of Educational Opportunity*, (Random House, 1971), p. 355. Based on EEOS data, they reported that among secondary schools surveyed 89.9% at Grade twelve and 91.3% at Grade nine practiced some form of ability grouping.

[14] H. Gerard, "Factors Contributing to Adjustment and Achievement," (Progress Report 15–16, Dept. of Psychology, U. of C. at Los Angeles, mimeograph, May 1969).

[15] T. Mahan, Jr., "Project Concern, 1966–69: A Report ı the Effectiveness of Suburban School Placement for Inner City Youth," (Conn. Dept. of Educ., Aug. 1968); T. Crane, "A Three Year Summary of Hartford Project Concern," (Conn. Dept. of Education, Oct. 1970).

[16] *Coleman Report* 29, 32 (Table 22), 331.

[17] N. St. John and R. Lewis, "The Influence of School Integration on Academic Achievement," (mimeograph, Harvard Univ., Apr. 1971).

[18] N. St. John and M. Smith, "School Racial Experience, Achievement and Aspiration," (draft mimeograph, 1970).

[19] I. Samuels, "Desegregated Education and Differences in Academic Achievement," (Ph.D. thesis, Ind. Univ., 1968).

[20] J. Lockwood, "An Examination of Scholastic Achievement, Attitudes and Home-Background Factors of Sixth-Grade Negro Students in Balanced and Unbalanced Schools," (Ph.D. thesis, Univ. of Mich., 1966) pp. 47, 50.

[21] L. Anderson, "The Effects of Desegregation on the Achievement and Personality Patterns of Negro Children," (Ph. D. thesis, George Peabody College for Teachers, 1966), pp. 69, 85.

[22] Denmark, Guttetag and Riley, "Communication Patterns in Integrated Classrooms and Pre-Integration Subject Variables as They Affect the Academic Achievement and Self-Concept of Previously Segregated Children," (Aug. 1967), reported in Weinberg, p. 75.

[23] T. G. Wolman, *Learning Effects of Integration in New Rochelle*, Integrated Education, Vol. 2, No. 6, p. 31 (Dec.-Jan. 1965).

[24] P. Carrigan, "School Desegregation via Compulsory Pupil Transfer: Early Effects of Elementary School Children," (Report to U.S. Office of Education, Bureau of Research, Sept. 1967) pp. 101–08.

[25] T. Mahan, Jr., "Project Concern, 1966–69 A Report on the Effectiveness of Suburban School Placement for Inner City Youth," (Conn. Board of Education, Aug. 1968).

[26] *Boston Globe*, Sept. 23, 1971, p. 5, col. 4; *National Observer*, Oct. 2, 1971, p. 6, col. 1.

[27] Jayjia Hsia, "Integration in Evanston, 1967–71; A Longitudinal Evaluation," (Educational Testing Service, Evanston, Ill., Aug. 1970) pp. 38–40.

[28] N. St. John, "The Effects of School Segregation and Desegregation on Children," (draft, 1971) p. B–15.

[29] *Coleman Report*, p. 31 (Table 21), 331. See also D. Armor, "School and Family Effects on Black and White Achievement A Re-examination of the USOE Data," (mimeograph, June 1969) p. 49.

[30] D. Armor, "The Racial Composition of Schools and College Aspirations of Negro Students," (U.S. Civil Rights Commission, 1967) p. 145.

[21] *Dred Scott v. Sanford*, 19 How. 393 (1856).
[22] *Plessy v. Freguson*, 163 U.S. 537 (1896).
[23] The most important were probably the voting rights cases. In 1915, the Supreme Court held that a state may not deny the vote to citizens simply because their ancestors were not entitled to vote, and that a state may not require literacy tests for newly registered voters. *Guinn v. United States*, 238 U.S. 347 (1915). Throughout 1927 to 1953 the Supreme Court reaffirmed the right of blacks to vote in party primaries. *Nixon v. Herndon*, 273 U.S. 536 (1927); *Nixon v. Condon*, 286 U.S. 73 (1932); *Smith v. Allwright*, 321 U.S. 649 (1944); *Terry v. Adams*, 345 U.S. 461 (1953). Other cases in which blacks gained rights through the courts related to restrictive covenants. *Shelly v. Kraemer*, 334 U.S. 1 (1948), jury selection, *Norris v. Alabama*, 294 U.S. 587 (1934), and fair trial rights, *Moore v. Dempsey*, 261 U.S. 86 (1923).
[24] *Missouri ex rel. Gaines v. Canada*, 305 U.S. 337 (1938); *Sipuel v. Board of Regents*, 332 U.S. 631 (1948); *Sweatt v. Painter*, 339 U.S. 629 (1950).
[25] *McLaurin v. Oklahoma Regents*, 339 U.S. 637 (1950).
[26] *Brown v. Board of Education*, 347 U.S. 483, 494 (1954).
[27] 347 U.S. at 494, n. 11.
[28] *Bolling v. Sharpe*, 347 U.S. 497, 500 (1954).
[29] *Brewer v. School Board*, 434 F.2d 408 (4th Cir. 1970).
[40] *Brunson v. Board of Trustees*, 429 F.2d 820 (4th Cir. 1970). Dr. Pettigrew's *Brewer* testimony is summarized at 429 F. 2d 831, n. 1 (dissenting opinion).
[41] *Id.* at 825 (concurring opinion).
[42] *Id.* at 824, 826.
[43] *New York Times*, Feb. 29, 1972, p. 18, col. 3.

INTEGRATION: A NO WIN POLICY FOR BLACKS?

(By Derrick A. Bell, Jr.)

Well, son, I'll tell you:
Life for me ain't been no crystal stair.
It's had tacks in it,
And splinters,
And boards torn up,
And places with no carpet on the floor—
Bare . . .

LANGSTON HUGHES.[1]

The opening lines of Hughes' famous poem, "Mother to Son," convey a sense of the deep weariness that people concerned about quality schooling for black children feel when they read, almost two decades after *Brown v. Board of education*[2] that while two-thirds of the American public approves of desegregated public schools, 69 percent opposes busing as a means of achieving them.[3]

These seemingly contradictory findings pose less a paradox than a problem. Despite growing racial isolation in housing patterns, which makes school desegregation impossible without busing, there is no paradox in the survey conclusions. They reflect still another manifestation of the traditional pattern of white America's racial behavior, expressed in the formula of a public posture of democratic ideals combined with actual racial policies that maintain blacks in a subordinate and oppressed status.

This phenomenon is not limited to the schools, but there is perhaps no other area in which it is more apparent, or where it has more consistently frustrated black parents' hopes of obtaining for their children what has been called, since the *Brown* decision, an "equal educational opportunity." [4]

HISTORY RECALLED

It provides some perspective, if little comfort, to recall that white resistance to integrated schools did not begin in 1954, but 175 years earlier. In 1787, the Massachusetts legislature, which was then establishing the first public schools to educate the poor, ignored a petition seeking schools for black children.[5] A century later, in 1899, the Supreme Court refused to honor the "equal" portion of its three-year-old *Plessy v. Ferguson*[6] "separate but equal" doctrine: it upheld a Georgia school board's decision to close its black high school, while continuing to offer a high school education to white students.[7] The Court later affirmed "separateness" by approving a Kentucky statute which forbids a private school from operating on an integrated basis.[8] Both decisions asserted concern for the educational welfare of black children.

Throughout the nineteenth century, black parents filed dozens of lawsuits seeking to obtain public schooling for their children. Later they petitioned, litigated and protested to equalize or integrate their local schools.[9] The suits to provide schools for blacks where none existed were often successful; those seeking integration usually were not.[10]

By the start of World War II, nearly half the states still required or permitted segregation in their public schools.[11] That these schools were inferior as well as separate is a truth that blacks knew well, but which the Supreme Court did not acknowledge fully until 1954.[12] Nor did confession lead to immediate penitence. Resistance took new forms. Racist passwords evolved from "never," to "freedom-of-choice," to "neighborhood schools" and "busing," but the basic unwillingness to accept black children into public schools designated for whites (officially or unofficially) remains.

JUDICAL FIRMNESS TODAY

If there is little solace in history, some reassurance may be gained from the judiciary's present firmness, for opposition to school desegregation is in reaction to federal court orders requiring just that. Despite its new personnel chosen to reflect the President's conservation view, the Supreme Court (albeit with some wavering) [13] has protected and enhanced the Warren Court legacy from *Brown*. Lower federal courts, under the prodding of civil rights lawyers, have enjoined one evasive scheme after another in a slow but steady flow of decisions requiring redrawing of school zone lines and busing to integrate school systems in compliance with *Swann*.[14] Some courts, realizing the need to balance the burden of school desegregation, have prevented districts from closing formerly black schools where these facilities could be used in an integrated system.[15] Others have voided policies that would make school assignments on the basis of standardized achievement tests.[16] Formerly white schools have been required to discard "Dixie" and confederate flags as schools symbols,[17] arbitrary expulsions and suspensions of black students have been challenged successfully,[18] and summary dismissals of black teachers have been reversed.[19]

In a decision of far-reaching implications, a federal district judge (as anticipated by Judge Skelly Wright in *Hobson v. Hansen* [20]) has sought to neutralize white flight to the suburbs by ordering the consolidation of the Richmond, Virginia school district with those of two adjoining counties.[21] This case is on appeal and will likely reach the Supreme Court next year. The support it has generated for anti-busing forces is apparent. Scores of Northern cities have also been ordered to desegregate their schools,[22] even though the Supreme Court has avoided ruling on the oft-presented question of whether *Brown* applies where no formal dual school system exists.[23]

CONSTITUTIONAL TAMPERING

These decisions have aroused passions in the North, where school desegregation was believed to be a "Southern problem." They have also brought renewed hope to a South almost defeated in its decades-long effort to avoid compliance with *Brown*. Now, with nationwide support and election-year fears as a vehicle, opponents of integration seek a constitutional amendment, nominally aimed at "forced busing," which could repeal the principle of the fourteenth amendment upon which most black claims to equality in education are based.[24]

This threat, coming at the end of two decades of often turbulent racial crisis, should be preposterous. But Rutherford B. Hayes (another Republican) secured the presidency a hundred years ago (in 1876) by promising Democrats that he would remove federal troops from the South, thereby insuring that the bloody disenfranchisement of blacks—already well underway—could be completed without federal interference.[25] Much has changed since 1877, but the white racism that underlay the betrayal of black hopes a century ago is all too evident in the public hysteria and political posturing around the busing issue today.

The danger is real. Continued pressure for school integration not only risks the progress made in this area during the last two decades, it also threatens precarious black gains in employment, voting, housing, and other major areas.

SCHOOLHOUSE RESULTS

Is the risk worth it? If we were to base our answer solely on improvement in the quality of education obtained by black children, the question would be close, with increasing numbers of black parents and children answering a resounding "No.' Whatever the difficulties of desegregating public schools, they hardly compare to the hardships endured by black students who have actually obtained "their rights." The physical, mental and emotional abuse heaped on black children enrolled in desegregated schools may have begun, but certainly did not end, with the Little Rock Nine.

Black children are harassed unmercifully by white students, are suspended or expelled by white teachers for little or no cause (when they are not simply ignored), are taunted and insulted, segregated within classes, excluded from extracurricular activities, shunted off into useless courses, and daily faced with a battleground of racial hostility, beyond the ability or willingness of courts to rectify. None of this bares the least resemblance to "equal educational opportunity." [26]

Not surprisingly, the educational achievement level of black children attending these desegregated schools has not improved noticeably, and even in settings like Berkeley which are held out as models of school integration, black achievement levels have been disappointing.[27]

Considering the racial crisis it has caused, black gains in other areas it has endangered, the lack of real educational advantage to blacks required to go to school with hostile whites, there is an overwhelming temptation—not to quit—but to alter strategy, to seek perhaps a compromise on "forced busing," to accept the reality of all black schools and trade away the possibility of integration in return for additional funds. Perhaps they might enable schools to do now what they were unable to do during "separate but equal" days: effectively serve the educational needs of black children.[28]

It was, after all, not simply to go to school with white children that the desegregation cases were brought. It was because black parents and lawyers knew from bitter experience with "separate but equal" schools that their children could only hope to obtain the same quality education that white children received by attending white schools.

While schooling received by blacks today is far from perfect, it is far better than it was in 1954. Should we not consolidate our gains rather than risk the election year passage of statutes, or even a constitutional amendment, that might erase them? Should blacks not compromise on school integration while whites seem so anxious to spend

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Footnotes at end of article.

substantial sums of money as "educational ransom" for their children?

At least two factors must be discussed before an answer can be given: (1) Are racially-mixed schools the basis for white resistance? (2) Are there alternatives to school integration that offer black children a brighter hope of quality education?

The first question is easy enough to answer. White resistance to integrated schools is the same as white resistance to fair employment opportunities for blacks, or to black representation on school boards or jury panels, or black residents in the house next door. The principle is supported, but the practice is avoided and, when necessary, opposed. The North favored school desegregation as long as it occurred in the South. Decent housing for blacks is a worthwhile goal, except in the suburbs where its presence may threaten the affluent white environment. The examples are endless. The message is the same.

The relatively inferior social, economic, or political status of blacks in this country did not happen by accident. It was dictated and enforced by the relative advantage it provided to whites. The status of blacks cannot be upgraded substantially without threatening and sometimes causing whites to surrender their superior social, economic, and political status. Most whites are simply unwilling to make or even risk making what they deem an unfair sacrifice. This unwillingness, expressed in overt or institutional actions tending to perpetuate the subjugation of blacks, is what is defined as "racism." It is this characteristic of American racial behavior which gives continued validity to Reinhold Niebuhr's statement of 32 years ago:

"It is hopeless for the Negro to expect complete emancipation from the menial social and economic position into which the white man has forced him, merely by trusting in the moral sense of the white race. ... However large the number of individual white men who do and who will identify themselves completely with the Negro cause, the white race in America will not admit the Negro to equal rights if it is not forced to do so. Upon that point one may speak with a dogmatism which all history justifies." [29]

HISTORIC PRECEDENT

Blacks have long known that whites were not going to eliminate racial bias because of their "moral sense," but the history Niebuhr refers to is instructive as to the dangers of attempted compromise on "busing," or on any aspect of full equality for blacks.

By the 1890's, blacks had lost most of their Reconstruction rights. They had been stripped of their voting power, most were in dire economic straits, the federal civil rights statutes had been voided or negated by non-enforcement, and with federal troops withdrawn, they were at the mercy of "Southern Justice."

One black leader sought to gain some benefit out of what he viewed as unchangeable political realities. Booker T. Washington in his famous "Atlanta Compromise" speech in 1895 called for black men to stop seeking social equality with whites. "Cast down your buckets where you are," he urged. "In all things that are purely social," Washington said, "we can be as separate as the fingers, yet one as the hand in all things essential to mutual progress." "The wisest among my race," he continued, "understand that the agitation of questions of social equality is the extremest folly, and that progress in the employment of all the privileges that will come to us must be the result of severe and constant struggle rather than of artificial forcing." [30]

When Washington finished, the audience went wild with glee. They were on their feet yelling. Waves and waves of applause dashed against the buildings. But Blacks in the audience are reported to have wept.[31]

Scholars tell us that Washington hoped to gain support for education, economic development and a curbing of killings and maiming of blacks in return for renunciation of social and political equality. As we know, he obtained none of these. Lynchings and murders reached new heights. Segregation and discrimination increased. The effort to compromise was interpreted by whites as an open invitation to further aggression.[32] Perhaps coincidentally, the Supreme Court issued its *Plessy* v. *Ferguson* decision the next year.

I thought of the Washington speech while reading of a black man who spoke recently at a national anti-busing conference in Detroit. The report described his as the "star" of the meeting. He stated his opposition to busing and complained to the group: "I'm being used by white Federal judges. Some people don't understand that the hearts of black mothers and fathers bleed, too." He was given a standing ovation, punctuated by yells of "Right On!" [33] The story is sad. Reading it, one understands why sensitive black men who witnessed the Booker T. Washington speech might weep.

The conclusion is clear. If blacks cease their pursuit of integrated schools, it must be in favor of a more viable educational alternative, not in the expectation that whites will reward the surrender with concessions they are not forced to make.

Whether or not on the basis of compromise, any abandonment of school desegregation assumes the availability of a more attractive alternative. Although there are alternatives, experience has shown that initial hopes for some of them were too optimistic.

COMPENSATORY EDUCATION

A few years ago, compensatory education programs were expected to become suitable substitutes to integration, particularly in large urban areas where meaningful integration would have been difficult even without the massive opposition that developed. The plans call for special programs in ghetto schools, extra teachers, the latest teaching aids, and committing additional resources to target schools.

Some of these programs have been financed under Title I of the Elementary and Secondary Education Act of 1965, [34] but serious problems have occurred with the administration of this Act. Civil Rights groups have charged incompetent and corrupt administration of Title I funds resulting in misuse, waste, and diversion of a substantial percentage of the billions of dollars appropriated under the Act.[35] There is also evidence that school systems have not, as the Act intended, supplemented target schools already receiving an equal share of state funds. Rather, they have used Title I money to reduce the disparity that existed between have and have-not schools. Money has often been spent to spruce-up black schools to discourage integration, rather than improve the education being provided.[36]

But even if efficient and honest administration of the program could be effected, there is serious doubt that enough money would be provided to insure the sustained effectiveness of compensatory education programs.[37] A society willing to deny black children a decent education in order to preserve segregation is not likely to spend three or four times as much on black children's education as on whites, even if this kept black children out of white schools.

TUITION GRANTS

A similar problem threatens the future of tuition grants. A few years ago educators were excited by the possibility that the quality of education provided the poor could be improved by stimulating competition between existing public schools and private schools.[38] Parents would receive "tuition vouchers" which could be cashed at the school where they enrolled their child. Parents would become education "buyers," and schools would theoretically become more sensitive to satisfying the educational needs of the children enrolled.

For this plan to work, poor parents must receive a substantially larger grant than well-to-do parents to entice schools to undertake the more difficult educational challenge presented by the ghetto child, and to offset the more affluent parent's ability to supplement his grant. A program providing larger grants for poor children would de difficult to enact for political reasons. A program providing equal grants for all would invite middle-class parents to supplement their grants with private funds and set up superior schools that would perpetuate present inequalities.

EQUALIZED SCHOOL FUNDING

For years, educators have been urging state legislatures to eliminate funding disparities between school districts by amending school funding formulas that discriminate against poor districts.[39] After a shaky start in the courts,[40] a number of decisions have invalidated several plans and required state legislatures to restructure funding laws to avoid discrimination based on district wealth.[41]

Even with the successes obtained thus far however, litigation is expected to drag on for years. Implementation will require more years of legislative debate, manipulation, circumvention, and delay. Ghetto schools are likely to need more than equal dollars even to approach the quality of suburban schools, but no court has yet recognized a legal right to such an entitlement. Nor are richer districts likely, in the scramble to arrange a new school funding system, to give up their superior ability to exercise political muscle with the legislature.

Finally, there is little proof that school inputs (dollars) have much relation to school outputs (student achievement), nor are there clear standards for defining, much less measuring, "achievement." [42] School funding reform is needed and appears on the way, but it is not a suitable substitute for school integration for insuring a better education for black children.

COMMUNITY CONTROL

As white resistance to integration persisted, many black parents and leaders who never enthusiastically embraced the idea of sending their children to white schools, changed strategy and sought decentralization and increased local control over the public schools as a means of obtaining equal educational opportunity for their children. Spokesmen for this movement believe that black communities would elect school boards genuinely concerned about their responsibilities, and that these boards would hire administrators and teachers who would create atmospheres of mutual respect and pride in which learning could take place. Emphasizing black history, art and culture, teachers selected for their sensitivity to the special needs of black children would build pride and counteract the low self-esteem that saps black student achievement.[43]

Some experiments in community control have returned impressive results.[44] But the obstacles are overwhelming. In addition to the challenges of efficiently administering such a project, gaining parental support, hiring effective teachers, and securing adequate financing, there is the serious (some would say fanatical) opposition of teachers unions and other groups with strong vested interests in the educational status quo. Mere mention of the New York P.S. 201 and Ocean

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Hill-Brownsville experiments suffice to make this point.[45]

Because community control projects seem to represent a voluntary return to "separate but equal" education, they are likely to receive little assistance from the courts, including those most unwilling to require the elimination of *de facto* school segregation.[46] Judicial resistance to any change in racial policy that retards school desegregation may prove a barrier to blacks seeking control over ghetto schools.

Moreover, community control seems more a result than a program, a means of describing a status already achieved rather than a means of acquiring it. The essence of community control is the parental sense that they can and are influencing policy making in their children's schools. Parents in highly regarded suburban school communities have this sense, and teachers and administrators in those schools realize that their jobs success depends on satisfying the parents whose children are enrolled in the school rather than the school board or the teacher union. Achieving this parental outlook in urban ghetto areas, where parents lack the sense of power that education and socioeconomic status provide their suburban counterparts, will be extremely difficult, even in the growing number of urban areas where the percentage of black residents is steadily rising.

FREE SCHOOLS

The real pioneers in the community control movement have given up on public schools entirely. In recent years they have established small private schools in ghetto areas.[47] Moving these schools from idea to reality requires great dedication. Sponsors must overcome myriad problems including state and local educational requirements, health and safety standards, teacher certifications and, of course, ongoing financial support. Many of these projects have nonetheless moved beyond the experimental stage and achieved impressive academic success. Perhaps significantly, many of these schools begun deep in black communities for black children have waiting lists of white children whose parents are more than willing to pay to have their children share in the innovative, integrated educational programs that often characterize free schools.

Again, however, almost by definition, free schools are small and require a degree of commitment, competence and courage difficult to mass produce for the millions of black children whose schooling continues to reflect a separate and highly unequal character.

LIMITED ALTERNATIVES

These are the major alternatives to integrated public schools for black children. How viable are they now that growing numbers of blacks are expressing their disenchantment with integrated schools and seeking means to provide quality in separate, black schools? [48]

For relatively small numbers of black children, alternatives to integrated public schools exist which are available and quite attractive. None of them, however, are attainable by the masses of blacks. Indeed, functioning alternative programs often owe some of the credit for their existence to pressure for school desegregation.

WHY INTEGRATION?

Clearly the mixing of black and white children in a school does not guarantee a quality education for either racial group; in some situations, the degree of racial hostility renders even the suggestion a farce. But, if integration is not a guarantee of quality education, what is it?

The short answer is that the right to an integrated education makes possible a legal and political climate in which the potential for quality education for black children can exist and grow. This potential is not lessened and may increase in the face of white opposition and hostility.

This is not to say that we should not be concerned about the racial fears, violence, and harassment that frequently mar public school integration efforts. But it would be a surprise if these schools did not mirror the racial antagonism of their communities. Sociologist Nathan Glazer suggests in a recent article that racial clashes among students in integrated schools, and the tendency of black and white students to remain separated in non-classroom activity, are indications that school integration has failed or is not worth pursuing.[49]

While school officials must do more to cope with racial harassment, and while courts could certainly be more explicit about this responsibility when writing integration orders,[50] it is not necessary that blacks and whites attending integrated schools love one another, or even get along very well. Given the status of race relations in our society, this would take a miracle. Indeed, it is little short of miraculous that there are as many interracial friendships as exist, to say nothing of the presence of a few of the greatly feared interracial romances.[51]

WHAT EDUCATION IS

Education is more than achievement scores on standardized tests. Education should prepare students for living. In integrated schools, whatever the *academic* value of blacks learning with whites or vise versa, the two groups are forced to cope with the problems of racial hostility and ignorance which have been imposed on them by the society in which they will soon take their places. It may not even be too extreme to say that, to the extent education lacks racial conflict, it is insufficient preparation for living in America as it is and as it is likely to be for a long time.

The damage that can be done to children in these encounters, particularly black children who cannot flee to the suburbs, should not be underestimated.[52] Often, for example, the harm resulting from suspension or expulsion for some racial indiscretion—real or imagined—is permanent. But is this risk any worse than that experienced by black students over many years in segregated institutions administered by men like Dr. Bledsoe, the classic example portrayed in Ralph Ellison's novel, *Invisible Man*? [53]

Honest men who experienced the dictatorial atmosphere that so frequently pervaded old segregated schools and colleges will agree that life, even in a hostile integrated school, cannot be worse. In fact, conflict in desegregated schools may serve as a catalyst for student growth and racial maturity. This growth is not measured by standardized achievement tests and it does not make the wire services, but it can be a crucial educational experience for students, black or white, who will all too soon inherit society's racial problems.

SOUTH CAROLINA RECONCILIATION

A black school board member in South Carolina recently reported an experience at a formerly all-black high school, which was experiencing racial distrust and resentment after desegregation orders produced a 50–50 racial balance in two years. His report of an open student forum is quoted at length:

"The principal opened the meeting with a few well-chosen words about *getting along*. He told them all very bluntly that the time was past for arguing the whys and wherefores of school attendance lines, government regulations, busing, and the rest of it. The job now was to get on with the business of education—to learn to live with the situation as it was.

"Again, like prizefighters, the students began to feel each other out. Members of the bi-racial committee brought out some of the sore points on both sides, and the students began to say what they felt—many of them for the first time.

"A tall, young black boy said, 'The whites act like they're too good to associate with us.'

"A small, earnest white girl said, 'I'm actually afraid to pass by a group of black boys in the hall. I don't want to be, but I am.'

"A sullen white boy with long hair said, 'Why should we take part in anything at this school? The government is making us come here against our will.'

"An equally sullen black girl said, 'I remember the things I had to put up with when I went to a predominately white school, and I'm not going to make a big deal out of being nice to them when they're in my territory.'

"And so it went. Tension was there, and it could have been explosive except for two things: the Principal is a tough-minded man who managed to keep down any uproars that got started, and the other thing was that I began to feel that the children themselves didn't want any trouble to happen.

"Almost as it was building, the tension seemed to be easing—as if the children realized that the things they were thinking, the prejudices and fears they had lived with all of their lives, sounded hollow when said out loud.

"Then it happened. A white boy about halfway back stood up and complained, 'How can we get along with the black kids when we don't know them? They stay to themselves! You always see them at lunch or recess standing together in groups.'

"A black child jumped up and said, 'Well, man, you whites act like we're going to jump on you with a knife every time we start to say something.'

"The white boy said, 'Well, how do you expect us to act? You stay together in groups and talk and laugh, and the only way we could join in would be to walk up and join the group. I'd feel funny being the only white in a big group of black kids.'

"Then down in front where at least 50 or 60 black children were sitting, a little tiny white girl stood up and turned to the boy and said, 'Here I am, and I don't feel funny. If I can sit down here with my friends, why can't you?'

"And somewhere else, a black child stood up to show she was sitting with a group of whites.

"Of course, there was a lot of applause and excitement throughout the auditorium; and the first thing you knew, the white boy and his girl friend moved from their seats and came down front to sit with some of the black children. That started the ball rolling, and all over the room black children and white children were shifting to sit with each other. Introducing themselves. Sharing the one excitement of a new experience as only young people can.

"A small thing. But when you think about the hundreds of years of distrust that have driven people apart, it doesn't seem small at all. White kids and black kids beginning to think of each other as *individuals* rather than as members of an opposing group." [54]

CONCLUSION

The beginning of this article recalled that opposition to school desegregation is neither new nor novel. Because of its pathological components, it is likely to continue. Because white resistance to integrated schools is symbolic—and represents the core of the philosophy that America is a white man's country—it must be fought even by blacks who are convinced that the educational merits of integrated schools are overstated, misconceived, or simply nonexistent. The right of black children to attend integrated public schools—quite literally whether exercised or

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not—is a right that is crucial not only to black success, but to black survival in this country.

Anyone doubting this need only re-read the constitutional amendment supposedly designed to curb "forced busing." With so much at stake, we cannot afford to surrender, and dare not risk compromise. Our efforts may or may not be successful, but fighting for survival is never a "no-win" policy. It is much more a "for better or worse" situation in which, for all our weariness and frustration, we can only, as the current expression goes, "keep on-keeping on." But Langston Hughes said it better when he concluded his "Mother to Son" poem, capturing in his lines what is the apparent heritage and inheritance of black men in America:

So boy, don't you turn back,
Don't you set down on the steps
'Cause you finds it's kinder hard.
Don't you fall now—
For I'se still goin, honey,
I'se still climbin',
And life for me ain't been no crystal stair.

FOOTNOTES

* This article was prepared for the "National Policy Conference on Education for Blacks" sponsored by the Congressional Black Caucus, in Washington, D.C. March 29–April 1, 1972.

[1] A. Bontemps, ed., *American Negro Poetry*, p. 67 (1963).

[2] 347 U.S. 483 (1954).

[3] *Newsweek*, Mar. 13, 1972, p. 24.

[4] 347 U.S. at 493.

[5] H Aptheker, *A Documentary History of the Negro People in the United States*, pp. 19–20 (Citadel ed. 1968). Subsequent efforts are reviewed in L. Litwack, *North of Slavery*, pp. 113–52 (Phoenix ed. 1961). Early efforts to educate slaves and free blacks in the South are traced in C. Woodson, *The Education of the Negro Prior to 1861* (1919).

[6] 163 U.S. 537 (1896).

[7] *Cummings v. Board of Educ.* 175 U.S. 528 (1899).

[8] *Berea College v. Kentucky*, 211 U.S. 26 (1908).

[9] See cases collected in Bell, *School Litigation Strategies for the 1970's*, 1970 Wis. L. Rev. 257, 259, n.9.

[10] The most famous of these was *Roberts v. City of Boston*, 59 Mass. (5 Cush.) 198 (1850), where the court refused arguments for school integration quite similar to those adopted a century later by the Supreme Court in *Brown*. Earlier, the Supreme Court cited *Roberts* as a basis for its decision in *Plessy v. Ferguson*, 163 U.S. 537, 544 (1896). Five years after *Roberts*, however, the campaign to end segregated schools in Massachusetts (of which *Roberts* was a part) succeeded in obtaining a state law to this end. See J. Daniels, *In Freedom's Birthplace*, pp. 446–49 (Johnson ed. 1968).

[11] R. Bardolph, ed. *The Civil Rights Record*, p. 210 (1970).

[12] In the decades following *Plessy*, at least 60 factors of disparity were litigated including physical facilities and equipment, number and qualifications of teachers, richness of curriculum and teacher's salaries. See Larson, *The New Law of Race Relations*, 1969 Wis. L. Rev. 470, 482–83.

[13] See Chief Justice Burger's effort to limit the scope of *Swann v. Charlotte Mecklenburg Bd. of Educ.*, 402 U.S. 1 (1971), while denying a stay in *Winston-Salem Bd. of Educ. v. Scott*, (U.S. Aug. 31, 1971).

[14] 402 U.S. 1 (1971).

[15] *Gordon v. Jefferson Davis Parish Sch. Bd.*, 446 F.2d (5th Cir. 1971); *Bell v. West Point Munic. Sep. Sch. Dist.*, 446 F.2d 1362 (5th Cir. 1971); *Lee v. Macon Co. Bd. of Educ.*, 448 F.2d 746 (5th Cir. 1971); *U.S. Bd. of Educ. of Clayton County*, 331 F. Supp. 446 (N.D. Ga. 1971).

[16] *Smith v. St. Tammany Parish Sch. Bd.*, 448 F.2d 414 (5th Cir. 1971).

[17] *Smith v. Tammany Parish Sch. Bd.*, 448 F.2d 414 (5th Cir. 1971).

[18] *Dunn v. Tyler Ind. Sch. Dist.*, 327 F. Supp. 528 (E.D. Tex. 1971).

[19] *Moore v. Bd. of Educ. of Chidester Sch. Dist.*, 448 F.2d 709 (8th Cir. 1971); *Rauls and Hammond v. Baker Co. Bd. of Educ.*,—F.2d—(5th Cir. 1971); *Smith v. Concordia Parish*, 445 F.2d 285 (5th Cir. 1971); *Cornist v. Richland Parish Sch. Bd.*,—F.2d—(5th Cir. 1971).

[20] *Hobson v. Hanen*, 269 F. Supp. 401, 515–16 (D.D.C. 1967), aff'd sub nom. *Smuck v. Hobson*, 408 F.2d 175 (D.C. Cir. 1969).

[21] *Bradley v. Sch. Bd. of Richmond*,—F. Supp.—(E.D. Va. Jan. 5, 1972), 40 U.S.L.W. 2446 (Jan. 18, 1972). See also *Lee v. Macon Co. Bd. of Educ.*, 448 F.2d 746 (5th Cir. 1971), where the court refused to allow a city to secede from a county and operate an independent school system where secession would adversely effect desegregation of the county school ssytem. But see, *Boyd v. Pointe Coupee Parish Sch. Bd.*, 332 F. Supp. 994 (E.D. La. 1971), where the court refused to grant further relief after 1800 white students enrolled in private schools to avoid segregation. The court deemed the resulting all-black schools "de facto segregated," stating, "This is simply an inevitable result of forced integration of schools." 332 F. Supp. at 995.

The Supreme Court has granted writs of certiorari to review two Fourth Circuit cases in which approval was given for the creation of new school districts for cities that were previously included in large county school districts. *U.S. v. Scotland Neck City Bd. of Educ.*, 442 F.2d 584 (4th Cir. 1971), cert. grt. 92 S.Ct. 47 (1971); *Wright v. Council of City of Emporia*, 442 F.2d 570 (4th Cir. 1971), cert. grt. 92 S.Ct. 56 (1971).

[22] In the last few years, orders have been entered in Los Angeles, *Crawford v. Bd. of Educ.*, Civ. No. 822854 (Sup. Ct. L.A. City, Feb. 11, 1970); Pasadena, *Spangler v. Pasadena Bd. of Educ.*, 311 F. Supp. 501 (C.D. Cal. 1970); San Francisco, *Johnson v. San Francisco Unified School Dist.*, — F. Supp. — (N.D. Cal. 1971); Oxnard, Cal., *Soria v. Oxnard Sch. Dist. Bd. of Trustees*, 328 F. Supp. 155 (C.D. Cal. 1971); Las Vegas, *Kelly v. Brown*, Civ. No. LV–1146 (D. Nev. Dec. 2, 1970); Pontiac, Mich., *Davis v. School Dist.*, 309 F. Supp. 734 (E.D. Mich. 1970), aff'd., 443 F. 2d 573 (6th Cir. 1971), cert. den., 92 S. Ct. 233 1971); Detroit, *Bradley v. Milliken*, — F. Supp. — (E.D. Mich. Sept. 27, 1971), 40 U.S.L.W. 2192 (Oct 12, 1971); South Holland, Ill., *U.S. v. School Dist. 151*, 404 F. 2d 125 (7th Cir. 1968), modified 435 F. 2d 1147 (7th Cir. 1970), cert. den., 402 U.S. 943 (1971).

[23] Note the Court's statement in *Swann v. Charlotte-Mecklenburg Bd. of Ed.*, 402 U.S. 1, 13 (1971), that "absent a constitutional violation there would be no basis for judicially ordering assignment of students on a racial basis."

[24] More than 50 amendments are under consideration, but one which has received substantial support in the House (H.J. Res. 620) provides: "Section 1. No public school student shall, because of his race, creed, or color, be assigned to or required to attend a particular school." This measure, if adopted, would not merely eliminate busing for integration, but would void *Brown v. Board of Education*, except perhaps as to desegregation resulting from freedom of choice plans.

In the Senate, S.J. Res. 165, that would have a similar effect provides, that: "Section 1. The assignment or transportation of children to a region beyond that covered by the neighborhood school, unless such assignment or transportation is voluntary, is expressly prohibited."

[25] J. Franklin, *From Slavery to Freedom*, pp. 330–32 (Vintage ed. 1969); K. Stampp, *The Era of Reconstruction: 1865–1877*, pp. 186–215 (Vintage ed. 1967).

[26] Reports indicate that black students in some predominately black schools, perhaps reflecting the racial hostility they see around them, have beaten and harassed white children assigned to "their" schools.

[27] The U.S. Senate Select Committee on Equal Educational Opportunity has found that disadvantaged children, without regard to race, tend to perform better in schools with a majority of advantaged children. But in achievement test terms, black students in Berkeley, while improving, are still at an educational level five years behind their advantaged white classmates at the eighth-grade level.

[28] Even committed school integrationist Dr. Kenneth B. Clark has expressed support for emergency programs of compensatory education intended to benefit children in predominately black schools. Clark, *Alternative Public School Systems*, 38 Harv. Educ. Rev. 100, 105(1968).

[29] R. Niebuhr, *Moral Man and Immoral Society*, pp. 252–53 (1932).

[30] B. Washington, *Up From Slavery*, pp. 218–25 (1901).

[31] L. Bennett, *Before the Mayflower*, pp. 227–29 (1966).

[32] *Id.* Washington's policies were vigorously challenged by other black spokesmen of the day, See H. Aptheker, *A Documentary History of the Negro People in the United States*, pp. 876–86 (1968). Of course the classic statement is "Of Mr. Booker T. Washington and others," in W. DuBois, *The Souls of Black Folk*, p. 42 (Premier ed. 1961). The ideological conflict between Washington and DuBois is reviewed in A. Meier, *Negro Thought in America 1880–1915* (1963).

[33] *Newsweek*, Mar. 13, 1972, p. 21.

[34] 79 Stat. 27–35, as amended, 20 U.S.C. §§ 236–44 (1965). Title I is the largest compensatory education plan ever attempted.

[35] "Title I of ESEA—Is it Helping Poor Children?", a study prepared by civil rights groups, was reported in the *New York Times*, Nov. 9, 1969, p. 1, col. 1.

[36] See 1969 Civil Rights Comm'n. Report, p. 32.

[37] Cohen, *Policies for the Public Schools: Compensation and Integration*, 38 Harv. Educ. Rev. 114 (1968). Sen. Walter Mondale, Chairman of the Select Committee on Equal Educational Opportunity, said recently, "With few exceptions, an annual Federal investment of $1.5 billion in compensatory education has little perceptible impact on mounting educational disadvantages." *New York Times*, Feb. 27, 1972, p. E 13, col. 8.

[38] See Sizer and Whitten, "A Proposal for a Poor Children's Bill of Rights," Psychology Today, Aug. 1968, p. 59; Sizer, "The Case for a Free Market," Saturday Review, Jan. 11, 1969, p. 34.

For a thorough discussion of the legal, political, and educational issues, see, Areen, *Education Vouchers*, 6 Harv. Civ. Rights-Civ. Lib. L. Rev. 466 (1971). Serious constitutional questions are posed in King, *Rebuilding the "Fallen House"—State Tuition Grants for Elementary and Secondary Education*, 84 Harv. L. Rev. 1057 (1971).

[39] See Coons, Clune & Sugarman, *Educational Opportunity: A Workable Constitutional Test for State Financial Structures*, 57 Cal. L. Rev. 305 (1969).

[40] *McInnis v. Shapiro*, 293 F.Supp. 327 (N.D. Ill. 1968), aff'd mem. sub. nom. *McInnis v. Ogilvie*, 394 U.S. 322 (1969).

[41] *Serrano v. Priest*, 5 Cal. 3d 583, 487 P.2d 1241, 96 Cal. Rptr. 601 (1971); *Van Dusartz v. Hatfield*, No. 3–71 Civ. 243 (D. Minn. Oct. 12, 1971); *Rodriguez v. San Antonio Ind. Sch. Dist.*, No. 68–175–5A (W.D. Tex. Dec. 23, 1971).

Similar suits are pending in perhaps 20 other states. See Note, *The Evolution of Equal Protection—Education, Municipal Services and Wealth*, 7 Harv. Civ. Rights-Civ. L. Rev. 103, 200–13 (1972).

[42] For what has become the classic exposi-

tion of the community control philosophy, see Hamilton, *Race and Education: A Search for Legitimacy*, 38 Harv. Educ. Rev. 669 (1968). The issues are thoroughly reviewed in A. Altschuler, *Community Control* (1970). See also *Community Control of Schools* (H. Levin ed. 1970); L. Fein, *The Ecology of the Public Schools* (1971).

[44] See, e.g., Fantini, *Participation, Decentralization, Community Control, and Quality Education*, 71 The Teachers College Record 93 (Colum Univ. 1969); Myers, "Schools: Morgan's Tentative Revolution," City Bi-Monthly Rev. of Urban America, Nov.-Dec. 1968, p. 6.

[45] *Confrontation at Ocean Hill-Brownsville* (M. Berube, M. Gittell, eds. 1968); D. Rogers, *100 Livingston Street* (1969).

[46] Community Control is constitutionally permissible. Kirp, *Community Control, Public Policy, and the Limits of the Law*, 68 Mich. L. Rev. 1355 (1970), but note the unreceptive opinion in *Oliver v. Donovan*, 283 F. Supp. 958 (E.D.N.Y. 1968).

[47] G. Dennison, *Lives of Children* (1969); J. Kozol, *Free Schools* (1972).

[48] While the *Newsweek* poll, footnote 3, asserts that ". . . nearly half the blacks interviewed opposed busing," their reasons go to the unfair burden placed on black children in many busing plans, and what some interpret as the subtle implications in all school integration plans that blacks cannot learn unless in the presence of whites. This latter concern is reflected in a controversial antibusing resolution passed at the recent black political convention held in Gary, Ind. *Boston Globe*, Mar. 13, 1972, p. 2, col. 3.

[49] Glazer, "Is Busing Necessary?" Commentary (Mar. 1972) p. 39.

[50] Some courts have required the establishment of bi-racial committees, but all too frequently this leads to the appointment of blacks who, once exposed to the school board's "problems" are coopted and join with the white members in opposing further legal action that may be needed to insure compliance with the plan.

[51] Petroni, "Teen-age Interracial Dating," Trans-Action, Sept. 1971, p. 54.

[52] R. Coles, *Children of Crisis* (1964).

[53] R. Ellison, *Invisible Man* (1947).

[54] Excerpts from speech of Theodore Lester, board member, Florence County School District No. 1 School Board, *Your Schools*, Newsletter of the South Carolina Community Relations Program, American Friends Service Comm., 401 Columbia Bldg., Columbia, S.C. 29201.

METROPOLITAN-WIDE DESEGREGATION

(By William L. Taylor)

Early this year federal district judge Robert R. Merhige ordered the merger of Richmond, Virginia's predominantly black school district with two predominantly white suburban county districts.[1] Several months earlier, federal Judge Stephen Roth in Detroit ordered Michigan officials to submit a desegregation plan for the Detroit metropolitan areas.[2] If the Richmond and Detroit decisions are upheld, they will have a broad impact on metropolitan areas throughout the nation.

For one thing, they provide a school integration remedy in places where it was previously thought to be a rapidly diminishing possibility. Black students now constitute a majority of the school enrollment of many cities, particularly large ones, and their numbers are growing rapidly. Black enrollment in Richmond, for example, is now about 65 percent and Detroit's is more than 60 percent.[3] Substantial school integration can be accomplished in many places only if the area encompassed by a court-ordered desegregation plan is larger than the city itself. In short, *Brown v. Board of Education* could become an anachronism unless its principles are interpreted broadly enough to encompass metropolitan relief. Because thirty-seven percent of the black population lives in the country's twenty-five largest cities (where racial concentrations tend to be highest), school integration, without metropolitan relief, can become a reality only in the smaller cities and rural areas which are rapidly losing population.

LEGAL JUSTIFICATION

The Richmond and Detroit decisions also have wide implications because they rest upon legal principles and factual findings which make them applicable throughout the country. The circumstances and principles, best articulated in the Richmond case, may be summarized as follows:

(1) *Public education is the responsibility of state government, which must make it available to all on equal terms.* This constitutional principle, articulated most clearly in *Brown*,[4] is also at the heart of the recent challenges to school financing systems based on the local property tax.[5] In Richmond, Judge Merhige found that general supervision over public schools was vested in the State Board of Education, which prescribed standards for certifying teachers, set quality standards for school divisions, set school construction standards, and approved local construction programs. In Detroit, Judge Roth found that the Michigan Board of Education had similar responsibilities, as do the state boards of education in all states.

(2) Political subdivisions, including school districts, are creations of the state and will be altered when necessary to meet the overriding demands of the Constitution. This principle, declared as early as *Hunter* v. *City of Pittsburgh*,[6] has had its major contemporaneous applications in the reapportionment cases.[7] It has also been applied to school districts in situations where courts found that the districts were segregated as a matter of law.[8] In Richmond, the court said, " . . . if political boundaries amount to insuperable obstacles to desegregation because of structural reasons, such obstacles are self imposed. Political subdivision lines are creations of the state itself, after all."

(3) *De jure school segregation is established by demonstrating that school assignment policies are based upon segregated housing policies.* This was the question the Supreme Court left unresolved in the *Swann* case.[9] Judge Merhige's resolution of the issue was crystal clear:

"School authorities may not constitutionally arrange an attendance zone system which serves only to reproduce in school facilities the prevalent pattern of housing segregation, be it publicly or privately enforced. To do so is only to endorse with official approval the product of private racism."

In this ruling, the court was following the recent line of decisions in northern school desegregation cases involving Pontiac, Michigan and Pasadena, California,[10] as well as a Fourth Circuit holding affecting the Norfolk schools.[11] A corollary principle is that the appropriate test of the constitutionality of school officials' actions is their operative effect, rather than whether they were the product of invidious intention or racial hostility. Constitutional violations may be established by the "knowing pursuit of policies whch cannot but produce racial separation," [12] and legality will be gauged by the "natural, probable, and forseeable effect" of the action.[13]

In both Richmond and Detroit, these holdings were supported by massive evidence of officially sanctioned housing segregation. This included the policies of the Federal Housing Administration (FHA) during the 1930's and 1940's, which called for the maintenance of racially and economically homogeneous neighborhoods and schools protected from "adverse influences" by "proper zoning regulations and deed restrictions." The persistent effect of these policies can be gauged by continuing segregation in FHA-assisted sale and rental housing. Other important factors include court enforcement of racially restrictive covenants (before *Shelley v. Kraemer*), the location of public housing only in predominantly-black sections of the inner city, the refusal of suburban jurisdictions to permit the construction of federally subsidized housing for low and moderate income families (and the predominantly white occupancy of these units where permitted), and continuing discriminatory practices of realtors and developers unrestrained by effective governmental action. Additional evidence tied these housing segregation practices directly to segregated schools. In Richmond, for example, it was established that when new suburban subdivisions were built, new schools were frequently constructed to serve only the all-white populace of the subdivision.

In short, the core of the Richmond and Detroit decisions was heavy government involvement in housing discrimination which contained blacks within the central cities. This demonstrated that black attendance at geographically-zoned segregated schools was hardly accidental or fortuitous. Metropolitan-wide efforts to integrate schools are well within *Brown's* mandate to end governmentally-imposed segregation, and can not fairly be described as imposing "artificial racial balance."

(4) *The State has no compelling interest in maintaining racially separate school systems within a single bi-racial metropolitan community.* While the Richmond and Detroit defendants repeatedly argued the sanctity of school district lines, they were unable to establish how these boundaries had any paramount significance in what were in practice single metropolitan communities. The evidence of "community of interest" was substantial. In Richmond, the city and the two suburban jurisdictions formed the great bulk of what is defined by the Census Bureau as a single interdependent metropolitan community. A substantial proportion of suburban residents works in the city; suburban people make many of their purchases in Richmond city stores; a large volume of traffic flows back and forth daily across jurisdictional lines; almost everyone in the metropolitan area is born or dies in a Richmond city hospital; many of the recreational and cultural facilities located in one jurisdiction serve people in the entire metropolitan area. In addition, the three governmental entities have contractual arrangements for the use of water and utilities, and are working toward other joint approaches to solve problems that are widely regarded as regional in nature.[14]

In Detroit, even less educational interest justifies existing boundaries. Eighty-five separate school districts exist within the metropolitan area. Unlike Richmond, they vary in their school enrollments and overlap other kinds of political subdivisions.

The justification for existing school boundaries has arisen in another form in Indianapolis where the court, in a school desegregation suit directed initially at the city school board, has asked how the maintenance of separate school districts can be justified in a metropolitan area which has consolidated almost all other functions.[15]

Establishing a "community of interest" is important because it undermines the sanctity of existing district lines, and because it gives content to what otherwise might be viewed as an amorphous state responsibility. The existence of a metropolitan community makes single-race schools racially identifiable and takes the argument out of the realm of whether "racial balance" is what is being sought.[16] Other educational considerations may play a part in determining whether an

Footnotes at end of article.

entire metropolitan area should be covered by one integration plan, but the existence of a single community establishes the framework for a desegregation plan to remedy past discrimination.

In Richmond much more proof existed than has been summarized here. The case had dragged through the courts for ten years while the city schools were becoming predominantly black, so that metropolitan relief could be viewed simply as an effective remedy under *Brown* and *Green v. School Board of New Kent County*.[17] The state of Virginia had intervened massively to preserve segregation freely transferring children across district lines and busing them long distances. Yet Judge Merhige apparently did not regard these factors as essential to his decision:

"When a school board . . . operating in any area where segregated housing patterns prevail and are continuing, builds its facilities and arranges its zones so that school attendance is governed by housing segregation, it is operating in violation of the constitution . . . These conclusions apply in a case where no history of past intentional seregation was relied on in order to establish an affirmative duty to desegregate. In a situation such as the instant one, when officially mandated segregation was enforced by numerous other means, the legal principles are all the more demanding."

In sum, the crucial elements of the Richmond and Detroit decisions were state responsibility for public education, the containment of black people in the central city by housing discrimination policies, and the lack of justification for maintaining separate districts in a single metropolitan community where they resulted in segregated schools. If the decisions are sustained on these grounds, they will have obvious applicability throughout the country.

REMEDY

The Richmond court has ordered into effect a city school board plan that will consolidate the three districts into one district of 104,000 students governed by a single school board and superintendent. While this ruling has refueled the furor over busing, several key aspects of the decision and of other allied cases are frequently overlooked:

Logistically, metropolitan plans may be less difficult to implement than desegregation plans for a single district. In Richmond, for example, the desegregation plan adopted by the court divides the metropolitan area into six subdistricts. The maximum time for any trip would be 45 minutes in five of the six subdistricts and one hour in the sixth (a rural area of Chesterfield County where long distance busing is already common.) Very few children would actually travel the maximum time, times which are well within limits set by the Virginia State Department of Education twenty-five years ago. And the number of children to be transported would increase by no more than 10,000 (from 68,000 to 78,000).

In Hartford, where another metropolitan-wide case has survived a motion to dismiss and is awaiting trial,[18] the city's North End contains every school with a 90–100% minority group enrollment, and no predominantly white schools. Integrating North End minority students with South End whites would necessitate busing through Hartford's large commercial and industrial center. Logistically, it is simpler to integrate the North End with the adjacent suburban community, where schools are within walking distance for many students. In Hartford, therefore, pairing nearby schools is a feasible technique for metropolitan integration, while busing is the only feasible means of achieving intracity desegregation.

In larger cities, planning for metropolitan integration may be more complex, but logistics may be no more difficult. In Detroit, for example, preliminary state board planning suggests that substantial racial and economic integration can be accomplished without any increase in transportation costs, or the number of children to be transported, if the integration plans encompass a group of adjacent suburbs.

Remedies can be made flexibly enough to achieve the desired educational result. Total consolidation is only one option. Others include partial merger, redistricting, or even the assignment of children across existing boundaries. The only prerequisite would be that the remedy accomplish integration.

Metropolitan plans offer the prospect of stable integration. In metropolitan Richmond, with a minority population proportionately as large as any area in the nation, enrollment in the consolidated school system would be 66 percent white and 34 percent black. Under the Richmond Board's plan every school would have an 18 to 40 percent black enrollment.

This arrangement should enhance stability. Whether "white flight" is based upon racism, or upon a judgment that schools consisting of a majority of advantaged children offer greater educational benefits, the dangers of rapid resegregation are decreased where the obligation to desegregate is systemwide and the racial and economic class composition of each school is defined within a range. Most families would have an incentive to remain living where they were to make integration work, instead of moving to more distant areas.

Metropolitan plans offer greater educational advantages than do simple integration plans. Expert witnesses in the Richmond and Detroit cases testified that metropolitan-wide desegregation will provide economies of scale in many places that will make possible new facilities and services that are too costly for smaller districts. These include special schools and programs to serve the gifted and handicapped, improved facilities for teacher training, and wider use of television and computers as instructional tools. (In some places, such as New York, the state provides incentives to suburban districts, but not to cities, to cooperate in providing services. It seems reprehensible, as well as unconstitutional, for states to hold out incentives for consolidation and cooperation only in a manner that entrenches racial separation.)

Metropolitan plans do not decrease, and may even enhance, school accountability and opportunities for community participation. Under the Richmond plan, the new consolidated district is to be divided into six subareas of about 18,000 students each. While the plan does not specifically apportion responsibility between the central authority and the subdivision, there is no reason why each subdivision cannot be delegated broad authority to determine the kind of educational program that best meets the needs of children in the area. This might include the hiring of faculty and administrative personnel, and decisions about curriculum and the allocation of budget. Thus, there is no basis for the suggestion that metropolitan school integration plans necessarily entail a loss of "local control."

Judge Merhige's order also seeks to protect blacks against various forms of discrimination that have often accompanied past desegregation. It contains detailed provisions prohibiting discrimination in the retention, reassignment and hiring of faculty or staff, and requires plans for "in-service training of staff, creation of biracial committees, employment of black counselors in all schools, and plans for biracial extracurricular activities."

None of this ignores the fact that black children, who will be a minority in each subdivision, frequently encounter difficult problems in desegregated schools. But the battle to win respect for one's heritage, and fair treatment from teachers, administrators, and fellow students is a new phase of the desegregation struggle. Because it is difficult does not mean the effort should be abandoned. The struggle to win equal status in desegregated schools is an integral part of the effort to win equality in a biracial society. It is doubtful that students who are shielded from inter-racial contact in the name of avoiding mistreatment will be well prepared for the struggle for equal status they will face after school.

Nor does the evidence suggest that integrated or predominantly black school systems are more accountable or subject to black parents' influence. On the contrary, it is likely that participation of minority and low income parents in school affairs will increase under metropolitan integration arrangements. Parents in Evanston, Rochester, and Boston whose children have moved from racially isolated to integrated schools have reported feelings of greater participation and influence in their children's education in the new situation than in the old.

THE POLITICS OF METROPOLITANIZATION

One concern about metropolitan school litigation is that it may encourage metropolitan government, which could dilute minority political power, particularly in areas where blacks constitute a voting majority in the central city and have elected (or are about to elect) their own candidates to municipal office.

But there is no necessary link between metropolitan school integration and metropolitan government. This is well illustrated in Richmond where another group of black plaintiffs sued during the school suit to deannex a predominantly white portion of Chesterfield county that had been merged with the City of Richmond. They claimed that the annexation's purpose was to prevent blacks from becoming a voting majority in Richmond. Judge Merhige, the same judge who later ordered metropolitan school relief, ruled that the annexation was racially motivated and required some form of redress.[19] Equal educational opportunity in a metropolitan area is clearly a separate issue from political representation in the same area. Urging the former does not compel either a legal or a policy commitment to the latter.

Moves toward metropolitan school integration, however, may bring significant political realignments. The Richmond school board, long a defendant, was a principal moving party in the request for metropolitan relief. In Detroit, a group of white city residents initially raised the metropolitan issue. Whether these parties truly believe in school integration varies from situation to situation. But they do assert that whatever social burdens are inherent in school integration should be borne equally by the generally more affluent citizens of suburbia and by the white and black working people of the cities.

There is merit to this view, and the fact that it is being asserted in the courts indicates that the potential support for metropolitan solutions is not limited to black people. It also suggests that despite the controversy the Richmond and Detroit decisions have aroused, a metropolitan approach may help to diffuse conflict between blacks and whites in the inner city.

It is far too early to predict the outcome of metropolitan school integration suits. Given the current hysteria over busing and the sparsity of courageous political leadership, the effort may be thwarted by Congressional action. The Senate has already passed legislation to stay the implementation of any inter-district integration order until all appeals have been exhausted. Any restraints placed upon busing as an integration tool would obviously frustrate metropolitan integration.

Footnotes at end of article.

A WARNING ABOUT FINANCE

A more sophisticated, but no less dangerous development would be for public officials to embrace school financing equalization *as an alternative* to integration. The *Serrano* decision has fostered a surge of litigation and legislation to apply its principle that school finances may not vary because of local districts' property wealth. While fiscal inequities must be remedied, there are limits to what reform can accomplish:

(1) Some states are discovering no correlation between district property wealth and the wealth of families who reside there. New York City is an example of a city with a rich tax base and many poor families.[20] There, poor and minority children would be hurt rather than helped by application of the *Serrano* principle of redistributing property wealth for school financing purposes.

(2) The *Serrano* decision points to an equalization of property tax revenues, rather than a financing system based on educational need (what poor children really require), or even equalized per pupil expenditures.

(3) There is little persuasive evidence that different expenditures produce significant educational differences (except on a major scale). It is problematical at best that increases in funding can by itself bring about the higher quality education that poor children so desperately need.

(4) While implementation of *Serrano*, because it would eliminate the cost of educating new students, strips away the affluent suburbs' traditional rationale for refusing to shelter poor and minority families, it hardly guarantees that suburban barriers to the poor and minorities will fall.

While fiscal reform is needed, it is no panacea for educational ills that are traceable in large part to discrimination and racial isolation. Care must be taken that it does not become the modern equivalent of the "separate but equal" theory of *Plessy* v. *Ferguson*.[21]

If Congress should resolve to support court desegregation efforts, it could do much to assure the success of a metropolitan approach. Much current concern about integration arises from widespread dissatisfaction with the quality of public education. If people become convinced that integration is one part of a broader effort to improve public education for *all* children, some opposition to it would abate. New facilities, such as education parks located in areas accessible both to suburban and city residents, might temper the cross-busing controversy. Federal assistance to individualized instruction programs could help convince parents that their children's learning problems will not be neglected in an integrated system.

This view may be too hopeful at a time when public officials, including the President, are manipulating the integration issue for narrow political gain. But major progress in school integration has been achieved in the South even in the face of massive resistance. A new brand of leadership, best exemplified by Governor Askew of Florida, is emerging. It encourages people to face their problems and solve them rather than retreat to racism. It may be that Richard Nixon's *realpolitik* will prove to be more illusory in the long run than the dream of Martin Luther King.

FOOTNOTES

[1] *Bradley v. School Board of the City of Richmond*, C.A. No. 3353 (E.D. Va. Jan. 5, 1972), 40 U.S.L.W. 2446 (Jan. 18, 1972).

[2] *Bradley v. Milliken*, C.A. No. 35257 (E.D. Mich. Sept. 27, 1971), 40 U.S.L.W. 2192 (Oct. 12, 1971).

[3] In Wilmington, Delaware and Atlanta, where other cases are pending, black enrollments exceed 80% and 60% respectively. In Baltimore and St. Louis they are more than 60%, and in Chicago and Cleveland more than 50%.

[4] "Such an opportunity [the opportunity for an education] where the State has undertaken to provide it, 'is a right which must be made available to all on equal terms." 347 U.S. at 493.

[5] *Serrano v. Priest*, 5 Cal. 3d 584 (Cal. Sup. Ct. 1971); *Van Dusartz v. Hatfield*, No. 3-71 Civ. 243 (D. Minn. Oct. 12, 1971); *Rodriguez v. San Antonio Independent School District*, C.A. No. 68-175-SA (W.D. Tex. Dec. 23, 1971).

[6] 207 U.S. 161, 178 (1907).

[7] See, e.g., *Reynolds v. Sims*, 377 U.S. 533 (1964); *Wesberry v. Sanders*, 376 U.S. 1 (1964).

[8] See, e.g. *Haney v. County Board of Education of Sevier County*, 429 F.2d 364 (8th Cir. 1970); *U.S. v. Texas*, 321 F. Supp. 1043 (E.D. Tex. 1970), *aff'd*, 447 F.2d 441 (5th Cir. 1971).

[9] *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971).

[10] *Davis, v. School District of City of Pontiac*, 443 F.2d 573 (6th Cir. 1971), *cert. den.*, 92 S.Ct. 233 (1971); *Spangler v. Pasadena City Board of Education*, 311 F. Supp. 501 (C.D. Cal. 1970).

[11] *Brewer v. School Board of City of Norfolk*, 397 F.2d 37 (4th Cir. 1968).

[12] *Johnson v. San Francisco Unified School District*.—F. Supp.— (N.D. Cal. April 28, 1971).

[13] *Bradley v. Milliken*, footnote 2, at 12, 23.

[14] The elements of establishing a community of interest were first established in *Jenkins v. Township of Morris School District*, C.A. No. A-117 (N.J. Sup. Ct. June 25, 1971), in which the Supreme Court of New Jersey held that the New Jersey Commissioner of Education was authorized to merge the school districts of a closely related town and suburban area. The community of interest argument is paradoxical in one sense. As suburbs break away from any dependence upon central cities, establishing their own employment opportunities, hospitals, cultural and recreational facilities, it will be increasingly more difficult to demonstrate the existence of a single metropolitan community. Yet racism is certainly an important element in this process of central city abandonment.

[15] *United States v. Board of School Commissioners of the City of Indianapolis*, 332 F. Supp. 655 (S.D. Ind. 1971).

[16] The failure to allege or prove housing discrimination which confines blacks to segregated schools and the lack of compelling justification for separate districts in a single metropolitan community led to the dismissal of an early cases in this area. *Spencer v. Kugler*, 326 F. Supp. 1235 (D.N.J. 1971), *aff'd*, —U.S.— (Jan. 17, 1972). The complaint only alleged that public education was a state responsibility and that the schools were racially imbalanced.

[17] 391 U.S. 430(1968).

[18] *Lumpkin v. Meskill*, C.A. No. 13,716 (D. Conn., filed Feb. 1970).

[19] *Holt v. City of Richmond*, C.A. No. 151-71 R(E.D. Va. Sept. 28, 1971).

[20] U.S. Senate, Select Committee on Equal Educational Opportunity, *Inequities in School Finance*, 92nd Cong. 2nd Sess. (Jan. 1972).

[21] Of course metropolitan integration itself may be a means of removing fiscal inequities. In Richmond, the new consolidated district presumably will have a single tax base and a uniform tax rate.

PENDING DESEGREGATION CASES

(By Robert Pressman)

Allegheny County, Pennsylvania: *Hoots v. Commonwealth of Pennsylvania*, C.A. No. 71-538 (W.D. Pa.).

This action challenges the manner in which school districts have been consolidated in one section of suburban Pittsburgh. Plaintiffs allege that District 16 (42 percent black) is racially identifiable compared with the newly created adjoining systems which are one percent, six percent and one percent black. Plaintiffs also allege that District 16 "does not have the economic capacity nor educational resources to provide an educational program commensurate to those of the adjoining school districts." The parties have reverently submitted proposed stipulations pursuant to the court's request.

Plaintiffs' counsel: R. Stanton Wettick, Jr., Neighborhood Legal Services Association, Pittsburgh.

Benton Harbor, Michigan: *Berry v. School District of City of Benton Harbor*, Civ. No. 9 (W.D. Mich. Feb. 17, 1970).

The district court found discrimination in faculty assignment, school grouping practices, and in the quality of physical plants, and ordered remedial action. The court did not grant any relief on student assignment. Each side has appealed to the Sixth Circuit, plaintiffs challenging the failure to order student desegregation. Plaintiffs have received additional time to file their brief because of a delay in the preparation of the transcript.

Plaintiffs' counsel: Louis Lucas, Memphis, Tennessee; Stuart Dunnings, Jr., Lansing, Mich.

Boston, Massachusetts: *Morgan v. Hennigan*, C.A. No. 72-911-G (D. Mass. filed Mar. 15, 1972).

This action challenges the segregation of pupils and faculty, hiring and promotion of faculty and staff, resource allocation, and the content of the educational program. Plaintiffs seek implementation of a plan fully desegregating the system for the 1972-73 school year. Among other things, the complaint alleges that the system has transported students to schools in ways promoting racial segregation of students.

Plaintiffs' counsel: Thomas M. Simmons, S. Stephen Rosenfeld, John Leubsdorf, Roger Abrams, Boston.

Clark County, Nevada: *Kelly v. Guinn*, F.2d (9th Cir. Feb. 22, 1972).

The Ninth Circuit affirmed the district court's finding that officials had illegally segregated certain elementary schools. The appellate court also affirmed the district court's approval of a desegregation plan providing for clustering of schools, with associated grade reorganization and two-way busing. The school system has filed a petition for rehearing.

Plaintiffs' counsel: NAACP Legal Defense Fund, New York City, New York.

Denver, Colorado: *Keyes* v. *School District No. 1*, 303 F. Supp. 279 (D. Colo. 1969), 303 F. Supp. 289, 313 F. Supp. 61, 313 F. Supp. 90, reversed in part, 445 F.2d 990 (10th Cir. 1971), cert. granted, 92 S.Ct. 707.

The district court found that school officials had deliberately segregated certain schools, and ordered them desegregated pursuant to a plan adopted, but later rescinded by the school board. As to 17 additional schools with minority enrollments of at least 70 to 75 percent, the district court found insufficient proof of deliberate segregation, but ordered their desegregation based upon the finding that their students were denied "an equal educational opportunity." In reaching this conclusion, the court noted in the impacted schools lower test scores and higher dropout rates, less qualified teachers and, in general, a disparity in the age of school buildings and the size of school sites.

On appeal, the Tenth Circuit affirmed as to the finding of deliberate segregation, but reversed on the equal educational opportunity theory. On January 17, 1972, the Supreme Court agreed to review the case; however, the argument will be delayed until the October, 1972 Term. Petitioners raise the question of whether the lower courts erred in looking at the system in segments, rather than as a whole, in assessing system involvement in the creation of segregation. They also challenge the rejection of the equal edu-

cational opportunity contention in view of the appellate court's failure to reject any of the factual findings of the district court upon which it was based.

Plaintiffs' counsel: Craig Barnes, Gordon Greiner, Denver; NAACP Legal Defense Fund, New York City.

Detroit, Michigan: *Bradley* v. *Milliken*, C.A. No. 35257 (E.D. Mich. Sept. 27, 1971), 40 U.S.L.W. 2192 (Oct. 12, 1971).

In September 1971, the district court held that the segregation of pupils in the Detroit school system violated the Fourteenth Amendment. The court found, *inter alia*, that school transportation practices had promoted segregation. The district judge also found involvement by the state and its agencies in the maintenance of the pattern of student segregation. The court held that under the federal and state constitutions, "the responsibility for providing educational opportunity to all children on constitutional terms [was] ultimately that of the state."

Thereafter, the court ordered local and state defendants to prepare and file intracity and metropolitan desegregation plans. Hearings on the plans were held during March, 1972.

Plaintiff's counsel: Louis Lucas, William Caldwell, Memphis, Tennessee; Nathanial Jones, NAACP, New York City; Paul R. Dimond, J. Harold Flannery, Center for Law and Education, Cambridge, Mass.; NAACP Legal Defense Fund, New York City.

Grand Rapids, Michigan: *Higgins* v. *Board of Education of Grand Rapids*, C.A. No. 6386 (W.D. Mich. filed 1971).

Plaintiff's complaint challenged student and faculty segregation in Grand Rapids. The Grand Rapids system moved to join officials of a number of suburban systems as defendants. Plaintiffs filed an amended complaint including state officials and representatives of suburban systems as defendants. The court denied the state defendants' motion to dismiss.

Plaintiff's counsel: Stuart Dunnings, Jr., Lansing, Michigan; Lucas, Memphis.

Hartford, Connecticut: *Lumpkin v. Meskill* C.A. No. 13, 716 (D. Conn. filed Feb. 1970).

This action seeks metropolitan school desegregation in the Hartford area. The three-judge court denied the motion to dismiss in January 1971. Plaintiffs have been conducting discovery.

Plaintiffs' counsel: Douglas M. Crockett, Raymond Marcin, Tolland-Windham Legal Assistance, Willimantic; Paul R. Dimond, Harvard Center for Law and Education, Cambridge, Massachusetts.

Indianapolis, Indiana: *United States (And Buckley) v. Board of School Commissioners of the City of Indianapolis*, 332 F. Supp. 655 (S.D. Ind. 1971).

This suit was filed as a conventional student and faculty desegregation case by the Department of Justice in 1968. In August 1971 the district court ruled that the system had never adequately disestablished the dual system operated pursuant to an Indiana statute repealed in 1949. The court ordered limited in-city relief. In addition, the court discussed the passage of state laws concerning the expansion of the city school system, and creating "Uni-Gov," a metropolitan government for municipal services other than schools. Expressing the view that the effect of these measures "may well have been to retard desegregation and to promote segregation" in the Indianapolis system, the court ordered the United States to file pleadings joining as parties municipal and school officials in the metropolitan area. The court also referred to the stability of the city system (37.4 percent black) compared with adjoining systems (2.6 percent black).

In the fall of 1971, private plaintiffs intervened, joining as defendants almost all school officials in the SMSA. The court has denied motions to dismiss and has under advisement the question of convening a three-judge court.

Plaintiffs' counsel: U.S. Dept. of Justice Civil Rights Division; Nathaniel Jones, NAACP, New York City; J. Harold Flannery, Eric E. Van Loon, Harvard Center for Law and Education, Cambridge, Mass.

Kalamazoo, Michigan: *Oliver* v. *School District of the City of Kalamazoo*, C.A. No. K88-71 (W.D. Mich. 1971), aff'd, 448 F.2d 635 (6th Cir. 1971).

The system's school board adopted a plan of complete student desegregation. After an election, the new board rescinded the plan. Plaintiffs filed suit challenging the rescission. The district court held the rescission violative of the Fourteenth Amendment and entered a preliminary injunction requiring the system to implement its plan for the 1971-72 school year. On appeal, the court of appeals affirmed, finding no abuse of discretion in the granting of the preliminary injunction, and noting that the school board would have an opportunity to press its contentions in the hearing on the merits.

Plaintiffs' counsel: Nathaniel Jones, NAACP, New York City; Stuart Dunnings, Jr., Lansing, Mich.

Los Angeles, California: *Crawford* v. *Board of Education*, Civil No. 822854 (Sup. Ct. L.A. Cty.).

On February 11, 1970, the court held that students in the district were illegally segregated, and directed school officials to prepare a plan under which each school in the system would have between a 10 and 50 percent minority student enrollment. The court also found discrimintaion against minority students with respect to per-pupil expenditures, the quality of facilities, and the qualfications of teachers assigned to schools with concentrations of minority students.

The school system appealed to the California Court of Appeals; implementation of the affirmative aspects of the trial court's decision was stayed. Opening briefs have been filed. The case will be argued after the system files its reply brief.

Plaintiffs' counsel: William Rintala, Bayard Berman, Los Angeles.

Minneapolis, Minnesota: *Booker v. Special School District No. 1*, C.A. No. 4-71 Civ. 382 (D. Minn.).

This action challenges the segregation of students against minorities in hiring for faculty and staff positions and in promoting persons to supervisory positions. The trial is scheduled for April, 1972.

Plaintiffs' counsel: Charles Quaintance, Jr., Minneapolis.

Oxnard, California: *Soria v. Oxnard School District Board of Trustees*, 328 F. Supp. 155 (C.D. Cal. 1971).

Plaintiffs' motion for a summary judgment was granted May 12, 1971, the court finding "sufficient 'de jure overtones' " in school practices to warrant a holding that the segregation of the elementary schools violated the Fourteenth Amendment. Thereafter, a pairing plan was adopted, affecting six schools and increasing the number of students transported. The system appealed. The District Court and Ninth Circuit declined to stay implementation. Filing of briefs awaits preparation of a transcript. The school district is expected to argue on appeal that summary judgment was erroneous because there were genuine issues of material fact on the question of the school officials' intent.

Plaintiffs' counsel: Peter Roos, Western Center on Law and Poverty, Los Angeles; John A. Childers, Legal Service Center of Ventura County, Oxnard, California.

Pasadena, California: *Spangler (and United States) v. Pasadena City Board of Education*, 311 F. Supp. 501 (C.D. Cal. 1970).

The district court held that officials had illegally segregated the system, and ordered the implementation of a plan in September 1970 under which there would "be no school . . . with a majority of any minority students." Minority students constituted 41.7 percent of the enrollment as of the court's order. The plan utilized pairing of schools and transportation. The discriminatory practices identified by the court included busing white students to promote segregation.

Plaintiffs' counsel: U.S. Dept. of Justice, Civil Rights Division: Edgar Boyko and Michael Roberts, Los Angeles.

Pontiac, Michigan: *Davis v. School District of City of Pontiac*, 309 F. Supp. 734 (E.D. Mich. 1970), aff'd, 443 F.2d 573 (6th Cir. 1971), cert. denied, 92 S.Ct. 233 (1971).

May 28, 1971, the Sixth Circuit upheld the district court's finding that school officials had illegally segregated students and faculty. The appellate court also affirmed the lower court's approval of a desegregation plan (submitted by the system, but contested on appeal) utilizing pairing and transportation of students. Two issues are pending. The court of appeals stayed the district court's order that a black assistant superintendent be appointed. The district court is considering the question of counsel fees for plaintiffs' attorneys.

Plaintiffs' counsel: William Waterman, Elbert Hatchett, Pontiac.

Rochester, New York: *Colquhoun v. Board of Education, Rochester City School District*, C.A. No. CIV-1970-97 (W.D.N.Y. filed 1970).

This action challenging student and faculty segregation was initiated in the spring of 1970. After the filing, the school system adopted a plan for complete desegregation in steps beginning in 1970 and ending in 1974, and moved for summary judgment. Plaintiffs filed a cross motion. Following an election, the new school board rescinded a portion of the plan, and plaintiffs filed a motion for a preliminary injunction challenging the rescission as an independent Fourteenth Amendment violation. On March 16, 1972, the board rescinded the remainder of the plan. All motions are under submission.

Plaintiffs' counsel: William A. Shapiro, Monroe County Bar Legal Association Corp., Rochester.

San Francisco, California: *Johnson v. San Francisco Unified School District*, C.A. No. C-70 1331 SAW (N.D. Cal. Ap. 28, 1971).

In April and June 1971, the district court ruled that San Francisco elementary schools were illegally segregated under federal and state law, and that the system had discriminated in the hiring and assignment of black teachers. The court ordered the system to integrate "all public elementary schools so that the ratio of black children to white children will be and thereafter continue to be substantially the same in each school." The system implemented a plan based upon clustering and increased transportation for the 1971-72 school year.

The school system appealed. After the argument in the Ninth Circuit, one of the judges on the panel died. The Ninth Circuit has indicated that a new argument will be held after the Supreme Court decides the *Keyes* (Denver) case.

San Jose, California: *Dias v. San Jose Unified School District*, C.A. No. C-71 2130 RFP (N.D. Cal. filed 1971).

This is an action challenging discrimination against Mexican-Americans in pupil assignment, faculty hiring and assignment, resource allocation, and selection for advanced classes. January 11, 1972, the district judge denied plaintiffs' motion for a preliminary injunction against the construction of thirteen schools, finding insufficient evidence that defendants had "acted to create ethnic imbalance . . . ." Plaintiffs have prepared interrogatories. They may, depending upon the decision on appeal in San Francisco, move for summary judgment.

Plaintiffs' counsel: Stephen Manley, Community Legal Services, San Jose.

Seattle, Washington: *Citizens Against Mandatory Busing v. Palmason*, C.A. No. 731-666 (Superior Ct., King Cty. filed 1971).

In January 1971 the Seattle school board adopted a plan to convert to a system of racially desegregated middle schools at the start of the next school year. The plan required cross busing of some white and some non-white students. CAMB filed suit alleging that this violated a state constitutional provision forbidding racial discrimination.

In August 1971, the trial court held the adoption of the middle school plan to be arbitrary and capricious, and enjoined the board from engaging in mandatory busing. Thereafter the court allowed the system to adopt a middle school program incorporating a desegregation program based upon voluntary busing. The system appealed to the State Supreme Court contesting the ban on mandatory busing and the lower court's conclusion that the case involved no federal issue. The case was argued January 12, 1972.

School board's counsel: Camden Hall, Seattle.

South Holland-Phoenix, Illinois: *United States v. School District 151*, 286 F. Supp. 786 (N.D. Ill. 1968), aff'd 404 F. 2d 1125 (7th Cir. 1968), 301 F. Supp. 201 (1969), aff'd as modified, 432 F. 2d 1147 (1970), cert. denied, 402 U.S. 943 (1971).

Both students and faculty in this K-8 school system were fully desegregated for the 1969-70 school year. The student assignment plan utilized grade reorganization and substantially increased the transportation of white and black students, although distances were small (the total area of the system is 4.5 square miles). Since desegregation began, enrollment has decreased substantially. The district has asked the Department of Justice for permission to close one of the two formerly black schools. This request is under consideration. The discriminatory practices identified by the district court included the busing of white students in a manner promoting segregation.

Plaintiffs' counsel: U.S. Dept. of Justice, Civil Rights Division.

Springfield, Massachusetts: *Maness v. School Committee of the City of Springfield*, C.A. No. 71-143-M (D. Mass. filed Jan. 19, 1971).

This action challenges the school system's proposed desegregation plan for disproportionately burdening black students by one-way busing and eliminating schools in black residential areas. January 20, 1971 the district court denied a TRO, in part, because state officials had questioned the plan on similar grounds. Further action awaits completion of the state court proceeding, where counsel in *Maness* has filed an *amicus* brief.

Plaintiffs' counsel: William Malloy, Neighborhood Legal Services, Inc., Springfield.

Waterbury, Connecticut: *United States v. Board of Education of Waterbury*, C.A. No. 13465 (D. Conn. filed 1968).

This action challenging alleged student and faculty segregation was filed in 1968. There has been no hearing on the merits to date.

Plaintiffs' counsel: U.S. Dept. of Justice, Civil Rights Division.

The PRESIDING OFFICER (Mr. GOLDWATER). Who yields time?

Mr. DOMINICK. Mr. President, I yield myself 3 minutes.

The PRESIDING OFFICER. The Senator from Colorado is recognized for 3 minutes.

Mr. DOMINICK. Mr. President, I want to congratulate the Senator from Texas for bringing up this amendment. It is not only in Detroit, and it is not only in Texas that this has occurred. Activities of this type have occurred around the country. At the present moment, the capital city of Denver in my own State of Colorado is under an order stating that as one portion of the city is segregated, therefore it will require the forced busing of all portions of the city.

I am not going to challenge the decision of the judge. I think he was wrong. But, I am not a judge. But in the process of trying to determine this, a great deal of activity against the will of everyone in the city has been proven by one election after another. A great deal of activity is now occurring on behalf of overcoming "racial balance" and by trying to determine how far, so far as I can see, children can be bused without having them in limbo forever.

I certainly do not see any reason why the general taxpayers' funds should be used for this purpose. So I congratulate my friend from Texas. I hope his amendment will be agreed to.

Mr. KENNEDY. Mr. President, the Senator from Texas (Mr. TOWER) has repeated a charge against the Harvard Center for Law and Education which was raised in the House debate and thoroughly refuted.

The Senator has charged that an average of $500,000 a year has been awarded to the Harvard Center over the last 3 years to help finance school desegregation activities in the courts.

The apparent inference of this complaint is that most of the sum of $1.5 million has gone toward the prosecution of desegregation lawsuits. This is a total distortion of the facts.

There is no question that the Harvard Center has followed its mandate from the Office of Economic Opportunity to provide research and education on behalf of eligible clients and that this has involved issues of school desegregation. Indeed, the record of poverty in this country is replete with examples of how low-income children are denied the full opportunity to achieve a quality education by reason of their attendance at segregated public schools. The Harvard Center—or any other attorney, legal services or private, would have been professionally remiss to have ignored totally any requests for help from such children or their parents.

Neither the Harvard Center nor any other program, however, has allocated its resources so disproportionately as the above complaint suggests. Fewer than 5 percent of the cases in which the Harvard Center has been involved have concerned school desegregation. It has been active counsel in only one such lawsuit—in Detroit, Mich.—and has participated as cocounsel in only two others—Dayton, Ohio, and Indianapolis, Ind. The center has, of course, provided information and technical assistance to other programs on request as part of its function as an OEO backup center. It has not participated extensively in the prosecution of at least seven such cases in any event.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 858 of the Senator from Texas (Mr. TOWER).

On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. MANSFIELD (after having voted in the negative). On this vote I have a pair with the distinguished senior Senator from Georgia (Mr. TALMADGE), who is necessarily absent on official business. If he were present and voting, he would vote "yea." If I were permitted to vote, I would vote "nay." Therefore, I withdraw my vote.

Mr. ROBERT C. BYRD. I announce that the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Alaska (Mr. GRAVEL), the Senator from Indiana (Mr. HARTKE), and the Senator from Georgia (Mr. TALMADGE) are necessarily absent.

Mr. GRIFFIN. I announce that the Senator from Virginia (Mr. WILLIAM L. SCOTT) is absent on official business.

I further announce that the Senator from Kentucky (Mr. COOK), the Senator from Wyoming (Mr. HANSEN), and the Senator from Maryland (Mr. MATHIAS) are necessarily absent.

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

The result was announced—yeas 40 nays 51, as follows:

[No. 22 Leg.]

YEAS—40

Allen	Chiles	Huddleston
Baker	Cotton	Johnston
Bartlett	Curtis	Long
Beall	Dominick	McClellan
Bellmon	Eastland	McClure
Bennett	Ervin	Nunn
Bentsen	Fannin	Randolph
Bible	Goldwater	Roth
Brock	Griffin	Sparkman
Buckley	Gurney	Stennis
Byrd, Harry F., Jr.	Haskell	Taft
Byrd, Robert C.	Helms	Thurmond
Cannon	Hollings	Tower
	Hruska	

NAYS—51

Abourezk	Hughes	Packwood
Aiken	Humphrey	Pastore
Bayh	Inouye	Pearson
Biden	Jackson	Pell
Brooke	Javits	Percy
Burdick	Kennedy	Proxmire
Case	Magnuson	Ribicoff
Church	McGee	Schweiker
Clark	McGovern	Scott, Hugh
Cranston	McIntyre	Stafford
Dole	Metcalf	Stevens
Domenici	Metzenbaum	Stevenson
Eagleton	Mondale	Symington
Fong	Montoya	Tunney
Hart	Moss	Weicker
Hatfield	Muskie	Williams
Hathaway	Nelson	Young

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Mansfield, against

NOT VOTING—8

Cook	Hansen	Scott, William L.
Fulbright	Hartke	Talmadge
Gravel	Mathias	

So Mr. TOWER's amendment (No. 858) was rejected.

Mr. JAVITS. Mr. President, I move to reconsider the vote by which the amendment was rejected.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment.

AMENDMENT NO. 860

Mr. TOWER. Mr. President, I call up my amendment No. 860.

The PRESIDING OFFICER. The amendment will be stated.

The amendment was read as follows:

On page 19, after line 19, insert the following:

"(7) to provide legal assistance with respect to any proceeding or litigation arising out of a violation of the Selective Service Act or of desertion from the Armed Forces of the United States.".

The PRESIDING OFFICER. How much time does the Senator from Texas yield?

Mr. TOWER. Mr. President, I yield myself as much time as I may require. By the way, I am delighted to call you "Mr. President." I am not sure I ever would.

The PRESIDING OFFICER (Mr. GOLDWATER). I recognize the importance of that.

[Laughter.]

Mr. TOWER. Mr. President, I ask for the yeas and nays on my amendment.

The PRESIDING OFFICER. There is a sufficient second.

The yeas and nays were ordered.

Mr. TOWER. Mr. President, quite simply this amendment would prohibit beyond any question the provision of legal assistance under this act in any proceeding or litigation arising from a violation of the Selective Service Act or of desertion from the Armed Forces of the United States.

Now, Mr. President, I am aware of the provision in this bill which would prohibit representation in any criminal proceeding; however, that provision was also contained in section 222(a)3 of the Economic Opportunity Act of 1964, and yet in a number of instances, that prohibition has been ignored under the current program.

Inspection reports indicate that staff attorneys in a number of local offices ignored the needs of the poverty community they were designated to serve and spent most of their time in counseling draft evaders, and deserters on ways of avoiding military service and encouraging antiwar activities.

By offering this amendment, I hope that the Members of the Senate will make an affirmative statement of their intent in this regard.

Mr. President, I urge the adoption of my amendment.

Obviously, the legal services program was not designed for this purpose, and, therefore, I think we ought to nail it down into law because there has been a great deal of counseling on how to go about evading the draft, and I think that is terrible when they ignore the legitimate poverty cases to take on these kind of cases.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Texas. The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Alaska (Mr. GRAVEL), the Senator from Indiana (Mr. HARTKE), the Senator from West Virginia (Mr. RANDOLPH), and the Senator from Georgia (Mr. TALMADGE) are necessarily absent.

I further announce that, if present and voting, the Senator from West Virginia (Mr. RANDOLPH) would vote "yea."

Mr. GRIFFIN. I announce that the Senator from Virginia (Mr. WILLIAM L. SCOTT) is absent on official business.

I further announce that the Senator from Kentucky (Mr. COOK), the Senator from Wyoming (Mr. HANSEN), and the Senator from Maryland (Mr. MATHIAS) are necessarily absent.

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

The result was announced—yeas 47, nays 44, as follows:

[No. 23 Leg.]

YEAS—47

Allen	Chiles	Huddleston
Baker	Church	Johnston
Bartlett	Cotton	Long
Bayh	Curtis	Magnuson
Beall	Dole	McClellan
Bellmon	Domenici	McClure
Bennett	Dominick	Montoya
Bentsen	Eastland	Nunn
Bible	Ervin	Packwood
Biden	Fannin	Pastore
Brock	Goldwater	Pearson
Buckley	Griffin	Roth
Byrd, Harry F., Jr.	Gurney	Stennis
	Helms	Thurmond
Byrd, Robert C.	Hollings	Tower
Cannon	Hruska	Young

NAYS—44

Abourezk	Inouye	Percy
Aiken	Jackson	Proxmire
Brooke	Javits	Ribicoff
Burdick	Kennedy	Schweiker
Case	Mansfield	Scott, Hugh
Clark	McGee	Sparkman
Cranston	McGovern	Stafford
Eagleton	McIntyre	Stevens
Fong	Metcalf	Stevenson
Hart	Metzenbaum	Symington
Haskell	Mondale	Taft
Hatfield	Moss	Tunney
Hathaway	Muskie	Weicker
Hughes	Nelson	Williams
Humphrey	Pell	

NOT VOTING—9

Cook	Hartke	Scott, William L.
Fulbright	Mathias	
Gravel	Randolph	Talmadge
Hansen		

So Mr. TOWER's amendment was agreed to.

Mr. PERCY. Mr. President, I support S. 2686, the Legal Services bill. I have been a supporter of Legal Services since its inception for the very simple reason that it fleshes out the most fundamental of the rights with which every American is endowed. If we indeed are all created equal, with equal rights, it is only with adequate legal counsel that each of us can insure that our rights are protected, preserved, and defended. Like it or not, we are in a litigious society, where the most trivial matters end up in our courts, and where only in our courts can the most fundamental matters be properly adjudicated. The key to entering this judicial system is the lawyer.

For those who are able to afford attorneys, this is no problem. But for the vast majority of Americans, legal expenses are a luxury that cannot be indulged in too often. And for the poor of our Nation, it is—or used to be—a mere fantasy.

Before legal services, the poor knew the legal system as a system designed to take things from them, a system to be feared. Now, the poor have learned that the law can be used by them the same way it is used by all other Americans. Because of Legal Services, there is no distinction between the poor, the middle class, and the affluent. Each is entitled to full legal counsel.

The legislation before us today will guarantee a continuation of the achievements of Legal Services. I recognize that it is the result of a compromise and that there are some portions of the bill which we might like to see a little different. However, in sum, it is worthy of our support because it continues the Legal Services program while insulating it from political pressure. I have opposed any and all efforts to impose on Legal Services attorneys restrictions on their ability to fully represent their poor clients. The simple guiding principle must be that Legal Services attorneys owe their first allegiance to their clients, and that in fulfilling their duties to their clients, they are entitled to use every legitimate means at their disposal, consistent with their ethical and professional responsibilities. Whether we agree or do not agree on issues like amnesty, abortion, busing, welfare, or any of a myriad of issues which might arise in a legal context, the client should not have his attorney's hands tied in representing him. If it is a just claim, the courts will vindicate him. If it is an unworthy claim, the courts will properly dispose of the matter.

Though there has been a great deal of talk in this Chamber about keeping politics out of Legal Services, we have nonetheless seen repeated attempts to insert politics into this bill by trying to limit the ability of a lawyer to represent his client in certain politically "hot" areas. I do not believe that this is either the responsible or the best way to get at the concerns which have been expressed by those who have deep feelings on these issues.

Mr. President, I have received many letters and communications from lawyers in Illinois, all expressing basically the same thoughts that I have just stated. I ask unanimous consent that two letters, one to Senator NELSON and one to me, from the Chicago Bar Association, along with the material which was enclosed, be inserted in the RECORD at the conclusion of my remarks.

In conclusion, I want to congratulate the Senator from New York (Mr. JAVITS), and the Senator from Wisconsin (Mr. NELSON) for the excellent job they have done on this legislation. It is a good bill, a majority of the Senate agrees that it deserves to be passed, and I am proud to be able to support it.

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

THE CHICAGO BAR ASSOCIATION,
Chicago, Ill., January 25, 1974.

Hon. CHARLES H. PERCY,
New Senate Office Building,
U.S. Senate,
Washington, D.C.

DEAR SENATOR PERCY: We are writing to you concerning Senate Bill 2686 since we understand that during the forthcoming week, the Senate will consider the future of a federal legal services program. We have written to you previously on this general

subject. Enclosed is a copy of a report from the Legal Aid Committee of our Association listing the specific objections to Senate Bill 2686. We ask that you note and voice these objections in the discussion relative to that bill since the objections are material.

We understand that in addition to Senate Bill 2686 that there is also pending Senate Bill 1990 (the Brock-Helms plan) which advocates in effect an open panel judicare program for legal aid. That approach may suit the rural areas of our country where the number of persons seeking and eligible for legal aid assistance are relatively few in number. That approach would not be feasible in metropolitan areas and particularly in a city such as Chicago.

We hope this letter and a list of specific objections to Senate Bill 2686 will be helpful in your consideration of this type of legislation.

Sincerely,

JAMES W. KISSEL, *President.*

OBJECTIONS TO SENATE BILL 2686

The following provisions to Senate Bill 2686 do not deserve the support of either the Chicago Bar Association or the Congressional Legislators of Illinois:

1. That portion of Section 1006(b)(5) which unnecessarily prohibits attorneys from committing crimes, but also prohibits them from asserting fundamental rights on behalf of themselves and their clients.

2. All of Section 1007(b)(3) which prohibits the corporation from granting funds to private firms which expend 50% of their resources litigating public or poverty issues.

3. That portion of Section 1007(b)(6) which attempts to place guideline restrictions on group representations.

4. That portion of Section 1007(b)(4) which requires the consent of parents before assistance to juveniles could be offered.

5. That portion of Section 1007(a)(7) which prohibits the client and the corporation's attorneys making an independent judgment of whether or not an appeal is necessary in a given case.

6. That portion of Section 1007(b)(1) which may prohibit use of private funds for the purposes stated in this section.

7. That portion of Section 1007(b)(2) which prohibits funds for the activities enumerated in Section 1007(a)(6).

8. That portion of Section 1007(b)(6) which attempts to place restrictions on group representation.

In addition to the above specific objections, there is a provision which limits an attorney in his representation of a client in "lobbying activities" to doing so "as an attorney." It is difficult to evaluate what sort of limitation this presents to the Legal Aid lawyer in lobbying activities. However, to the extent that it restricts him from doing these things which any private attorney might also do in this area, then it is our belief that such restrictions ought to be opposed.

Respectfully submitted.

PATRICK J. REILLY,
Chairman, Subcommittee on Legal Aid, Committee of Chicago Bar Association.

THE CHICAGO BAR ASSOCIATION,
Chicago, Ill., September 6, 1973.

Hon. GAYLORD NELSON,
Chairman, Employment, Manpower and Poverty Subcommittee of the U.S. Senate Committee on Labor and Public Welfare, Senate Office Building, Washington, D.C.

DEAR SENATOR NELSON: The Board of Managers of The Chicago Bar Association has considered at length a report by its Legal Aid Committee discussing Senate Bill 1815, which proposed the establishment of a National Legal Services Corporation. Today, our Board passed a Resolution concerning this legislation and I enclose a copy of that Resolution herewith. You will note that attached to the Resolution various specific items in House Bill 7824 and Senate Bill 1815 are discussed.

We trust that this material will be of material assistance to your Subcommittee in its consideration of this significant legislation.

Yours very truly,

JAMES W. KISSEL, *President.*

RESOLUTION OF THE CHICAGO BAR ASSOCIATION WITH REFERENCE TO ESTABLISHMENT OF A NATIONAL LEGAL SERVICES CORPORATION

The U.S. House of Representatives has passed H.R. 7824 which calls for the establishment of a national Legal Services Corporation. In the Senate there is pending S. 2686, a different version of a bill with similar purposes—that of providing legal services to the poor.

The Chicago Bar Association strongly supports the principles that poor persons are entitled to effective legal representation—legal representation that is not dependent upon the popularity, political or otherwise, of the person or cause being represented; and that legal rights should not rest on the favor of the government, but upon the Constitution and laws of the land.

The Chicago Bar Association strongly supports the establishment of a national legal services corporation. But the pending House and Senate Bills call for too great a variance from the ideal of effective, independent and non-partisan representation of the poor.

The prohibitions on the types of cases which may be handled such as, desegregation, abortion and selective service cases, are particularly odious. There should not be discrimination or selectivity among the legal rights which the poor may enforce.

Nor should a case brought on behalf of a poor person be subject to greater penalties in the event of defeat than those inflicted on wealthy claimants. The provision for payment of costs and attorney's fees by the proposed legal services corporation in all losing cases should be deleted, and the general law governing such matters should apply to all.

The proposed restrictions on the activities of attorneys employed by the legal services corporation, such as legislative advocacy, engaging in political activity, and a host of other acts which are among the rights of every citizen, will serve only to lower the quality of the legal services offered to the poor. Restrictions similar to the Hatch Act might be permissible, but not the complete abnegation of the rights of citizenship called for in the pending bills.

The bills fail to provide for maintenance of legal research facilities—the all-important "back-up" work which plays so great a part in determining the quality of legal representation. Provision should be made for such facilities, to the extent of at least 10% of the corporation's annual authorized expenditure.

The attempt contained in the House Bill to prohibit privately funded charitable legal services for any use prohibited by the proposed statute is an arbitrary, unwarranted and probably unconstitutional infringement on the rights of the poor and those who seek to help them.

Finally, the proposed national legal services corporation should be funded for periods long enough to guaranty continuity and stability—periods of at least three years are minimal.

We strongly urge the Senate to amend S. 1815 to correct the foregoing deficiencies, and we urge the Congress to pass a bill which will give in reality what these bills now promise only partially—effective legal representation to the poor.

There are annexed specific, paragraph-by-paragraph recommendations for amendments to H.R. 7828 and S. 1815.

JAMES W. KISSEL, *President.*

H.R. 7824. THE FOLLOWING PROVISIONS SHOULD BE DELETED

1. That portion of Section 3(d) of House Report 7824 which terminates the corporation in three years time.

2. That portion of Section 6(a)(1) which provides that state and local governments are eligible clients.

3. That portion of Section 6(b)(5) which unnecessarily prohibits attorneys from committing crimes, but also prohibits them from asserting fundamental rights on behalf of themselves and their clients.

4. That portion of Section 6(d)(3) which prohibits non-federal funds for the uses stated in that section.

5. All of Section 6(e) which prohibits representation regarding ballot measures, initiatives, referendums, or similar measures.

6. All of Section 6(a) which imposes costs and attorney's fees on the corporation in all losing cases.

7. That portion of Section 7(a)(4) which prohibits any outside practice of law. This section could be supported if amended to prohibit only outside practice of law for compensation.

8. That portion of Section 7(a)(5) which prohibits representation before federal and state legislative bodies.

9. That portion of Section 7(a)(6) which prohibits certain political activities of the corporation's attorneys.

10. That portion of Section 7(b)(1) which occurs after the disjunctive "or" and prohibits the use of the extraordinary civil remedies.

11. All of Section 7(b)(3) which prohibits the corporation from granting funds to private firms which expend 50% of their resources litigating public or poverty issues.

12. All of Section 7(c) which requires that ⅔ of the recipient boards be attorneys. This section could be supported if only a majority of the recipient boards were required to be lawyers.

13. That portion of Section 7(b)(6) which attempts to place guideline restrictions on group representations.

14. That portion of Section 7(b)(6) which requires the consent of parents before assistance to juveniles could be offered.

15. All of Section 7(b)(7) which prohibits representation in school desegregation suits.

16. All of Section 7(b)(8) which prohibits representation in abortion cases.

17. All of Section 7(b)(9) which prohibits representation in Selective Service cases.

18. All of Section 7(b)(10) which prohibits representation in desegregation cases in institutions of higher learning.

19. That portion of Section 7(e) which provides that state and local governments are eligible to receive grants and contracts.

20. That portion of Section 10(b) which prohibits the use of non-federal funds from uses prohibited by the statute. This section could be supported if the reference to non-federal funds was deleted.

21. All of Section 13 because reference to specific cases ought not to be included in a statute of general application.

S. 1815—THE FOLLOWING PROVISIONS SHOULD BE DELETED

1. That portion of Section 1006(a) appearing on page 5, line 24, which makes state and local governments eligible as clients.

2. That portion of Section 1006(b)(5) appearing on page 7, lines 11–14 which unnecessarily prohibit attorneys from committing crimes, but also prohibits them from asserting fundamental rights on behalf of themselves and their clients.

3. That portion of Section 1006(d)(2) appearing on page 8, lines 20–23 which prohibits certain representations before federal, state and local legislative bodies.

4. That portion of Section 1006(e)(4) appearing on page 8, lines 20–23 which prohibits

the use of non-federal funds for the purposes stated in this section.

5. That portion of Section 1006(e)(4) appearing on page 8, lines 24–25, and on page 9, lines 1–3, which prohibits representation regarding ballot measures, initiatives, referendums, or similar measures.

6. That portion of Section 1007(a)(5) appearing on page 10, lines 4–7 which prohibits *ANY* outside practice of law. This section could be supported if amended to prohibit only outside practice of law for compensation.

7. That portion of Section 1007(a)(6) appearing on page 10, lines 8–13 which prohibits funds made available for representation before federal, state and local legislative bodies.

8. That portion of Section 1007(a)(7)(A) appearing on page 10, line 19 which prohibits ANY political activities of the corporation's attorneys (see page 2, paragraph 1 of this Resolution).

9. That portion of Section 1007(a)(7)(B)(C) appearing on page 10, lines 20–24 and on page 11, lines 1–6 which prohibits certain political activities of the corporation's attorneys.

10. That portion of Section 1007(a)(8) appearing on page 11, lines 7–11 which prohibits the client and the corporation's attorneys making an independent judgment of whether or not an appeal is necessary in a given case.

11. That portion of Section 1007(b)(1) appearing on page 11, lines 14–16 which may prohibit use of private funds for the purposes stated in this section.

12. That portion of Section 1007(b)(2) appearing on page 11, lines 17–18 which prohibits funds for the activities enumerated in Section 1007(a)(7)(A)(B)(C).

13. That portion of Section 1007(b)(6) which attempts to place restrictions on group representation.

14. That portion of Section 1007(b)(3) appearing on page 11, lines 19–23 which prohibits ANY funds being used for grants or contracts with ANY public interest law firm which expends ANY resources and time litigating issues either in the broad interests of a majority of the public or in the collective interests of the poor or both.

15. That portion of Section 1007(b)(4) appearing on page 11, line 24 and page 12, lines 1–9 which prohibits assisting juveniles without parental consent.

The following provisions of Senate Bill 1815 has the vigorous support of the Chicago Bar Association:

1. That portion of Section 1006(a)(2) appearing on page 6, lines 4–10 which provides for the necessary "back-up" facilities needed for the Legal Air program.

2. That portion of Section 100(b)(6) appearing on page 12, lines 23–24 which provides that a majority of the recipient organization's board be lawyers licensed to practice in the state where the legal services are to be provided.

3. That portion of Section 1007(g) appearing on page 13, lines 20–22 which provides that 10% of the money appropriated must be allocated to the "back-up" activities.

Mr. WILLIAMS. Mr. President, 9 years ago, when Congress passed the Economic Opportunity Act, one of its stated purposes was:

> To further the cause of justice among persons living in poverty by mobilizing the assistance of lawyers and legal institutions and by providing legal advice, legal representation, legal counseling, educaton in legal matters, and other legal services.

That need is just as great today as it was in 1964. The Legal Services Corporation will provide a new vehicle from which the highest caliber of legal representation can be dispensed, while assuring the continuity of client services.

As an amendment to the Economic Opportunity Act, S. 2686 will guarantee an uninterrupted flow of these vital legal services. In addition to the existing areas now being served, it is hoped that new ones will be established in order to satisfy those whose legal needs are now unmet.

The intent of this bill is simple—to allow legal services attorneys to be attorneys in the fullest sense of the term.

Participating attorneys must be endowed with the same professional tools as their private sector counterparts.

To do otherwise would not only violate the canons of ethics of the legal profession, but would do grievous harm to the concept of equal justice for all under law.

I am sad to say that there are still those who think it fashionable to debunk all Government-sponsored programs which try to improve the life of this country's poor and disadvantaged citizens.

In the past, these antagonists have been content merely to hurl verbal epithets. Today, they talk about the high costs and low benefits of such programs.

Though I think the accountant's ledger is not the best way to evaluate legislation which seeks goals which include fulfilling social and human needs, I sincerely believe that the legal services program can pass the muster of any management test.

Using my own State of New Jersey as an example, its 120 legal services attorneys in 1972 handled 48,957 cases.

And actually this figure is well over 50,000 when telephone inquiries and informal contacts are taken into consideration.

Based on the Federal Government's contribution, the average cost per case was only $55.

My colleagues, many of whom are fellow lawyers, will quickly attest to the fact that it would be rather difficult to match this figure in the private sector.

A breakdown of the 1972 New Jersey caseload shows that three out of every four cases dealt with matters which were basic to the very existence of the clients being served—such things as housing, family, domestic, consumer, and employment-related problem areas.

I might add that I understand this statistic is representative of the national picture as well.

Without the legal services attorney, there is virtually no one to come forward and handle these cases.

As I have said, one cannot judge a social program solely in terms of dollars and cents.

While these figures I have presented are truly remarkable, they are hardly full measures of success.

Who among us can place a value on dignity and self-respect?

These are intangibles whose intrinsic worth can be calculated only by persons receiving them.

And so it is, most poignantly, with legal services.

Therefore, I am proud to associate myself with these hardworking and dedicated professionals, who with their programs have brought so many of our less fortunate citizens into the mainstream of our society by providing them with something too many of us have taken for granted—our constitutional rights as citizens of the United States.

As chairman of the Labor and Public Welfare Committee, I can vouch for the fact that every possible attempt has been made to reconcile the administration's philosophy on legal services with that of the committee members.

Indicative of the bill's bipartisan support was the fact that it was reported favorably out of committee, 16 to 0.

As drafted by the committee, S. 2686 has been endorsed by major bar associations throughout the country. State and local government officials have likewise communicated their support for legal services to me.

The concept of an independent Legal Services Corporation has been debated at length since the 91st Congress. The arguments pro and con have been stated and restated. The time has now come to stand up and be counted.

Mr. President, I shall vote in favor of S. 2686, and sincerely hope that the establishment of an independent Legal Services Corporation will soon become a reality.

The PRESIDING OFFICER. The bill is open to further amendment.

Mr. HELMS. Mr. President, I yield myself such time as I may require and call up amendment No. 816.

The PRESIDING OFFICER. The Senate will be in order. Senators will please take their seats. The clerk will not report the amendment until there is order in the Senate. Will Senators please take their seats or go elsewhere to do their talking?

The clerk will report the amendment.

The legislative clerk read as follows:

> On page 10, strike lines 3 through 8.

Mr. HELMS. Mr. President, this amendment would simply strike lines 3 through 8 on page 10 of the bill, that is section 1006(a)(3). This section, under the "Powers, Duties, and Limitations" part of the bill, states as a power of the Legal Services Corporation:

> To provide . . . for research, recruitment, training, and information clearinghouse activities . . .

The purpose of this amendment is to see to it that funds available for legal aid to the poor are assigned to pay for legal representation and assistance, rather than for developing exotic social reform projects that are then passed down the line to the legal services projects. Attorneys in private practice representing poor clients, middle-class clients and affluent clients are able to survive without special Federal funding for research, recruitment, training, and information clearinghouse activities relating to their work. There are law libraries in each community and lawyers for the poor have the same access to them as do other lawyers. There is no reason why we should establish and subsidize a separate system of justice for the poor; and

there is no reason why we should subsidize a national network of legal services backup centers which are unrelated to the representation of particular clients.

It is noteworthy that the House of Representatives, on two separate occasions, voted to cut out this kind of research activity by the Legal Services Corporation. Led by the able leadership of Congresswoman EDITH GREEN, the House voted 2 to 1 on both occasions to strike this kind of backup activity. Mrs. GREEN, as is well known, was originally a strong supporter of the legal services program. She has a reputation for close scrutiny of education and social welfare programs. Yet she came to the conclusions—and the overwhelming majority of her colleagues agreed with her—that the backup centers served no useful purpose, and in fact were harmful.

What is wrong with the backup centers?

First, they are devoted exclusively to nonclient representation. Their specialty is amicus curiae briefs, test cases, class action suits, and appeals. If we want to provide legal services to the poor, let us provide them to the poor. Let us not provide salaries for middle-class lawyers who want training in social action.

Second, they engage in policy advocacy. Policy advocacy should, in our system of government, belong to the legislative branch. It should not belong to the judicial branch. The backup centers by sponsoring travel, seminars, training groups, publications, conferences, and so forth, are able to disseminate policy concepts and legal strategies throughout the legal services movement.

Third, they provide house counsel services to advocacy groups, such as the National Welfare Rights Group, the National Tenants Association, the NAACP, the American Indian Movement, and so on. Whatever one may think of these groups, I presume that everyone agrees that they should operate in the private sector. If their activities are beneficial, they should be supported by private funding. Public funding should not go, even indirectly, to advocacy groups that pit one section of the population against another.

Fourth, they engage in lobbying, drafting model legislation, and providing staff assistance to legislators. Once again, we are talking about advocacy. Lobbying should be prohibited in any form, and the mechanism for lobbying should be eliminated as the best protection against this kind of activity.

I know that it will be said that lobbying is prohibited in this bill. The bill indeed does say that "no funds—at any time, directly or indirectly * * *" may be used for lobbying, except where "necessary to the provision of legal advice and representation," or where "representations" are requested. This renders the prohibition meaningless. It allows more than testimony—representation can be virtually any form of lobbying, whenever requested—and not even a formal request is required—by a legislator or "in the course" of the representation of a client. But the client can be an advocacy group such as the National Welfare Rights Organization.

The only way to eliminate this problem is to eliminate the source. The backup centers must be eliminated.

It must be remembered that the backup centers are into every controversial political field. They have been in the frontline of abolishing abortion laws, of suits requiring forced busing, of so-called welfare reform, of unionizing Government employees, of diminishing parental control, of undermining the authority of educators, of revising the property tax structure. I realize that many people are on both sides of these questions, but that is the point. Advocacy should not be supported by tax funds. It does an injustice to the other side, who must pay their taxes to be attacked.

Mr. President, one of the major projects of the backup centers is the publication of the Clearinghouse Review, which serves as a channel for legal strategies and briefing material.

It recently published a list of Legal Services support projects, which is another name for backup centers. To this list, I have added the annualized funding for 1973.

Mr. President, I ask unanimous consent that this list, with my notes, be printed in the RECORD.

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

DIRECTORY OF LEGAL SERVICES SUPPORT PROJECTS

INTRODUCTION

Neighborhood Legal Services lawyers have been provided with specialist assistance from "back-up" centers from the earliest days of the OEO Legal Services program. This support activity now consists of national centers either (1) specializing in subject matter areas of the law or the problems of identifiable subgroups of the poor, or (2) providing technical services to Legal Services lawyers. There are several statewide or regional centers as well.

The support centers work with Legal Services lawyers in many ways: providing written materials of general applicability or answers to specific questions, assisting in litigation or legislative work, and negotiating with administrative agencies, for example. Many centers have established mailing lists for distribution of materials to specialists in each program; others have published material which is provided (when OEO makes funds available) to all local offices. In all of this work the goal is the most effective representation of the clients of Legal Services lawyers.

The back-up centers, like all Legal Services programs, do not have unlimited resources. The larger centers average eight attorneys, and some have as few as two. Centers working in areas that might overlap are in regular communication to avoid any duplication of efforts.

At the time this summary goes to press, one support program, the National Paralegal Institute, is reported to have exhausted its funds and may be terminated. Another, the Legal Services Training Program, has been told that its contract will not be renewed. Three centers (Harvard Center for Law and Education, Migrant Legal Action Project, and National Employment Law Project) have been placed on month-to-month standby funding, at least through such time that the agency can take final action with respect to back-up centers generally. Needless to say, the uncertainty bred by such occurrences may hamper the effectiveness with which some programs can serve Legal Services lawyers at this time.

The following summary of national back-up center activities has been compiled by the Organization of Legal Services Back-Up Centers (OLSBUC), largely through the efforts of Alan Houseman of Michigan Legal Services. As chairman of OLSBUC I welcome any comments or suggestions you might have.

HENRY A. FREEDMAN,
Chairman, OLSBUC, Director, Center on Social Welfare Policy and Law.

NEW YORK, N.Y.

CENTER ON SOCIAL WELFARE POLICY & LAW

(1973 Annualized Funding, $375,700)

The Center on Social Welfare Policy & Law is the oldest of the back-up centers, having been founded in 1965. Its work is now concentrated in the area of cash assistance programs related to need, with some resources devoted to food assistance, Medicaid, and social security matters.

The Center cooperates with local Legal Services programs in preparing and conducting litigation likely to benefit large numbers of recipients and resolve outstanding issues of federal law. Regular meetings are held with officials of HEW and other federal agencies to seek changes in regulations desired by Legal Services lawyers and their clients, including welfare rights organizations, and to press for enforcement of the law in areas where it is reported that problems of noncompliance exist. The Center follows legislative developments in Congress and provides assistance and information on such matters to Legal Services lawyers.

Extensive materials on welfare law have been provided to each Legal Services office, a periodical newsletter is mailed to all Legal Services lawyers, and additional memoranda and materials are distributed to over 300 Legal Services welfare specialists. Individual questions from Legal Services lawyers are answered as fully as resources permit.

Priorities for the center's work are established by its governing board of directors. The board, organized in 1971 when the center ended its formal affiliation with Columbia University, consists largely of Legal Services lawyers and representatives of organizations of the poor.

CENTER FOR LAW & EDUCATION

(1973 annualized funding, $409,100)

The Center for Law & Education is in its fourth year of operation and is jointly sponsored by the Harvard Graduate School of Education and the Harvard Law School. It assists Legal Services programs and other groups active in education in designing and implementing educational reform on behalf of poor children.

The Center's work continues to fall largely into four categories: litigation, research and publication, administrative monitoring of federal programs and legislative counselling.

The primary subject areas are pupil classification and grouping practices, including in some instances exclusionary devices, which disproportionately affect poor children; elimination and prevention of racial and other invidious discrimination; issues associated with federal educational programs, such as Titles I and VII of ESEA, Title VI of the Civil Rights Act, day care and affirmative action; allocation of educational dollars and other resources within and among districts; the constitutional and statutory rights of students; alternative schools and Indian education issues.

The overwhelming majority of Center cases are in response to and in conjunction with local Legal Services offices. The remainder of our cases and activities are in cooperation with such groups as the Mexican-American Legal Defense Fund, the Puerto Rican

Legal Defense Fund, The NAACP, and the NLADA, all groups actively involved in education problems of the poor.

THE LEGAL ACTION SUPPORT PROJECT

(1973 Annualized Funding, $174,400)

The Legal Action Support Project has been in existence for 4½ years. It provides Legal Services attorneys with social science research services to support efforts to change the law as it adversely affects the poor or to maintain and expand the law where it works to the poor's advantage. It helps with efforts which include litigation and with cases that involve representation before legislative and administrative agencies.

The Project's work, therefore, includes a wide variety of undertaking the preparation of memoranda and statistical calculations based on data collected by themselves or by others, the provision of expert testimony; and the critical analysis of data and social science presentations offered by opposing counsel.

They also undertake special studies of problems of general interest within the Legal Services community. Some of these studies are self-generated. Others are performed at the suggestion of our advisory panel, the National Office of Legal Services, or by attorneys with local programs or with other back-up centers.

The Project is located with the Bureau of Social Science Research, Inc., a private, nonprofit research corporation. This provides access to their staff, including statisticians, criminologists, education specialists, and computer programmers, as well as their library, computation, and reproduction services.

LEGAL SERVICES TRAINING PROGRAM

The Legal Services Training Program provides continuing legal education to lawyers in OEO-funded Legal Services projects and offers training sessions, both national and regional, in lawyering skills as well as the substantive areas pertinent to poverty problems. By combining participatory learn-by-doing methods and video and cassette tapes with more traditional workships and information lectures, the Program also offers diversified approaches to learning.

In addition to sessions in specific subject areas, all planned with the advice of substantive curriculum advisory committees composed of Legal Services lawyers, and experts in the area, the Program offers special training to new lawyers and project directors. The Program employs fellows—Legal Services attorneys on leave for up to three months—to develop teaching materials for conferences. The Program was established by a cost reimbursement-type contract between OEO and the Catholic University of America School of Law which terminates on August 27, 1973.

MIGRANT LEGAL ACTION PROGRAM, INC.

(1973 Annualized Funding, $170,400)

The Migrant Legal Action Program (MLAP) was established in August of 1970 as a successor to the legal staff of the Migrant Research Project. It is presently staffed by seven attorneys and three part-time law clerks, all of whom have prior experience in serving the needs of migrant and seasonal farmworkers.

They prepare, collect, and periodically distribute litigation papers relating to administrative and court litigation in all areas of migrants' concern, and analyses on pending and recently adopted legislation and other legal administrative developments. They assist programs serving the needs of migrant and rural populations in obtaining information from or presenting materials to administrative agencies and congressional committees, and furnish technical assistance to those agencies and committees on matters affecting migrant needs and concerns. Litigation presently emphasizes reform of the rural manpower service through a federal suit and through being of counsel in several state suits; reforms in the land grant college system; promulgation of standards by the Occupational Safety and Health Administration; suits filed under the Federal Fair Labor Standards Act emphasize joint liability among two or more parties or employers; several cases under the standardized agreement for recruitment and employment of Puerto Rican migrants; several housing cases; and two peonage cases and several cases involving access to labor camps.

They also provide telephone advice or technical assistance to any program or individual in need of legal advice or the assistance of a Washington representative, and in selected areas, upon appropriate referral, engage in litigation as co-counsel or in an "of counsel" capacity. They are particularly interested in assisting new programs with training and other support activities which may increase their capability to provide legal services to farmworkers.

NATIONAL CLEARINGHOUSE FOR LEGAL SERVICES

(1973 Annualized Funding, $276,600)

The National Clearinghouse for Legal Services serves as the national communications network and information exchange for OEO-Legal Services through publication of the Clearinghouse Review and the library and document reprint services of the project.

The library is a central repository of pleadings, legal memoranda, briefs, unreported decisions, and other litigation and legislation work products received from OEO-Legal Services Projects and other poverty law practitioners. It also contains practice and training manuals of general application produced by Legal Services lawyers for use within their projects. A significant number of community education materials are also collected. The library, through a reciprocal arrangement with the *CCH Poverty Law Reporter*, contains the original text of all material published in the *Poverty Law Reporter*, with the exception of law review articles and legislation.

Copies of documents in the library and reported in the *Clearinghouse Review* are distributed on request to OEO-funded Legal Services projects free of charge, not to exceed one copy of each document per project. Others are charged duplicating and postage costs.

The *Clearinghouse Review* is a monthly publication designed to make the work product of Legal Services lawyers accessible to their colleagues everywhere. Each issue contains features which attempt to present comprehensive statements of new developments in all areas of Legal Services practice. In addition to articles and columns submitted regularly by the back-up centers, each issue contains an open forum; legislative report; a synopsis of litigation, administrative proceedings and decisions; a positions available service; and a poverty law bibliography.

NATIONAL CONSUMER LAW CENTER, INC.

(1973 annualized funding, $369,100)

The Center aids Legal Services attorneys requesting assistance in a variety of ways depending upon the nature of the case and the needs of the attorney. Responses include consultation, extensive legal research, and aid in writing pleadings and briefs. The Center serves as a source of information on current litigation developments as well as a resource for coordination of nationwide efforts to solve consumer problems through the courts.

The Center seeks to identify the major problems of low-income consumers and to develop litigation having a high potential for significant law reform. The Center works directly with Legal Services attorneys on selected cases which meet the above criteria. The aid may take the form of appearances as co-counsel or of counsel, or the submission of amicus briefs. The Center is involved in attacks on the constitutionality of confessed judgments, prejudgment replevin, self-help repossession and the termination of service by public utilities.

The Center also provides assistance in the development, drafting and promotion of model legislative proposals for consumer law reform at both the federal and state levels. The National Consumer Act and the 1973 Model Consumer Credit Act, drafted by the Center, are the major vehicles for promotion of desired reform and resistance to anti-consumer proposals. Individual model consumer statutes are being developed for states not prepared for a major revision of their consumer laws. Existing state and federal consumer protection agencies are being studied for possible development of model enabling legislation.

The Center has published the National Consumer Act, the 1973 Model Consumer Credit Act, three volumes of the *Consumer Law Handbook*, including a *Truth-in-Lending Manual* and a practice manual for the Federal Fair Credit Reporting Act.

NATIONAL EMPLOYMENT LAW PROJECT

(1973 Annualized Funding, $224,000)

The Project provides legal assistance in the area of the employment problems of the poor. Most of the Project's activity is devoted to litigation dealing with employment discrimination, unemployment insurance, labor relations, manpower programs, minimum wage provisions, compulsory work programs for welfare recipients, and employment rights generally.

The Project provides litigation assistance to Legal Services attorneys specializing in federal court litigation of employment discrimination, unemployment insurance, wages and hours and labor relations matters. The Project assists in administrative advocacy of unemployment insurance claims and labor relations matters before the NLRB. The Project provides legislative drafting and analysis assistance in a wide range of employment law issues with emphasis on unemployment insurance and employment discrimination. The Project also distributes a number of publications and model papers, including the *Legal Services Manual for Title VII Litigation*.

Project personnel are available to assist at training conferences and to provide assistance in the development of local employment law programs.

NATIONAL HEALTH LAW PROGRAM

(1973 Annualized Funding, $356,600)

This Program is designed to study health laws and the unequal provision of health care for the poor. Areas of inquiry include the following. (1) Accessibility of quality health care for poor people including Hill-Burton matters, tax exempt status of nonprofit hospitals without a requirement that charitable medical care be provided, state laws wherein prohibitions concerning the corporate practice of medicine prevent community health systems from delivering care in poor areas and to poor people. (2) Health planning and systems of prepaid health care. Principal project of the National Health Law Program in this area is the major undertaking concerning prepaid health care plans under Medi-Cal in California. (3) The National Health Law Program will continue to work on issues of eligibility for and scope of services under Medicaid and Medicare. (4) Mental health, alcoholism, and drug abuse. Principal efforts of the Program include the right to treatment and the quality of treatment and questions of privacy and confidentiality. The Program also is concerned with rights of persons both before and after they come within the state's jurisdiction because of problems of mental health, alcoholism, and drug abuse. (5) Occupational safety and health. The Program has prepared and distributed two manuals on Occupational Health and Safety and is now seeking ways to implement the requirements of the Act.

Other areas of concern, but currently of lesser priority except to the extent they fall within the purview of the five high priority areas include, but are not limited to, Indian health, family planning and abortion, medical ethics and comprehensive health planning. The Program also provides attorney training and technical assistance in coordination with other OEO technical assistance projects, research at the national and state levels, and the education of law students and professionals.

NATIONAL HOUSING & DEVELOPMENT LAW PROJECT

(1973 Annualized Funding, $260,000)

This Project provides back-up services to Legal Services lawyers and local organizations in housing law and community-based economic development.

Most of the Housing Law Section's activities fall within the following four major categories: Landlord-Tenant Law; Federal Planning and Redevelopment Programs; Public Housing; and Housing Production, Rehabilitation, Related Contracting, and Employment. In each of these areas, the Project undertakes research and the development of model legislation, and provides backup assistance for Legal Services attorneys engaged in litigation of administrative actions. The section's major publications include its *Handbook on Housing Law*, the *Law Project Bulletin*, the *California Defense Manual*, and various law review articles dealing with housing problems from the consumer perspective.

The Project's Economic Development Law Section carries on three broad categories of activity: practicing law-type assistance to Legal Services lawyers, legal research and writing in the field of economic development law, and advisory service to OEO and other government agencies on regulatory and legislative matters related to community economic development.

In the first category, the Project assists Legal Services lawyers and community groups in establishing nonprofit community development corporations and in obtaining financing for their activities. The establishment of such corporations usually involves assistance in drafting articles of incorporation, in preparing applications to the Internal Revenue Service for tax exempt status, obtaining the registration of the corporation within the state or states where it will carry on its activities, preparation of requests for federal grants needed to carry on development activities and in the negotiation and documentation of bank borrowings, SBA loan guarantees and security arrangements designed to raise funds. For already established community development corporations, the Project assists in the creation of subsidiary and affiliated nonprofit and for profit enterprises. Finally, in the practicing law area, the Project serves as counsel to the National Congress for Community Economic Development, an association representing the common interests and dealing with some of the common problems of community development corporations.

In the second category, legal research and writing, the Project has in preparation a "Lawyer's Manual on Community-Based Economic Development," a book which will provide commentary, model legal documents and source materials on all of the major legal and financing aspects of community economic development.

In the last category, dealing with public law, the Project maintains regular contact with various government agencies for purposes of suggesting changes in rules, regulations, and procedures insofar as they affect community-based economic development efforts. Because of the scope of the project's work, it is in a unique position to identify national policy questions arising out of economic development activities and to offer legislative and administrative solutions to problems as appropriate.

NATIONAL JUVENILE LAW CENTER

(1973 Annualized Funding, $198,000)

A principal Center activity is providing assistance upon request to Legal Services programs. It is the policy of the Center to respond to all requests received from Legal Services attorneys. Assistance includes consultation, legal research, drafting of pleadings and motions, and aid in writing trial and appellate briefs. NJLC staff will, to the extent possible, assist in the conduct of litigation where requested.

In selected cases, NJLC attorneys work actively in the field with Legal Services attorneys in litigation seeking to implement the right to counsel in juvenile court, improving conditions in juvenile institutions, reforming standards and practices in juvenile court proceedings and strengthening procedure for the transfer of children from juvenile court to be tried as adults in criminal court.

Center attorneys provide assistance to Legal Services programs concerning state and federal legislation affecting the rights of children and parents. The Center collects proposed legislation from the various states, and serves as a clearinghouse in providing information and assistance to Legal Services attorneys relating to these proposals. In addition, a model state juvenile code is in preparation, which incorporates provisions for improving the organization of juvenile courts, for insuring procedural safeguards for children and parents, and containing definite standards governing court action.

The Center has published and distributed to Legal Services programs a juvenile law litigation manual, *Law and Tactics in Juvenile Cases*. Other publications include occasional position papers and bibliographies, which are sent to all Legal Services programs.

NATIONAL PARALEGAL INSTITUTE

(Funding Terminated)

The Project's main activities include: a library which collects and makes available all information and materials on paralegalism; the development of manuals and guidelines about methodology (recruitment, training, and supervision of paralegals), substantive training (a "core curriculum" of skills training), and paralegal use (systems, manuals, etc.); and the demonstration of training programs, and working with academic institutions to offer useful courses and programs.

The Project also encourages paralegalism generally by working with law schools, junior colleges, and bar associations which are involved in paralegal matters, assisting in the organization of paralegals, helping resolve paralegal issues (salary, education opportunity, job mobility, etc.), stimulating funding for the field (searching for funding sources, helping local LSPs find funding, demonstrating paralegal possibilities, etc.), and doing research on the training and use of paralegals.

NATIONAL RESOURCE CENTER ON CORRECTIONAL LAW

(1973 Annualized Funding, $124,000)

The Center, begun in August, 1972, is funded jointly by OEO and the Ford Foundation. The OEO component, serving as a back-up center, provides technical assistance in the field to attorneys involved in prison reform litigation. It does not become directly involved, however, in litigation itself.

Two studies have been completed by the Center on aspects of correctional law. The first determined the degree of compliance by parole boards with the Supreme Court decision of *Morrisey v. Brewer*. The second, which will be available by May 15, is a study of current programs of delivery of legal services to inmates, as well as a model for such programs.

The Center has published a *Prisoners' Rights Litigation Manual*, composed of five monographs on prison law, including mail regulations, due process in disciplinary hearings, medical rights, law libraries, and remedies in prisoner litigation.

NATIONAL SENIOR CITIZENS LAW CENTER

(1973 Annualized Funding, $482,400; $700,000 for WCLP)

NSCLC is a national resource for information and assistance with respect to the legal problems of the low-income elderly.

NSCLC maintains branch offices in Washington, D.C. and Sacramento, California and the NSCLC-CRLA office in San Francisco, California. These offices monitor legislative and administrative activities and draft model legislation, as well as inform Legal Services attorneys of legislative and administrative proposals and actions affecting the interests of the elderly poor.

The Center hopes to persuade Legal Services attorneys throughout the nation and the bar in general of the importance of and the need for redress of the legal problems of low-income elderly; to train Legal Services attorneys to identify and meet these needs; to provide information and technical assistance to Legal Services attorneys who seek to meet the needs; and to seek new ways of delivering Legal Services to the low-income elderly.

The Governing Committee of NSCLC, composed of representatives of the client-community and the Legal Services bar, has selected the following priorities for NSCLC: income adequacy and maintenance, health and nutrition, institutionalization, housing, transportation, guardianship and conservatorship, probate, employment, consumer, and pension reform.

NATIVE AMERICAN RIGHTS FUND

(1973 annualized funding, $65,000)

The Fund is the National Indian Law Back-Up Center and provides the services of at least two attorneys to OEO programs serving Indians. One attorney works full-time on the Back-Up Center. The other 12 staff attorneys, working on requests from Legal Services programs, will provide the equivalent of at least another full-time attorney.

As the Native American Rights Fund is committed to the preservation and protection of tribal governments and Indian self-determination, the Indian Law Back-Up Center will not ordinarily participate as counsel in actions against tribal governments or between Indians except in extraordinary cases authorized by its all-Indian steering committee. Short of litigation, however, the Center will provide pleadings and advice.

Except for this limitation, the Native American Rights Fund seeks to respond with materials, advice, research, and where requested, formal participation as counsel in every case in which Legal Services attorneys who serve Indians desire assistance. The Fund's public designation by the Internal Revenue Service permits the Fund to engage in substantial legislative advocacy with prior approval of the director or steering committee.

The main focus of Native American Rights Fund is on Federal Indian Law—the relationship of federal and state governmnts to Indians. It offers the same type of assistance as other back-up centers, from research to acting of counsel or even the counsel in certain cases. Native American Rights Fund also handles civil rights and educational matters as they relate to Indians but will offer assistance in any area relating to Indians in which they feel they have the expertise.

The project has the following objectives: to protect rights to land, water, and other natural resources; to assist in achieving the fulfillment of trust and treaty obligations to Indians, and to assist in obtaining enforcement of special governmental responsibilities to Indians; to aid in strengthening tribal sovereignty and promoting the pres-

ervation of Indian culture, values, and heritage; to protect civil rights and rights to the benefits of the dominant society; to contribute to the development of a body of Indian law that will strengthen the ability of Indian people to maintain their ways of life within the dominant society; and to contribute to the training of Indian lawyers and the development of an Indian bar.

YOUTH LAW CENTER, WESTERN STATES PROJECT

(1973 Annualized Funding, $70,300)

As a section of the Youth Law Center, the Western States Project relies on YLC staff members, in addition to experienced juvenile law litigators in the field, to provide advice and assistance to Legal Services lawyers on issues in juvenile law, education and school law. The following issues are included in juvenile law matters: delinquency adjudications, neglect and dependency, right to counsel, due process, record sealing, probation revocation, institutional care and treatment, community alternatives to juvenile court jurisdiction and institutions, etc. Student rights and quality of education are issues of concern within the area of school law.

The project has the following objectives: (1) assuring that the due process protections established by *In re Gault* are being provided to all juveniles; (2) assuring that institutions in which juveniles are incarcerated provide meaningful care and treatment; (3) assuring that judicial scrutiny and standards are brought into the area of neglect and dependency proceedings; and (4) diverting as many children as possible from juvenile court and institutional jurisdiction into community alternatives.

The Project's jurisdiction includes the following states: Alaska, Arizona, California, Hawaii, Idaho, Nevada, New Mexico, Oklahoma, Oregon, Texas, Utah, and Washington.

TECHNICAL ASSISTANCE PROJECT, NATIONAL LEGAL AID AND DEFENDER ASSOCIATION

(1973 Annualized Funding, $220,000)

The National Legal Aid & Defender Association's Technical Assistance Project is a grantee of the Office of Economic Opportunity. The purpose of this project is to provide substantive and administrative technical assistance to Legal Services programs funded by OEO.

The major thrust of Technical Assistance activities is to be found in on-site visits to individual programs. These visits are usually made at the request of the program itself or at that of the regional office. These visits take, on the average, two to three days, and are made by one consultant or a consultant team, depending upon the needs of the specific project.

On some occasions, the Technical Assistance Project has aided groups of programs who together have sponsored conferences on topics of universal interest such as consumer action or welfare law. In this way the Project has been able to provide assistance to many programs at one time.

The Technical Assistance Project has also entered into some subcontracts, but this has been done only rarely and in cases where the subcontracts will result in systems or materials which would be useful to Legal Services programs on a nationwide basis. Also under Technical Assistance is the FACT Commission which provides fact finding assistance for Legal Services programs involved in disputes or controversies. For further information on Technical Assistance contact the project director.

Mr. HELMS. I reserve the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from North Carolina.

Mr. HELMS. I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. JAVITS. Mr. President, I yield myself 2 minutes.

This is an amendment about which one very vital thing has not been said as yet, and that is that the corporation itself is given the authority to decide whether or not we will have the so-called backup or support centers. That is a critical point, because this is essentially—we have argued this time and again in this debate—pulling at the upper level of control on the program, and one of the amendments that we defeated was an effort to remove the autonomy of this corporation, which is something we have not previously had. It has had a political base in the past.

We have, as the Senator from North Carolina has properly stated, prohibited lobbying, et cetera, including any political activity, which is fully covered by the act, but what he claims is that that is just done to be vitiated.

Whatever may be the claims of the OEO administration, they cannot simply be extended to the corporation which we are organizing, especially because of these queasy feelings which have been had, whether right or wrong. And the form of organization, or respecting whether they will continue or not, is critical.

Finally, Mr. President, I have had personally very extensive experience with the legal services provided, and with the people who actually do the work. If you really want to give the poor a representation which is respectable in terms of the law, you have to have competence in terms of the briefs and in terms of research, and the work-a-day, day-to-day operation of the legal services office is so excessively trying that it is simply impossible for those people in the project offices to do it.

It is a question of whether you have a large firm, such as many Members have and such as I have had, where you have a backup because clients can pay the bill, or whether you have to do it more efficiently and economically in what is called a support or backup center, where you have this kind of funnel with a large number of projects, and that is the reason for it.

The alleged excesses, and so on, which are really the target of Senator Helms' amendment, I respectfully submit, can be best dealt with without killing off the concept which, in legal practice, is entirely sound. This can be accomplished by leaving to the Corporation, which will now be highly professional and very lawyer-like, the decision as to whether you will include monitoring these operations, and second, as to having them or not having them. If we adopt this amendment, we cut it off all together; it has no place to exist. That, I think, would be a great mistake.

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

Mr. JAVITS. On the Senator's own time, because my time is running short.

Mr. MONDALE. May I have 3 minutes?

Mr. NELSON. The Senator has his own time, does he not?

Mr. MONDALE. Do we have controlled time?

The PRESIDING OFFICER. The Senator has his own time.

Mr. MONDALE. Mr. President, I wish to strongly endorse the statement by the Senator from New York (Mr. JAVITS) about the so-called backup centers. I think there are several arguments for these centers. No. 1, these are basically legal research centers, and it is in these centers that some of the best thinking and development of law affecting the rights of the poor takes place.

Many of them are functioning in conjunction with our better law schools and have been able to draw upon the advice and counsel of some of the best legal minds in the country. One result of these efforts has been to develop some very highly sophisticated and responsible backup centers which provide legal information, research, briefs, and the rest, and which I think have contributed enormously both to a sense of responsibility and to the level of sophistication of law being asserted on behalf of the poor.

Second, it is the efficient way to do this work. Rather than spreading some of the legal questions among several project attorneys across the country, specific legal questions can be selected for in-depth research, which then is available to the whole legal services program. It seems to me that in terms of cost-effectiveness, in terms of legal services, this makes a good deal of sense.

The American Bar Association has repeatedly stressed the importance of backup centers to the quality and effectiveness of the whole program. In House hearings held in early 1973, Robert W. Meserve, then president of the American Bar Association, stressed the economies and efficiencies that flow from backup centers. I ask unanimous consent that that portion of the hearing record be printed at this point in the RECORD.

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

Mr. STEIGER. You do agree, do you not, that there is a need for the concept of backup services?

Mr. MESERVE. Indeed I do. I don't see how with any efficiency the individual lawyers in the field can do all the types of research which these backup centers can do in specific and particular areas. I think it is a great economic advantage that a backup center in Massachusetts can tell a lawyer in Colorado what is going on in a particular field not only in Colorado and Massachusetts but throughout the United States because they have an actual capacity to correlate and integrate resources into these particular problems. I think the concept of a central organization responsive to legal and drafting questions in particular areas is an excellent one. I do think that the backup center program has worked well from all I have heard. I see no reason to abolish the concept but I am not wholly on the inside on that. I think some kind of backup center services ought to be provided to counsel in the field or they will handle a great many less cases than they are now, which I think is bad for the poor people.

Mr. MONDALE. Mr. President, I yield the floor.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from North Carolina (putting the question).

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

The PRESIDING OFFICER. Is there a sufficient second?

The yeas and nays were ordered.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk called the role.

Mr. ROBERT C. BYRD. I announce that the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Alaska (Mr. GRAVEL), the Senator from Indiana (Mr. HARTKE), the Senator from Maine (Mr. MUSKIE), and the Senator from Georgia (Mr. TALMADGE) are necessarily absent.

Mr. GRIFFIN. I announce that the Senator from Virginia (Mr. WILLIAM L. SCOTT) is absent on official business.

I further announce that the Senator from Kentucky (Mr. COOK), the Senator from Wyoming (Mr. HANSEN), and the Senator from Maryland (Mr. MATHIAS) are necessarily absent.

I further announce that, if present and voting, the Senator from Kentucky (Mr. COOK) would vote "nay."

The result was announced—yeas 24, nays 67, as follows:

[No. 24 Leg.]

YEAS—24

Allen	Curtis	McClellan
Bartlett	Eastland	McClure
Bellmon	Ervin	Nunn
Bennett	Fannin	Roth
Brock	Goldwater	Stennis
Buckley	Gurney	Thurmond
Byrd, Harry F., Jr.	Helms	Tower
Cotton	Hruska	
	Long	

NAYS—67

Abourezk	Hart	Nelson
Aiken	Haskell	Packwood
Baker	Hatfield	Pastore
Bayh	Hathaway	Pearson
Beall	Hollings	Pell
Bentsen	Huddleston	Percy
Bible	Hughes	Proxmire
Biden	Humphrey	Randolph
Brooke	Inouye	Ribicoff
Burdick	Jackson	Schweiker
Byrd, Robert C.	Javits	Scott, Hugh
Cannon	Johnston	Sparkman
Case	Kennedy	Stafford
Chiles	Magnuson	Stevens
Church	Mansfield	Stevenson
Clark	McGee	Symington
Cranston	McGovern	Taft
Dole	McIntyre	Tunney
Domenici	Metcalf	Weicker
Dominick	Metzenbaum	Williams
Eagleton	Mondale	Young
Fong	Montoya	
Griffin	Moss	

NOT VOTING—9

Cook	Hartke	Scott, William L.
Fulbright	Mathias	Talmadge
Gravel	Muskie	
Hansen		

So Mr. HELMS' amendment (No. 816) was rejected.

The PRESIDING OFFICER. The bill is open to further amendment.

AMENDMENT NO. 950

Mr. ALLEN. Mr. President, I call up amendment No. 950 and ask that it be stated, and I yield myself 10 minutes.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

On page 18, before line 1, insert the following new subsection:

"(b) No funds made available by the Corporation under this title, either by grant or contract, may be used in any State—

"(1) for any purpose in derogation of any valid State law or any public policy enacted by or established by the State legislature or

"(2) for any activity which may be vetoed by a Governor (A) pursuant to a formally adopted resolution by the governing body of a State bar association requesting such veto or (B) pursuant to the exercise of the police power vested in the Governor of a State to protect the life, property, health, or welfare of the citizens of that State.".

Mr. ALLEN. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with, inasmuch as it is technical in nature, and I ask unanimous consent that the remainder of the amendment be printed in the RECORD.

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

The remainder of the amendment is as follows:

On page 18, line 1, strike out "(b)" and insert in lieu thereof "(c)".

On page 19, line 20, strike out "(c)" and insert in lieu thereof "(d)".

On page 20, line 13, strike out "(d)" and insert in lieu thereof "(e)".

On page 20, line 19, strike out "(e)" and insert in lieu thereof "(f)".

On page 20, line 21, strike out "(f)" and insert in lieu thereof "(g)".

On page 21, line 5, strike out "(g)" and insert in lieu thereof "(h)".

Mr. ALLEN. Mr. President, I might say in the beginning that no number of amendments to S. 2686 can make it sufficiently palatable to me to the point that I would vote for the bill. I have stated on previous occasions that I have no objection to providing legal services for individuals who are unable to pay for them. I do object, and I will continue to object, to the creation of an independent Legal Services Corporation, exempt from congressional oversight in the expenditure of its tax funds and in the promotion of radical and sometimes revolutionary causes and organizations. There are preferable alternatives to meet the problem of providing legal services for the poor and of the several approaches, the administration of legal services programs by an independent corporation is the worst possible approach.

Nevertheless, since there seems to be a strong likelihood that S. 2686 will pass the Senate, before it passes I want to give every Senator an opportunity to vote on what I consider to be critical defects in the independent legal services corporation approach.

Mr. President, it is inconceivable to me that Congress would set up an autonomous Corporation in the nature of a foundation, and permit it the freedom to attack valid public policies established by, and statutes enacted by, State legislatures in the exercise of their discretion and collective wisdom. Why should the taxpayers of this Nation be burdened with the cost of paying attorneys to challenge the legality of public policies established by State legislatures? The idea of the Federal Government authorizing and paying for such actions is incompatible with the maintenance of a republican form of government. This does not mean that attorneys may not challenge the validity of public policies or State statutes implementing such policies. If a problem is of sufficient importance to justify an attack on the validity of the public policies and statutes, there will be adequate clients and private funds to do so without placing the cost on the taxpayers of our Nation.

My proposed amendment provides that the Legal Services Corporation shall make no funds available either by grant or contract for use in any State for activities or purposes in derogation of State laws and public policies.

Mr. President, let me give an example of the types of public policy which under this amendment may not be challenged by Legal Services lawyers whose fees are paid by the taxpayers. The Legal Services program, while administered by the Economic Opportunity Act of 1964, funded certain law schools which I consider to be little more than law degree mills. In all States, the laws prescribing standards for accreditation of law schools are the result of a public policy to upgrade the legal profession by discouraging the establishment of so-called law schools which issue LL.B. degrees in Crackerjack boxes.

The taxpayers should not be burdened with the cost of paying Legal Services attorneys to attack that public policy or any statutes enacted to implement that policy. The same reasoning applies to all professions and to all standards of accreditation applicable to colleges and universities which are authorized to issue degrees indicating proficiency in the separate professions. This is by way of illustration and is not intended adequately to cover the multitude of State public policies and statutes which might be challenged by Legal Services attorneys who may be drooling at the public trough.

Mr. President, this amendment further provides that the governor of a State may veto any program or activity funded by the Corporation either by grant or by contract under two circumstances when a formally adopted resolution by the governing body of a State Bar Association requests such a veto. In addition, the Governor may veto any program or activity if he does so in the exercise of the inherent police power vested in his office to take actions in emergency situations to protect the life, property, health, or welfare of the citizens of that State.

Again, for the purpose of illustration, it is not unusual for a Governor to call out the National Guard or to marshal other State law enforcement personnel under his jurisdiction to meet any number of possible emergency situations. In the event of unlawful rioting, looting, shooting, burning, sniping, and killing innocent citizens, the Governor may invoke the police power of the State in order to protect life and property or to restore law and order. I can think of many instances where Legal Services attorneys might attempt to enjoin a Governor in the exercise of such emergency power. This proposed amendment would prevent such actions by Legal Services lawyers.

It is not that the application of police powers may not be challenged. What I hope to do by this amendment is relieve the taxpayers of the burden of paying

for such challenges, many of which would certainly be frivolous, a further burden on the courts, and a means of harassment of a Governor and those who may be called upon to execute the Governor's orders.

Mr. President, these examples are merely illustrative of the potential for mischief if Legal Services lawyers are permitted to feed their egos in frivolous and harassing actions against a State or its agents and agencies while acting under emergency circumstances, and on orders of the Governor of a State.

If this amendment is passed by the Senate, the Legal Services Corporation would, of course, be required to issue regulations indicating that the use of public funds for purposes of this nature are unauthorized. I think we can trust the bar associations in the separate States to take appropriate action in any case where a Legal Services attorney uses public funds for unauthorized purposes.

Mr. President, I challenge every Senator to go back to his State and face his Governor and State legislators and explain to them why he advocated the use of taxpayers funds to thwart the will of elected representatives of the people.

Mr. President, I hope that the practical utility of this proposed amendment will be recognized by a majority of the Senators when it is voted on.

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

Mr. ALLEN. I yield.

Mr. LONG. Mr. President, I have an amendment that relates somewhat to the same subject. I ask unanimous consent that Messrs. Bill Galvin and Mike Stern, of the staff of the Committee on Finance, be permitted on the floor at this time and during the debate on the amendment I have.

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

Mr. LONG. I thank the Senator for yielding. I think the Senator has a meritorious amendment.

Mr. JAVITS. Mr. President, I yield myself 1 minute. I do so out of respect for the Senator from Alabama (Mr. ALLEN).

The PRESIDING OFFICER. The Senator from New York is recognized.

Mr. JAVITS. Mr. President, I believe we could decide this matter without a rollcall vote on the amendment, but I would like to call to the attention of the Senator and the Senate that the reason we established this Corporation—essentially a lawyer's enterprise—is to have exactly the kind of professional discipline and professional operation which is set out here, and so far the Senator has agreed with us, as the best way to deal with all the vexing individual problems that have arisen.

In my opinion this amendment overstates that situation and gives more than a Governor veto; it even gives the veto to the State bar association; and under the broadest terms it gives the Governors a veto in respect of police powers.

I shall not quibble about that. I only state what I do to the Senator and the Senate because the scheme of the bill is such and it was designed to make this a lawyer-like operation. We believe that the main problems arose with respect to legal services in that respect. We believe we have proposed a scheme for fundamental correction, which is now agreed on in the House. They have a corporation, which the administration agrees upon in concept. Hopefully, the Senate will do so also, and that is the best way to deal with these nettling issues that have arisen on a case-by-case basis. We think this is the best way to reach the problem—through a professional corporation to handle it in a lawyer-like manner.

Mr. ALLEN. Mr. President, I yield myself 3 additional minutes.

I wish to suggest to the distinguished Senator from New York that I believe he misread the amendment when he states that it gave the bar association the right to veto a grant or activity. It states that the Governor may veto it on the recommendation of the bar association, or if it violates the public policy of the State as established by the legislature. In other words, that would be one condition precedent that would authorize the Governor, still in his discretion, to take that action, but to guarantee that the Governor would not act frivolously in the matter it would require before he could act the bar association would have to make that recommendation. That is quite different from the interpretation the Senator from New York places on the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Alabama. [Putting the question.]

The "ayes" appear to have it.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

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

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second. The yeas and nays are ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Alaska (Mr. GRAVEL), the Senator from Indiana (Mr. HARTKE), the Senator from Maine (Mr. MUSKIE), and the Senator from Georgia (Mr. TALMADGE) are necessarily absent.

Mr. GRIFFIN. I announce that the Senator from Virginia (Mr. WILLIAM L. SCOTT) is absent on official business.

I further announce that the Senator from Kentucky (Mr. COOK), the Senator from Wyoming (Mr. HANSEN), and the Senator from Maryland (Mr. MATHIAS) are necessarily absent.

I further announce that, if present and voting, the Senator from Kentucky (Mr. COOK) would vote "nay."

The result was announced—yeas 28, nays 63, as follows:

[No. 25 Leg.]

YEAS—28

Allen	Dominick	McClellan
Bartlett	Eastland	McClure
Bennett	Ervin	Nunn
Brock	Fannin	Randolph
Buckley	Goldwater	Roth
Byrd, Harry F., Jr.	Gurney	Sparkman
	Helms	Stennis
Byrd, Robert C.	Hruska	Thurmond
Cotton	Johnston	Tower
Curtis	Long	

NAYS—63

Abourezk	Griffin	Montoya
Aiken	Hart	Moss
Baker	Haskell	Nelson
Bayh	Hatfield	Packwood
Beall	Hathaway	Pastore
Bellmon	Hollings	Pearson
Bentsen	Huddleston	Pell
Bible	Hughes	Percy
Biden	Humphrey	Proxmire
Brooke	Inouye	Ribicoff
Burdick	Jackson	Schweiker
Cannon	Javits	Scott Hugh
Case	Kennedy	Stafford
Chiles	Magnuson	Stevens
Church	Mansfield	Stevenson
Clark	McGee	Symington
Cranston	McGovern	Taft
Dole	McIntyre	Tunney
Domenici	Metcalf	Weicker
Eagleton	Metzenbaum	Williams
Fong	Mondale	Young

NOT VOTING—9

Cook	Hartke	Scott, William L.
Fulbright	Mathias	Talmadge
Gravel	Muskie	
Hansen		

So Mr. ALLEN's amendment (No. 950) was rejected.

Mr. DOMENICI. To what extent would this bill, if enacted in its present form, lock in the present system for delivery of legal services in any particular State?

Mr. JAVITS. Although the general intent of the bill is to continue the present program in a new framework as proposed by the President, the committee has taken care to permit flexibility on the part of the corporation in meeting the needs of the poor in a particular State.

To that end, section 1006(a) of the committee bill authorizes the corporation to fund programs through individuals, partnerships, firms, corporations, and State and local government, as well as through nonprofit organizations. The latter, as the Senator knows, have been the principal vehicles for the program to date.

Additionally, section 1007(g) requires the corporation to provide for an independent study of alternative and supplemental methods of delivery of legal services to eligible clients, including the "use of appropriate demonstration projects." Under this provision, a particular State might participate in a demonstration project. There is no funding limitation on section 1007(g).

Accordingly, we have sought to permit flexibility on the part of the board to depart from the existing system, either to insure the most adequate means of delivery in a particular State or to test out new concepts such as judicare.

Mr. DOMENICI. In the city of Santa Fe, N. Mex., there now exists a legal services program utilizing the staff attorney approach and providing assistance to the poor called the Santa Fe Legal Aid Society. This program at the present time is not being funded by OEO, but has been

granted a limited amount of money by the Model City program in Santa Fe and also by the city and county of Santa Fe. My question is When the money which has been granted to the Santa Fe Legal Aid Society has been exhausted, which it will be in April of this year, could the program be funded by the Legal Services Corporation under the committee bills?

Mr. JAVITS. Yes; it would be eligible for funding under section 1006(a).

AMENDMENT NO. 914

The PRESIDING OFFICER. The bill is open to further amendment.

Mr. LONG. Mr. President, I call up my amendment No. 914 which is at the desk.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

On page 27, between lines 11 and 12, insert the following new section:

PROHIBITION AGAINST USE OF FEDERAL FUNDS TO UNDERMINE PROGRAMS UNDER FEDERAL LAW OR UNDER STATE LAW ESTABLISHED PURSUANT THERETO

SEC. 1016. (a) (1) Subject to paragraph (2), no Federal funds shall be used (whether directly or indirectly) to pay all or any part of the compensation or expenses of any attorney or other person who, as a part of his federally financed activity whether as an employee in the executive branch or under a grant or contractual arrangement with the executive branch (or other employment), engages in any activity, for or on behalf of any client or other person or class of persons, the purpose of which is (by litigation or by actions related thereto) to nullify, challenge, or circumvent any provision of Federal law establishing Federal programs or Federal-State programs or of State law established pursuant thereto to carry out such programs or any of the purposes or intentions of Congress or of the State in enacting any such law or provision thereof or relating thereto; and it shall be unlawful for any such attorney or other person who engages in any such federally financed activity to accept or receive any Federal funds to defray all or any part of his compensation.

(2) The prohibition contained in paragraph (1) shall not apply to any particular case or lawsuit (or to any attorney or other person involved therein) if the Attorney General issues an order specifically waiving such prohibition with respect to such case or lawsuit; except that no such order shall become effective with respect to any case or lawsuit until sixty days after the Attorney General shall have submitted to the appropriate legislative committee of the Senate and the appropriate legislative committee of the House of Representatives a notice of his intention to waive such prohibition with respect to such case or lawsuit.

(b) Any person who authorizes the disbursement of any Federal funds, and any attorney or other person who receives or accepts any such funds, in violation of subsection (a), shall be held accountable for and required to make good to the United States the amount of funds so disbursed or received or accepted.

Mr. LONG. Mr. President, the amendment I offer on behalf of myself and the junior Senator from Georgia (Mr. NUNN) is a similar provision to that which the Senate voted on when it had H.R. 1 before it. It involves the proposition that no one but an idiot would hire a lawyer to sue himself.

I know that one can contend that a lawyer should represent the best interests of his clients, whatever he thinks they may be. However, if someone is asking us to hire a lawyer, especially if he is asking to strike down the law and to strike down the very bill that we reported out of our committee, a bill which the committee had carefully considered and believed to be constitutional, we should not pay Federal money to file a lawsuit to strike down our own bill without the Attorney General at least being given a chance in the committee to testify as to what he thought about the bill and without someone having some sort of responsibility in that matter.

Here is a report put out by the backup Center on Social Welfare Policy and Law, Inc. in New York City, formerly a component of Columbia University. They proudly describe their activities. For example, among other things, any time any State law or any regulation, even a regulation approved by the Department of Health, Education, and Welfare tends to narrow the eligibility of people to go on the welfare rolls, they challenge that law or regulation, declaring it to be contrary to the Constitution and to the intent of the Congress.

There are a good many things in the law which we expressly put in the law.

I think a State can decide how it wants to handle this matter. However, any time an administrator of a State welfare agency does exactly what we intended him to do or any time that a State administrator exercises the discretion we gave to him, it will be immediately challenged.

The Government is expected to pay for a lawsuit challenging the very law it passed. Among other things, they challenge any demonstration project that would require that able-bodied welfare recipients work. They challenge that project. They did it in New York State and had some success in that area.

We have a bill in conference with the House in which we give a State complete latitude to encourage people to go to work and get more money by working than by being on welfare. We can expect anything along that line to be challenged. We should not be willing to pay to strike down our own work.

All we say in this amendment is that we should bring the Attorney General into this case or lawsuit and if he decides that Federal funds may be used, then such funds could not be used for 60 days. So that the appropriate legislative committee could look at the matter and pass judgment on whether the suit has any merit. If it has merit, it should be filed.

Otherwise, what do we find? The Federal Government is paying somebody to sue the Federal Government. We are suing ourselves and defending ourselves. We ought to be able to decide which side is right and be on that side. That does not mean that the Rockefeller Foundation or any other well-intentioned fund, or even a poorly intentioned fund, cannot file a lawsuit and put up the money to file a lawsuit. They can even do that when it does not have merit. However, we should have some idea of what we need to do before someone files a lawsuit to strike down a law, when that party contends something that is exactly contrary to what we intended when we passed the act. Someone should pass judgment on whether the law is meritorious.

We had a provision of this sort in 1972 in H.R. 1. An amendment was offered to strike the provision from the bill. The amendment had 20 or 25 cosponsors when it was called up. They contend that as a matter of ethics a lawyer should be completely free to do anything he wants to do in his client's interest. I explained our position. The Senate adopted the amendment by a vote of 38 to 35. Our position was sustained, that we should not have to pay both sides in a lawsuit without passing some judgment on the relative merits of what we are doing. If we were to leave out the cosponsors, the vote would have been about 3 to 1 or 4 to 1 of those who heard the argument that it does not make any sense to hire somebody to sue one's self.

I am convinced that poverty lawyers will do a great deal more good for the poor—and I have had many judges tell me so—if they did what they were supposed to do instead of trying to find some way to overthrow a provision of law or a regulation by going out and locating a client wherever he may be in the United States to initiate the suit in which they have the petition and the complaint already drawn in the case. They are trying to establish some principle that would increase by 50 percent or even double the welfare rolls of the Nation.

Before we allow that, somebody ought to pass judgment on whether the lawsuit should be filed to strike down all of the Federal law or put an interpretation on those laws that is completely at odds with what Congress had in mind when it passed the act.

Mr. President, that to me is just common sense. I do not think we will find anyone who is asked to put up his money to file a lawsuit who would fail to ask what the lawsuit is all about.

If one is talking about filing a lawsuit to get some poor man out of jail on a habeas corpus petition, by all means, the lawsuit should be filed. However, we can seldom get the poverty lawyers to file that kind of lawsuit.

They are too busy looking for a case that would involve a great number of people all over the entire Nation, so they can say, "You are looking at the man who increased the welfare rolls by 100,000 poor souls in this country."

You cannot get them to take some little case where someone is being sued for eviction, and fool around with that, half the time, and I have had judges tell me this. They are too anxious to file those cases where they have a brief already drafted at this backup center.

It is all right to do all those things, provided that someone who is not in the business of initiating legislation, who has some responsibility—in this case it would be the Attorney General—would give them consent to do that. But to do otherwise, Mr. President, in my opinion, is pretty ridiculous, and that is the result that I would hope to prevent from happening under this legislation.

I would hope that they would devote themselves diligently to looking after

the needs of poor people, and stop this nationwide search for some sort of case that would dramatically attract attention all over the land by striking down the dedicated efforts of some person, some welfare administrator, for example, who has issued policies which have the approval of the Department of Health, Education, and Welfare and the acquiescense of the committee initiating the legislation to do the best he can. They have said to some State directors that a welfare client's caseworker cannot inspect the premises where the client may be. They actually filed such a case in New York, and the district court so ruled. Then the State appealed the decision, and finally the Supreme Court said the caseworker does have the right to look at the house and inspect the premises to see if the situation is as it is purported to be, but New York had to take it all the way to the Supreme Court to get that decision. And I am still not sure that someone can go to see a welfare client, to see if someone lives in that house, without making an appointment a week in advance. It is claimed that to do otherwise would be harassment—to see if someone lives at the residence where she purported to live—unless you first notified the person a week or two in advance so that she would be sure to be there when you arrive.

All I am saying is that even those types of things are suits that can be filed under this amendment, provided the Attorney General says it is all right.

But for us to pass laws here and pay someone to strike the laws down at the same time makes very poor sense, if we thought the laws we passed were constitutional in the first instance.

Mr. STENNIS. Mr. President, will the Senator yield to me for one question?

Mr. LONG. I yield.

Mr. STENNIS. I am thinking of this thing from the standpoint of the courts. Under established law and practice, does anyone have the right to pass on, we will call it, the petition or the bill that is filed in the lawsuit? Does anyone above, so to speak, other than the man who is working in the field, have the right to stop it until they can look at it and pass on it?

I am thinking about protecting the courts from small, frivolous, or unfounded suits.

Mr. LONG. I do not know how you can prevent such litigation from being initiated. Here we have, for example, welfare administrators all over the country doing what we thought we had authorized them to do, but every time they change their regulations they are hauled into court and challenged; and now there is a group in New York that say they are going to challenge anything that would limit in any way the eligibility of people to go on those welfare rolls. There is nothing to prevent that from being the case, even though they are not seeking the legislation. All they have to do is send the client into court.

Mr. STENNIS. I know they are cluttering up the courts with lots of these cases, and causing other cases with merit to be delayed.

Mr. LONG. I do not know what they estimate the cost of this thing to be, but I estimate that the legislation allowing the poverty lawyers to bring these suits has cost the Government billions upon billions of dollars. If you initiate all sorts of litigation without merit, you will win some of the cases. You cannot expect anyone to always be right—even judges are human and make mistakes—and then we in Congress strive for years to correct the decisions resulting from a lawsuit that should not have been filed in the first instance.

I am just saying we should not be paying someone to file a lawsuit, when we do not think it has any merit to begin with.

Mr. STENNIS. That is the point I am trying to make. The amendment does not cut anyone off from filing; it just requires them to clear it with someone representing the Federal Government before they can have the right to go in and clutter up the docket?

Mr. LONG. Basically what it says is that lawyers at the so-called backup center—I think it would be more appropriately called the "front-up center," because many times they initiate litigation—but the so-called backup or front-up center at New York and the other poverty lawyers should not be filing suits to strike down State or Federal law without the consent of the Attorney General. If he wants to give them consent, more power to them; let them go in and file it, and win if they can. They can file it anyway if someone else other than the Federal Government will pay for it. But for us to be spending all this American taxpayers' money to strike down a law passed through the Senator's committee, for example, or to restrain a State administrator from doing what we thought we authorized him to do, without the consent of someone speaking for the Federal Government, does not make much sense.

Mr. STENNIS. In other words, the Senator wants an umpire of some kind before they can file suit. I think the Senator makes a lot of commonsense.

Mr. LONG. Well, if we pay some administrator to do one thing, and then pay someone else to sue him to make him do just the opposite, and the Supreme Court makes him do just the opposite of what you had in mind, why not think about it and decide which side we think is right? In other words, if we thought the man was right in filing the lawsuit, we ought to change our way of doing business. But I have had the experience, and I think other Senators have, of having the courts rule that a law which I personally sponsored and pressed through onto the statute books declared by the court to be just exactly the opposite of what I intended when I wrote the thing and passed it through.

This amendment would require if what the lawyer is trying to do is to strike down the law or to make the States do just the opposite of what we intended when we passed the law, that to give him a right to do something like that, we would like the Attorney General to have the right to say whether the suit would or would not be filed, and that if he decided to permit the suit he would notify the committee that initiated the law and let them see what the lawyer had in mind.

That does not mean the committee would have to agree with the case, but at least it would give them a chance to comment on it during the 60-day waiting period.

This would not impede all the things we ordinarily think of as a lawyer representing the poor doing. It only has to do with the striking down of a Federal law, and would provide that if we are going to pay to strike down the State laws or our laws, we ourselves provide that someone speaking on behalf of this Government, with a responsibility to this Government, in this case the Attorney General, would have to give consent to it. So I would think it is meritorious.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Louisiana.

Mr. LONG. I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. NELSON. I have discussed this proposal with the Senator from Louisiana.

I think it should be understood that what we are talking about here is a proposal that would deprive the poor of legal counsel—those unable to afford private counsel when it is the purpose of this legislation to assist; for example, when a statute has been passed which the complainant believes deprives him of some right, discriminates against him, or perhaps even deprives him of a constitutional right.

If this amendment is adopted, what we are really saying is that the poor have different legal rights. If a State legislature passes a law discriminating against the General Motors Corp., they can go to court, challenge the validity of a statutory provision, or see if they can upset the statute by challenging the constitutionality of it.

If you are a rich person, and can afford a lawyer, and there is a statute which you feel discriminates against you, or deprives you of some right—perhaps a constitutional right—you can have your lawyer go to court, and challenge that statute. But if you are poor, you are not going to be able to go to court and challenge that State or Federal statute.

I think, in this program of legal assistance to the poor, we should protect their rights to challenge statutory provisions just as we protect the rights that as anyone who is rich has.

Victories won on behalf of groups of eligible clients against bureaucratic regulations which contravene the constitutional and statutory rights of poor persons have angered critics and inflamed passions against legal services. Needless to say, neither a local housing authority nor Federal agencies like the Department of Agriculture are happy when lawsuits succeed in requiring them to change their regulations, even though the result is to remove obstacles to better low-income housing or to improve nutrition programs for poor children. But those whose passions have been so in-

flamed should be reminded that the legal process in this country, by which the people govern themselves, is never uncontroversial in the best of circumstances. It was in recognition of the need for this controversy, indeed, that the former Director of the Office of Economic Opportunity Frank Carlucci reminded us, when this legislation was first proposed, that:

> It is an act of great self-confidence for a government to make resources available for testing the legality of government practices. We have written laws and created government agencies that provide food for people who are hungry, homes for people who are homeless, and jobs for people who are unemployed.
>
> Consequently, a lawyer who is going to represent poor people is inevitably going to be an advocate for them against governmental agencies. It is to shield legal services from the repercussions generated by suits of this kind as well as those generated by action against private interests that the President proposes creation of an independent legal services corporation.

Now, Mr. President, this amendment by Senator LONG seeks to prohibit the expenditure of any Federal funds for any activity seeking to "nullify, challenge or circumvent" first, any Federal law establishing Federal programs or Federal-State programs; second, any State law to carry out such programs.

Only one exception is permitted regarding these far-reaching prohibitions: the U.S. Attorney General may issue a waiver as to a specific case but only after he has given 60 days notice to the relevant committees in the Senate and House.

The amendment would prohibit constitutional challenges to Federal and State laws establishing Federal-State programs. It would also prohibit federally subsidized attorneys from challenging State laws that conflict with Federal laws and regulations.

This amendment would deprive the poor of a fundamental right exercised by everyone else who can afford a lawyer: the right to challenge the validity of laws adversely affecting their interests. Indeed, this amendment would deny poor persons the only recourse they may have against illegal or unconstitutional actions taken against them by State and Federal officials with respect to OASDI, unemployment insurance, public assistance benefits, public housing, FHA financed housing, child welfare services, health services, truth in lending violations, occupational health and safety, vocational rehabilitation, school lunches, supplemental food programs, educational achievement and headstart programs, and a host of other programs.

In the guise of preventing courts from undermining Federal laws or congressional intent in enacting those laws, this amendment provides congressional approval for the undermining of the rights of the indigent under Federal laws by State noncompliance and provides further that unconstitutional provisions of State and Federal laws could not themselves be challenged.

This amendment directly interferes with the delicate, but yet unique, balance of power between our legislative, executive, and judicial branches of Government. It seeks to allow the Attorney General, and the Congress, to determine whether court actions should be initiated in a particular case, based upon an incident-by-incident review process. It seems fundamentally unfair—if not clearly unconstitutional—to make the right to seek redress in court dependent on the permission of one's adversary. If the distinguished Senator from Louisiana wishes to restrict the jurisdiction of our courts, let him request the appropriate committee to review the question, and we will consider that issue directly in separate legislation.

Moreover, if he wishes to achieve proper interpretation by the courts of certain substantive provisions of Federal laws, let Congress seek to amend those provisions with the precise language to carry out its intent. But to achieve those goals by discriminating against the rights of the poor—and by upsetting the balance of powers among our three branches—is both wrong and unnecessary. This amendment also threatens a denial of equal protection and due process to the poor. The constitutional guarantee of equal protection could be violated because only the poor would be so restricted from bringing legal action to enforce their rights or to challenge the constitutionality of this particular act of Congress. Imagine a corporation having to seek the permission of the Attorney General, and waiting 2 months for congressional committees to review that question, before challenging governmental actions it considers damaging to its own existence.

A denial of due process might also be involved when the courts are clearly the only forum for the effective resolution of the matter at hand and an indigent person is denied access to such form—*Boddie* v. *Connecticut*, 401 U.S. 371 (1971).

This amendment also sets a dangerous precedent in its disregard for a vital function of the courts in our legal system. The committees of Congress cannot conceivably be available to consider and determine every question of interpretation arising under Federal laws or challenges to State laws on the basis of Federal laws. It would be virtually impossible for them to give careful consideration and seek legislation to avoid the need for litigation within 60 days. It is essential for the resolution of disputes that the courts determine such matters in accordance with the established procedures for construction of legislative language. This amendment seeks to avoid judicial scrutiny of the constitutionality of legislation, while at the same time allowing governmental entities, including low level officials, to interpret the language of Federal laws without fear of challenge.

This amendment poses substantial problems for the Congress if congressional review is put forth as a serious suggestion. Already overburdened committees would have to take on additional responsibilities within short time periods. Moreover, Congress would be turning over to committees the power to determine what is or is not the intent of Congress as a whole with regard to Federal laws or the enforcement and implementation of Federal laws.

Looking at what effect this amendment would have in actual practice might help to provide a better picture of why it must be defeated. In a recent legal services case, *Carelson* v. *Remillard*, 406 U.S. 598 (June 6, 1972), a mother and her children were denied welfare benefits when the father's military allotments were too low to support them. The father was serving his country in Vietnam. The Legal Aid Society of San Mateo County sued the State of California, claiming the mother was eligible under the Federal law; namely, the Social Security Act. The current Supreme Court unanimously upheld the mother's appeal and awarded her benefits. The permission to bring this case might have been denied, since the Attorney General had filed an amicus brief in opposition. But clearly the merits of the case are obvious.

Even more disturbing are cases seeking to enforce present rights and entitlements accorded by long standing Federal laws or regulations against recalcitrant States. One such example involves the failure of several States to implement a mandatory preventive health program established by the Federal Social Security Act and requiring early and periodic screening, diagnosis and treatment of eligible medicaid recipients under 21. Although this provision was originally passed in 1968, nothing was done by HEW to implement it until indigent clients, entitled to benefits under the program, brought suit against HEW. After the resulting regulations became effective, most States failed to take any action to effectuate a program. In fact, as late as March, 1973, 26 States had failed to establish any semblance of the program. In only three States was there a program on paper which conformed to the Federal law. All other States were ignoring the Federal law. Clients denied these Federal benefits had no recourse but to bring suit seeking implementation of the program on the basis of State violation of Federal laws. Such suits would be effectively prohibited by this amendment.

In another example, several suits were brought to implement the Hill-Burton Act. Hill-Burton, you will recall, requires hospitals built with funds distributed under the act to afford a reasonable amount of services to persons unable to pay. These suits against the State health bureaucracies were necessary for several reasons. First, in the cities where they were brought there was a substantial health crisis for the poor. Indigent people without medical insurance were not provided service and many of the hospitals refused to serve medicaid and medicare patients. In New Orleans, for example, four hospitals receiving Hill-Burton funds refused to serve medicaid clients. Second, HEW had done nothing in 25 years since the Hill-Burton Act was passed to enforce these provisions; in fact, regulations were never even promulgated. As a result of the litigation, regulations were promulgated implementing the requirements. Third, the

HEW regulations were inconsistent with the requirements of the Federal laws.

Not only had HEW never acted but the Attorney General also refused to act when given the opportunity. An assistant U.S. attorney from the southern district of New York investigated several New York City hospitals and sought to initiate litigation. The Attorney General refused and forbade any additional steps from being taken.

Under the proposed amendment, these health cases could not have been brought without approval from the Attorney General. Yet when given a chance he refused to give permission. Without the cases, HEW would not have issued regulations to comply with Federal law, and hospitals would have continued to receive massive Federal funds without meeting their Federal statutory obligations.

These illustrations raise another important issue—the vagueness and breadth of the language in the proposed amendment. The intent of the sponsor is apparently to prevent almost all lawsuits which he sees as "challenging or circumventing" Federal statutes or even congressional intent. However, not only have the courts considered many of these suits meritorious, but almost all of these suits have actually sought to enforce the laws, not nullify them. Poverty attorneys are most often allies with Congress in helping to control the recalcitrant activities of low level State and Federal bureaucrats.

Until recently the States have not had any reason to fear that Federal law would be enforced by relevant Federal agencies. Take, for example, the Department of Health, Education, and Welfare. The Assistance Payments Administration—the division of HEW responsible for public assistance—reported that as of June 30, 1973, 27 out of 54 jurisdictions with federally funded public assistance programs had been out of compliance with Federal law for a considerable period of time. The Social and Rehabilitation Services reported that 47 States were out of compliance. But not one State has been notified that sanctions or enforcement proceedings were even being contemplated. Because HEW brought only seven conformity hearings within the last decade, it has fallen to legal services lawyers to enforce Federal law.

Surely we do not want to tell the poor that the system of justice is for everyone but them; that when the Congress acts, the resulting statutes are immune from judicial scrutiny. This Senate cannot reject the national policy commitment symbolized by the legal services program. That commitment is to a government that offers to the powerless the opportunity and the resources to challenge improper acts by both private and public officials.

The Senate must defeat this amendment.

Mr. JAVITS. Mr. President, I would not wish to duplicate anything the Senator from Wisconsin (Mr. NELSON) has said. I have great respect for the Senator from Louisiana (Mr. LONG), having heard before and am acquainted now with argument which he makes for this provision. But I rise only to point out that it is the genius of our law to remember that we have had a tradeoff on that—that the sovereign does not wish the individual to be solely subject to the power of the sovereign, he wishes the individual to have the tension between himself and the sovereign—to wit, the United States, which, in our concept, produces the greatest justice.

That trade-off is quite nettling at times. Look at what it has done to us in the energy situation. The Senator from Louisiana (Mr. LONG) has made that argument most eloquently as to how irritating and delaying this can be in the future in respect to the particular laws for the good of the people, which Senator LONG's committee turns out and we pass and make into law. But that is the trade-off situation in our system. That is my experience as a lawyer, as one who has tried many cases—that we have to establish an agency to assert this authority for the individual. I have pointed out that we ourselves—in a number of bills—have established the means for the court to carry this out, because the plaintiffs had no status. We have also established the means for giving the plaintiff status in order for him to test out the constitutionality of the various actions we ourselves have taken.

It is because we are animated by this principle I have described, as lawyers, judges, individuals, and as Americans that we have made the tradeoff, which is nettling, difficult, and delaying. Sometimes it is an unbelievable, contrary aspect of the public interest but this is our system. This is what we have opted for. Thus, our bill does not try to make any radical change. It is conservative. It will be in the hands of the lawyers, essentially. But it does continue to give the individual that right, which is the thrust of our system; that it, this tension between the all-powerful State and the individual whom we have equipped with rights and the means to assert them.

Mr. LONG. Mr. President, this does not say that we would not be for any valid suit to strike down some laws. All it says, it has to have the approval of the Attorney General. It would stop the filing of a whole bunch of lawsuits some of which are so ridiculous on their face and for all we know, if they filed enough of these ridiculous lawsuits, perhaps one would prevail.

I can recall when I filed a lawsuit which I thought was one of the best, for $1 million. I had only a 1 percent chance of winning, but if I won, I would win $1 million. So it was a $1 million lawsuit.

All I would think is that if the Attorney General thinks that one of the cases does not strike down the law we pass here, it should be heard by the court and by all means authorize it, and pay the expenses for the backup work that the New York center might put behind it. But the idea of paying for both sides, to pay the Attorney General to defend on the one hand and then pay the other attorney to sue on the other side, gets to be ridiculous. Anyone, if he wants to, can sue the Federal Government—that is anyone but us—can hire a lawyer to sue us, but when the United States has to pay for both sides, particularly if we do not think the lawsuit has merit, is absolutely ridiculous.

That type of lawsuit prevents lawyers from putting their time on getting some poor soul out of jail on a habeas corpus, or preventing some poor person from getting a conviction in a case, because the lawyer is looking for some glamorous case in which he can establish a principle, whereby he can increase the welfare rolls by 20 percent.

Mr. MONDALE. Mr. President, in order to accept this amendment as being consistent with the canons of justice, I think we have to assume two things: First of all, that the Government never does anything that is wrong at the Federal, State, or local level; and second, if it does, the Attorney General will always agree to permit the Government to be sued when it does so.

I think all of us in the Senate spend half of our time complaining when the Government is acting improperly, because that happens all the time. We know that sometimes there is a great restriction on the right to sue, even though all the legal expenses that are used when a corporation sues the Government are deducted from its taxes and are actually paid by public money. But those actions are backed by the wealth of the persons who sue the Government.

But what would happen if we proposed that corporations could sue the Government only if the Attorney General agrees? Every Senator knows what would happen. They would try to defeat such a restriction. The corporation lawyers would be down here, and there would not be five votes for it.

These other people are poor, but their constitutional rights are valid. Even though the law we pass might be construed in various ways by the Director, they can sue only if they have a good suit.

A few years ago, I and some of my colleagues held hearings on migrant hunger. Some of the local officials came in and said, "We don't care what the law is. We have migrants here. We refuse to give them any food stamps, because if we do, they won't work."

The only way the migrants could get the food stamps to which they were entitled was to have Legal Services sue the local welfare officials. They won every lawsuit, because there was not a single bit of law on behalf of the welfare department.

Let us suppose that at that time this amendment had been law, and that at that time the Attorney General was that warm, compassionate lover of the poor, John Mitchell. When these poor migrants came to town, they would say, "John, we would like to sue the Government about this." We know what John would do. He would bring the poor people into his office, and find for the Government.

The second part of the argument is that people believe the court makes laws. But everyone who has gone to law school knows that the law is determined in a court by the statutes. The way to protect

against faulty lawsuits is to have good judges, not to have a system that nails the courtroom door shut if one happens to be so poor that he cannot afford a lawyer.

Mr. LONG. I had a lawyer friend come to me. He said he was going to plead an important case; that I should just wait, and in due course I would be hearing of a prominent case, and something could be learned.

Here was a good lawyer, who was spending time waiting until he could find a client and find a case. Somebody wanted to try to win a particular point. He was seeking someone to start the case.

The poverty lawyers have had people come to them where they were not interested in obtaining the kind of treatment thought best for these people but were interested in making a certain type application for something thought not appropriate to do and actually injured their health by not permitting them to have the kind of help the doctor thought was appropriate, because the lawyers wanted to initiate a certain type case against the doctor's hospital.

These lawyers, in my judgment, actually are out seeking to stimulate the litigation, to think up the point they would like to sue about, and then find somebody to engage in a certain course of conduct which would lay the foundation to bring this case and make another 50,000 people eligible for the welfare rolls or for some other program.

One would think, to hear the debate on the other side, that there is nobody else, no State government, no foundation, nobody available to pay to file lawsuits that we do not think should be filed, to strike down the laws that we thought were constitutional when we passed them, when we thought the States were acting in pursuance of legislation allowing them the latitude to act one way or the other.

Mr. President, I suggest that Senators go home and try to explain to somebody why they hired a lawyer to sue themselves, why they paid the lawyers on both sides, one to sue and one to defend, particularly when some of these people actually are out looking for cases and creating litigation, to have someone engage in a course of conduct which would lay the foundation for a certain kind of lawsuit.

Mr. PERCY. Mr. President, I am opposed to amendment No. 914 to S. 2686 because it goes to the very heart of the lawyer-client relationship by attempting to prevent an attorney from representing his client, not because the client's case would be unworthy, which is a matter for the courts to decide, but because the client is poor. This amendment would say to a lawyer and his client, "you are entitled to legal representation, but only up to a point. From then on, you become a second-class citizen." The poor have a closer relationship to the Government and its program than most of the rest of society. They often depend on Government programs for their homes and their subsistence. Yet this amendment would prevent a poor person from having adequate counsel in these important areas.

I have received an excellent letter from a Chicago attorney, Mr. Milton Shadur. He very cogently expresses the reasons why this amendment should be defeated. I ask unanimous consent that it be printed in the RECORD at this point.

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

JANUARY 28, 1974.

Senator CHARLES H. PERCY,
Dirksen Office Building,
Washington, D.C.

DEAR SENATOR PERCY: As you know, the Legal Assistance Foundation of Chicago is the not-for-profit non-governmental agency administering the Chicago Legal services program, funded by periodic federal grants (heretofore provided by the OEO Legal Services program). In accordance with federal requirements that the Foundation's Board of Directors have a broad community base, the Board is selected from a number of sources within the legal community (including the organized bar and certain law schools) and the client community; and I have been designated by the Dean of the University of Chicago Law School to serve on the Board since the inception of the Foundation.

My involvement and keen interest in the program and in the general subject of legal services to the poor perforce extends to the pending proposals to create a Legal Services Corporation to supplant the OEO in this area. The continued existence and viability of that program are essential if the rule of law is to have any meaning for the large segment of our society that cannot itself pay for the costs of legal services.

Senator Long's proposed Amendment 914 to the Corporation for Legal Services Bill (S.B. 2686) is inconsistent with the fundamental responsibilities of the legal profession. It would deprive both the legal services lawyers and the poor persons they represent of their basic rights. Canon 5 of the lawyers' Code of Professional Responsibility mandates that every lawyer "exercise independent professional judgment on behalf of a client"—in the great tradition of undivided loyalty to the person the lawyer represents:

"EC 5-1 The professional judgment of a lawyer should be exercised, within the bounds of the law, solely for the benefit of his client and free of compromising influences and loyalties. Neither his personal interests, the interests of other clients, nor the desires of third persons should be permitted to dilute his loyalty to his client."

No lawyer in private practice could or would tolerate for a moment a restriction that would prevent him, in representing a client, from seeking (as the Long Amendment provides) "to nullify, challenge, or circumvent any provisions of federal law establishing federal programs or federal-state programs or of state law established pursuant thereto to carry out such programs or any of the programs, or any of the purposes or intention of the Congress or of the state in enacting any such law or provision thereof or relating thereto." Every citizen deals with government every day of his life, and we all know that government is not omniscient or always right. Even Congress has been known to enact unconstitutional legislation.

For the poor person, whose contacts with government are in many respects even more pervasive (often dependent on one or more of the various governmental welfare programs, and perhaps living in public housing), the need to consult a lawyer is even more likely to be related to problems with government. The Long Amendment would subvert the provision of legal representation to the poor by making it ineffective in one of its most critical areas—a classical example of what it means to:

". . . keep the word of promise to our ear
And break it to our hope."

One of the Ethical Considerations stated in the lawyers' Code looks directly at just this kind of inhibition, when sought to be imposed by persons other than the lawyers' clients:

"EC 5-23 A person or organization that pays or furnishes lawyers to represent others possesses a potential power to exert strong pressures against the independent judgment of those lawyers. . . . Since a lawyer must always be free to exercise his professional judgment without regard to the interests or motives of a third person, the lawyer who is employed by one to represent another must constantly guard against erosion of his professional freedom."

It is ironic that lawyers in government, our Congressmen, who should be vigilant to protect our freedoms, may seek instead to curtail them (even for motives they deem worthy). The benchmark against which every proposed restriction in the Legal Services Bill should be measured is whether private lawyers would ever countenance comparable legal inhibitions against rendering legal services to their clients. Under that standard, the Long Amendment must be rejected.

For your information, I enclose a copy of the thoughtful resolution of the Chicago Bar Association, expressing similar views in this area.

Let me close by expressing my hope that you will continue both your support of the Legal Services program's continuation and your opposition of the crippling amendments that would strip the program of a substantial part of its desirable strength.

Respectfully submitted,

MILTON I. SHADUR.

The PRESIDING OFFICER. The question is on agreeing to the amendment. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Alaska (Mr. GRAVEL), the Senator from Indiana (Mr. HARTKE), the Senator from Maine (Mr. MUSKIE), the Senator from Georgia (Mr. TALMADGE), and the Senator from Montana (Mr. METCALF) are necessarily absent.

Mr. GRIFFIN. I announce that the Senator from Virginia (Mr. WILLIAM L. SCOTT) is absent on official business.

I further announce that the Senator fom Kentucky (Mr. COOK), the Senator from Wyoming (Mr. HANSEN), and the Senator from Maryland (Mr. MATHIAS) are necessarily absent.

I further announce that, if present and voting, the Senator from Kentucky (Mr. COOK) would vote "nay."

The result was announced—yeas 38, nays 52, as follows:

[No. 26 Leg.]

YEAS—38

Allen	Cotton	Mansfield
Bartlett	Curtis	McClellan
Beall	Dole	McClure
Bellmon	Dominick	Nunn
Bennett	Eastland	Pastore
Bible	Ervin	Randolph
Brock	Fannin	Roth
Buckley	Goldwater	Sparkman
Byrd, Harry F., Jr.	Gurney	Stennis
Byrd, Robert C.	Helms	Symington
Cannon	Hruska	Thurmond
Chiles	Johnston	Tower
	Long	Young

NAYS—52

Abourezk	Hatfield	Nelson
Aiken	Hathaway	Packwood
Baker	Hollings	Pearson
Bayh	Huddleston	Pell
Bentsen	Hughes	Percy
Biden	Humphrey	Proxmire
Brooke	Inouye	Ribicoff
Burdick	Jackson	Schweiker
Case	Javits	Scott, Hugh
Church	Kennedy	Stafford
Clark	Magnuson	Stevens
Cranston	McGee	Stevenson
Domenici	McGovern	Taft
Eagleton	McIntyre	Tunney
Fong	Metzenbaum	Weicker
Griffin	Mondale	Williams
Hart	Montoya	
Haskell	Moss	

NOT VOTING—10

Cook	Hartke	Scott,
Fulbright	Mathias	William L.
Gravel	Metcalf	Talmadge
Hansen	Muskie	

So Mr. LONG's amendment (No. 914) was rejected.

Mr. HATHAWAY. Mr. President, I move to reconsider the vote by which the amendment was rejected.

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

The motion to lay on the table was agreed to.

Mr. HELMS addressed the Chair.

Mr. NELSON. Mr. President, may we have order so we can hear the Senator from North Carolina.

The PRESIDING OFFICER. The Senator is entitled to be heard. Senators will please carry on their conversations outside the Chamber.

The Senator from North Carolina is recognized.

Mr. MANSFIELD. Mr. President, will the Senator yield to me on my time?

Mr. HELMS. I yield to the Senator on my time.

Mr. MANSFIELD. Mr. President, because of the fact that we are getting so many votes and the hour is getting late, the Senate willing, I ask unanimous consent that there be a 10-minute time limit on votes from now on.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The Senator from North Carolina may proceed.

AMENDMENT NO. 885

Mr. HELMS. Mr. President, I call up my amendment No. 885.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from North Carolina (Mr. HELMS) proposes an amendment for himself and Mr. BROCK in the nature of a substitute.

The amendment is as follows:

Strike out all after the enacting clause and insert the following:

That this Act shall be known as the Federal Legal Aid Corporation Act of 1973.

DECLARATION OF PURPOSE

SECTION 1. Where fundamental rights are to be protected and justice attained, it is essential that the institutions of government be accessible to all. In a nation where justice is dispensed by the courts it is inherent that they be available to all regardless of race, religion, sex, national origin, or personal wealth.

DEFINITIONS

SEC. 2. (a) The word "State" shall include each of the several States of the United States, the Commonwealth of Puerto Rico, and the District of Columbia.

(b) An "eligible client" shall be an individual in need of professional legal services who meets certain criteria as established in section 4, subsection (k)(4) of this Act.

(c) A "State instrumentality" shall be an agency of a State government established solely to carry out the purposes of this Act, or an existing State agency which shall have assigned to it by the State the responsibility to carry out the purposes of this Act.

ESTABLISHMENT AND GOVERNANCE

SEC. 3. (a) There is authorized to be established in the Federal city a nonmembership nonprofit corporation chartered by the Congress of the United States of America which shall be known as the Federal Legal Aid Corporation (hereinafter referred to as the "Corporation").

(b) The Corporation shall be brought into being by a board of directors (hereinafter "Board") consisting of seven members who shall be appointed by the President of the United States of America, to take office upon confirmation by the United States Senate.

(c) Of the initial members of the Board, one each shall be chosen for fixed terms of seven, six, five, four, three, two, and one year(s), respectively. Succeeding appointments to fill terms which have expired, will be for seven years each. Each person duly appointed by the President and confirmed by the Senate, to fill a vacancy, shall serve for the balance of the term to which he was appointed. No member shall be appointed for more than seven years.

(d) No more than four members of the Board shall be members of the same political party. A majority of the members of the Board shall be members of the bar of the highest court of a State and none shall be full-time employees of the United States.

(e) No fewer than four members of the Board may be present to conduct the business of the Corporation. Should there, at any time after the Corporation has come into being be fewer than four members, as a result of the failure of the Senate to confirm nominations submitted by the President of the United States, the President may designate one of the remaining directors or, if none remain, some other citizen of the United States, to supervise the affairs of the Corporation in a manner not inconsistent with policies already established.

(f) The terms of the original members of the Board shall be measured from the date on which this Act is enacted into law.

(g) The Board of Directors shall have a Chairman, to be appointed by the President of the United States from among the duly appointed members of the Board of Directors for a term of one year, with the term of the first Chairman to be measured from the date on which this Act is enacted into law. If the President shall fail to name a Chairman within thirty days of a vacancy in the chairmanship, the members of the Board shall choose a Chairman from their own membership. No Chairman may immediately succeed himself. A Chairman may be removed at any time by a vote of a majority of the members of the Board.

(h) Meetings of the Board shall be held at the call of the Chairman, or by written request of a majority of its members, and shall be required to be held at least once in every four-month period. All meetings shall be held in the Federal city, except by unanimous agreement of the members of the Board.

(i) The purpose of the Corporation shall be—

(1) to render financial assistance to the States to enable the provision of legal assistance to qualified individual citizens who are indigent and in need of professional legal services (hereinafter "eligible clients");

(2) to assist in the provision of legal services to eligible clients by obtaining and making available information of a technical nature to those rendering legal services to eligible clients; and

(3) to, consistent with the provisions of this Act, set forth such procedures and regulations governing the use of Federal funds as may be authorized for expenditure by the Corporation.

(j) The Corporation shall maintain a principal office in the Federal City and shall therein designate an authorized agent for service of process.

(k) Subject to approval by a majority of the members of the Board, the Chairman shall elect an Executive Director of the Corporation who shall serve at the pleasure of the Chairman, and be authorized to secure as many staff members as may be authorized pursuant to law, but in no event shall the Corporation have more than twenty-five employees. Employees of the Corporation shall serve at the pleasure of the Executive Director. No Executive Director may serve more than four years.

(l) Compensation of Board members shall be limited to cost of travel plus a per diem rate equal to one two-hundred-sixtieth the annual pay of the highest civil service grade schedule, on days actually employed on Corporation affairs. The Executive Director shall be compensated at the rate of an employee in the highest civil service grade.

CORPORATION POWERS, REQUIREMENTS, AND PROHIBITIONS

SEC. 4. (a) The Corporation shall assign and disburse all funds appropriated to it to the governments of the several States, as qualify, in amounts proportionate to their respective shares of the total number of eligible clients in the United States (which shall be calculated so as to include eligible clients in the District of Columbia and the Commonwealth of Puerto Rico), as of June 30 of the fiscal year preceding the fiscal year for which an appropriation is made by Congress to further the provisions of this Act, only excepting—

(1) such funds as are necessary for administrative expenses including compensation of the Executive Director and his staff, payment of expenses and per diem of Board members, costs incurred in purchase and rental of space and equipment, and costs necessary to pay such audits, evaluations, and inspections as may be required to assure adherence to the provisions of this Act;

(2) such funds as may be made available by special grant to the various States as incentives to experiment with alternative delivery systems for legal services to eligible clients. Funds available to the Corporation for special grants shall be limited to maximum of 5 per centum of the Corporation's annual appropriation; and

(3) such funds as may be expended by the Corporation in entering into any contract as provided for in subsection (b) below. Funds available to the Corporation for such a contract shall be determined by Congress at the time of the Corporation's appropriation.

(b) The Corporation shall have the power to contract with a private or public group, association, or organization for the purpose of doing research into special legal problems encountered by those who qualify as eligible clients. Such research shall be made available by the Corporation to those rendering legal assistance to eligible clients and to all others interested in such research.

(c) Funds appropriated to the Corporation, or appropriated by the Corporation to the States, shall only be used to make legal assistance available to individual eligible clients, and to pay necessary expenses as authorized by subsection (a), above.

(d) No funds shall be disbursed by the Corporation to any State until said State has qualified as set forth in section 5.

(e) Personnel employed by the Corporation and funds appropriated to the Corporation

or disbursed by it to a State shall not be used or commingled with other funds being used—

(1) to initiate, organize, support, represent, or assist any training program, workshop, seminar, school, publication, newsletter, club, association, group, organization, demonstration, boycott, meeting, rally, march, strike, or any other activity, group, or institution;

(2) to support or oppose, directly or indirectly, any candidate for public or party office, or any political party;

(3) to represent any person less than eighteen years of age without formal written consent of one of said person's parents or guardian; or

(4) in a manner which tends to discriminate in favor of or against individual attorneys, employees, or clients, on grounds of race, religion, sex, or national origin;

(f) The Corporation shall not—

(1) initiate or defend litigation on behalf of clients other than the corporate entity itself;

(2) seek to influence, nor shall any funds appropriated or disbursed by it be used to influence the passage or defeat of any legislation by the Congress or State or local legislative bodies or otherwise support any ground or association advocating or opposing any legislative proposals, ballot measures, initiatives, referendums, executive orders, or similar enactments or promulgations.

(g) The income or assets of the Corporation shall not inure to the benefit of any director, officer, or employee thereof, except as salary or reasonable compensation for services.

(h) Persons directly or indirectly receiving compensation under this Act, as attorneys, for the provision of legal assistance, shall only receive such compensation subsequent to admission to practice law in the jurisdiction where such assistance is rendered.

(i) Persons advocating disregard or violation of Federal or State law, during their service, may not receive compensation under this Act.

(j) Notwithstanding the provisions of title I of the United States Code, all persons salaried by the Corporation, or paid from funds disbursed by the Corporation through the States in an amount which is equal to 50 per centum or more of said person's income during any four-month period, shall be subject to the provisions of rule IV of the civil service rules prescribed by the President of the United States pursuant to section 3301 of title 5, United States Code, as amended as of the date of enactment of this Act, as if said employees were employees of the Federal Government. Said employees shall not be treated as employees of the Federal Government for any purpose not specifically authorized in this Act.

(k) Funds made available by the Corporation, pursuant to this Act, may not be used—

(1) to provide legal services with respect to any criminal proceeding or, in the case of juveniles, proceedings which would be criminal if involving adults (including any extraordinary writ, such as habeas corpus and coram nobis, designed to challenge a criminal proceeding); or

(2) for any of the political activities described in this section, or to contribute to or in any way assist any group or association participating in such activities;

(3) to maintain any action at law until such time as any and all administrative remedies provided for in applicable contracts have been exhausted; or

(4) to represent any person who fails to meet eligibility standards established in accordance with this subsection. An individual shall be eligible for legal assistance pursuant to this Act (an "eligible client") if his assets or income would entitle him to receive benefits, in the State in which he is seeking legal assistance, under the program of the State established pursuant to subchapter XIX or chapter 7 of title 42 of the United States Code or, in the event a State has not established a program, an individual shall be eligible for legal assistance pursuant to this Act if his income and assets fall below the official poverty line, as defined by the Office of Management and Budget: *Provided*, That no person shall be eligible for the receipt of legal services provided through this program if his lack of assets or income results from his refusal or unwillingness to seek or accept employment but in no event shall physical or mental incapacity prohibit an individual from receiving benefits under this Act: *And provided further*, That the States may impose additional eligibility criteria.

(l) The Corporation shall evaluate annually the program for provision of legal services to eligible clients being conducted in each State. Should any such evaluation disclose: discrimination on the basis of race, religion, sex, or national origin in the provision of legal services to eligible clients; or violation of the code of professional responsibility for attorneys, in any State's program, the Corporation may terminate disbursal of funds to that State until it is determined by the Corporation that such discrimination or violation of the code of professional responsibility will no longer occur.

(m) Upon request by any Governor, Member of Congress, or authorized officials of executive branch departments and agencies, reports of particular audits, evaluations, and inspections will be made available to the requesting official or to the public. Such inspections, audits, and evaluations shall be initiated in response to the written request of any Governor, Member of Congress, or official of the executive branch whose appointment has been confirmed by the United States Senate or the separate request of a member of the Board or Executive Director of the Corporation.

(n) Violation of any of the provisions of this section by an individual shall constitute a misdemeanor. The penalties for such shall not exceed six months imprisonment or a $500 fine or both.

QUALIFICATION BY STATES

SEC. 5. (a) To qualify for assignment of funds from the Corporation, States shall be required to enact enabling legislation setting forth the manner in which grant funds will be used to furnish eligible individuals with legal assistance. Such enabling legislation shall provide for at least one of (but none other than) the following procedures:

(1) Empower a State instrumentality to administer the funds received from the Corporation and disburse such funds to attorneys representing eligible clients as such attorneys provide proof to such State instrumentality of services actually rendered eligible clients; or

(2) Transmit the funds received from the Corporation to the bar association with overall jurisdiction in the State, which bar association shall have established a method for disbursal of funds to attorneys representing eligible clients as such attorneys provide proof to the bar association of services actually rendered on behalf of eligible clients; or

(3) Establishment of a method of direct payment of funds received from the Corporation to eligible clients or their attorneys based upon a voucher system or other method whereby proof of services actually rendered on behalf of eligible clients is provided to the State.

(b) In their enabling legislation, all States shall (1) permit eligible clients to retain the individual attorney of their choice; (2) insure that all attorneys, while engaged in activities funded by Corporation grants:

(A) Refrain (i) from political activity, (ii) from any voter registration activity, (iii) from any activity to provide voters with, or prospective voters with, transportation to or from the polls or provide similar assistance in connection with an election, and (iv) from any activity organizing individuals or groups or encouraging groups to organize in the community.

(B) Shall not at any time identify the Corporation of any program assisted by the Corporation with any partisan or nonpartisan political activity.

(C) Maintain the highest quality of service and professional standards in providing legal services to eligible clients.

(c) In the event a State does not enact the required enabling legislation within ninety days of the effective date of this Act or the legislature of a State is not sitting when this Act becomes effective and will not be able to enact the required enabling legislation within ninety days of the effective date of this Act, the bar association of the State may submit a plan in the form of a petition, embodying the provisions of subsections (a) and (b), above to the court of highest jurisdiction in the State. Said court may adopt such plans and upon such adoption, the State shall be qualified to receive funds pursuant to this Act. Where such a plan is adopted by the court of highest jurisdiction in the State, the plan shall be annually reviewed by said court: *Provided*, That nothing contained herein shall be construed to prevent the State legislature from reviewing, amending, or revoking such plan adopted by the court of highest jurisdiction in the State.

(d) In the event a State fails to adopt a plan as provided in subsections (a), (b), and (c), above, within one hundred and twenty days of the effective date of this Act, the Corporation may assign funds for expenditure within said State in a manner to be determined by the Corporation: *Provided, however*, That, shall a State determine not to participate in a program of legal assistance to eligible clients, pursuant to this Act, the authority of the Corporation to so assign funds in the State shall be terminated.

ATTORNEY-CLIENT RELATIONSHIP

SEC. 6. (a) As this program is one for the benefit of those individuals financially unable to afford counsel, the Corporation, officers, and employees thereof, may not interfere with any attorney in carrying out his professional responsibility to anyone who has become his client, or abrogate the authority of a jurisdiction to enforce adherence by any attorney to applicable standards of professional responsibility.

(b) Nothing contained herein shall be construed to limit an attorney, representing an eligible client, from taking any necessary legal action to protect the legal rights of his client.

REPORTS AND RECORDS

SEC. 7. (a) The Corporation shall have authority to require, from the States, such reports as it deems necessary.

(b) The Corporation shall have authority to prescribe the keeping of records with respect to funds provided and shall have access to such records at all reasonable times.

(c) The Corporation shall publish an annual report by April 15 of each year which shall be filed by the Corporation with the President and with Congress.

AUDITS

SEC. 8. (a) The accounts of the Corporation shall be audited annually. Such audits shall be conducted in accordance with generally accepted auditing standards by independent certified public accountants who are certified by a regulatory authority of a State.

(b) The audits shall be conducted at the place or places where the accounts of the Corporation are normally kept. All books, accounts, financial records, reports, files, and other papers or property belonging to or in use by the Corporation and necessary to facilitate the audits shall be made available to the person or persons conducting the audits and full facilities for verifying trans-

actions with the balances or securities held by depositories, fiscal agents, and custodians shall be afforded to such person or persons. The report of the annual audit shall be available for public inspection during business hours at the principal office of the Corporation. The above shall not be construed to limit the authority of the General Accounting Office to conduct such audits of the Corporation as deemed necessary.

(c) The Corporation may require from every State an annual report conducted in accordance with generally accepted accounting standards by independent certified public accountants, who are certified by a regulatory authority of the State, with respect to funds received from the Corporation. The Comptroller General of the United States shall have access to such reports and may, in addition, inspect the books, accounts, records, files, and all other papers or property belonging to or in use by the State which relate to the disposition or use of funds received from the Corporation.

RIGHT TO REPEAL, ALTER, OR AMEND

SEC. 9. The right to repeal, alter, or amend this Act at any time is expressly reserved.

APPLICABILITY OF OTHER PROVISIONS OF LAW

SEC. 10. (a) In the absence of specific reference to this Act, the provisions of the Economic Opportunity Act (EOA) of 1964, as amended (and references to the EOA in other statutes) shall not be construed to affect the powers and activities of the Corporation or to have any applicability with respect to programs and activities assisted by Corporation grants.

(b) The Economic Opportunity Act of 1964 (78 Stat. 508) is further amended (42 U.S.C. 2701, et seq.) by striking out paragraph (3) of section 222(a) thereof.

EFFECTIVE DATE

SEC. 11. (a) This Act shall take effect on the date of enactment.

(b) Section 10(b) of this Act shall take effect on (1) the date of incorporation of the Federal Legal Aid Corporation, or (2) the date on which the first appropriation after incorporation becomes available to the Corporation, whichever is later.

Mr. HELMS. Mr. President, last June, the Senator from Tennessee (Mr. BROCK) and I introduced S. 1990, a bill to establish a Federal Legal Aid Corporation through which the Federal Government may render financial assistance to the respective States for the purpose of encouraging the provision of legal assistance to poor citizens.

I now offer this as a substitute for S. 2686.

We believe that this legislation offers a striking reform of the present legal services program—now in OEO—because it will result in greater freedom for the poor client to choose an attorney who will fully represent his needs, and it will make the program more accountable to the American people through the traditional checks and balances of representative Government.

In the present unitary program, the Washington bureaucracy contracts with local projects and institutions to provide legal services to the poor. In most cases this has resulted in the hiring of staff attorneys to deal with client problems. The client has little or no control over the handling of the case because he is faced with a monopoly situation. Frequently such attorney dominance has resulted in the exploitation of individual cases for political reasons more related to the attorney's ideological interests than those of the client. The proposals to set up an independent, Washington-centered Legal Services Corporation fail to solve this underlying problem.

In the past, the staff-attorney system has distorted the lawyer-client relationship through monopoly dominance. It allowed many project attorneys to concentrate on political advocacy through the courts, seeking to enlarge the law, or make new law through the judicial system. Legal services attorneys, for example, played the key role in striking down the "man-in-the-house" rule in welfare law, in overturning the use of property taxes in California for financing schools, and in the Detroit/suburban busing cases. We believe that these are political questions which, in the American system of representative government, ought best to be solved in the legislatures.

The bill introduced by the distinguished Senator from Tennessee and the Senator from North Carolina sets up a small congressionally chartered corporation which acts as a funding and compliance unit. The funding unit is empowered to transfer appropriated moneys to qualified State governments. A State government qualifies by passing enabling legislation setting up at least one of the following three procedures:

First. To empower an existing or new State agency to disburse funds to attorneys representing eligible clients;

Second. To transmit funds to the Bar Association with overall jurisdiction in the State, if the Bar Association has established a method to disburse funds to attorneys representing eligible clients; for example, judicare;

Third. To establish a method of direct payment to eligible clients or their attorneys based upon a voucher system of proof.

Within this framework, the States would have full freedom to design their own program to suit local conditions, so long as clients were given the right to retain the individual attorney of their choice. The bill also contains appropriate restrictions on lobbying and political activity by attorneys while engaged in activities funded by the program.

Another significant reform proposed by the bill would be the equitable geographic distribution of appropriated funds based upon the proportion of eligible clients in each State. At present there is a serious imbalance in the distribution of funds for the delivery of legal services to the poor, with certain favored projects in selected areas receiving disproportionate amounts. This means that needy people in many parts of the country are unjustly denied the legal services intended by Congress. The standard of eligibility in this bill is the standard of the medicaid formula, a standard already endorsed by Congress, State legislatures, and welfare groups.

We believe that this proposal is client-oriented, restoring freedom of choice to poor people. It provides for greater and more active participation by local bar associations, involving local attorneys more intimately in the problems of the poor community. It sets up a sound basis for a stable, ethical lawyer-client relationship. Finally, it allows the people's representatives in the State legislatures to play a proper role in designing the program in each State.

I earnestly solicit the support of my colleagues in consideration of this matter.

I ask unanimous consent to have published in the RECORD at the conclusion of my remarks a document which I have, being a comparison and analysis of the key provisions of the four legal services bills which have been presented in the House or the Senate.

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

COMPARISON AND ANALYSIS OF KEY PROVISIONS

Four Proposals for the establishment of a Legal Services Corporation:

Plan A—The Administration Bill (ADMIN) as announced May 15, 1973.

Plan B—The House Bill (HOUSE)/Passed 276–95 on June 21, 1973, H.R. 7824.

Plan C—The Senate Labor and Public Welfare Committee Bill (LPW)/S. 2686, as reported on November 9, 1973, with Report Language (93–495).

Plan D—The Brock-Helms Substitute (BROCK), S. 1990.

General notation: In certain instances, prohibitions apply only to "staff attorneys" and do not cover para-professional and non-professional employees, such as community organizers.

PREAMBLE

Plan A (Admin)—"To establish a Legal Services Corporation."

Plan B (House)—"To establish a Legal Services Corporation."

Plan C (LPW)—"To amend the Economic Opportunity Act of 1964 to provide for the transfer of the legal services program" from OEO to "a Legal Services Corporation."

Plan D (Brock)—"Federal Legal Aid Corporation Act of 1973."

ANALYSIS

As an amendment to the E.O.A., the LPW Committee plan would place oversight responsibility for the new Corporation with the Senate Committee on Labor and Public Welfare, giving that Committee exclusive authority to confirm appointees to the Corporation Board. Under the language of the three other proposals, oversight would lie with the Senate Judiciary Committee.

DEFINITIONS

Plan A (Admin)—includes as "State," the fifty states, D.C., Puerto Rico, Virgin Islands, Guam, "or any of the territories and possessions of the United States." "Legal assistance" means the "provision of any legal services under this Act."

Plan B (House)—specifically adds as "State" American Samoa and the Trust Territory of the Pacific Islands. "Legal Assistance" means the "provision of any legal services under this Act."

Plan C (LPW)—specifically adds as "State" American Samoa and the Trust Territory of the Pacific Islands. "Legal Assistance" is broadened to intend not merely "legal advice and representation," but also "other appropriate legal services consistent with the purposes and provisions of this title";

Plan D (Brock)—"State" is limited to mean the fifty states, D.C., and Puerto Rico. No specific definition of "legal assistance" is set forth.

ANALYSIS

Unlike the Administration proposal and Brock-Helms, both the House and LPW Committee versions specifically provide for programs in American Samoa and in our United Nations Trusteeship in Micronesia. The effect is to "lock in" the controversial Micronesia Legal Services Program.

STATEMENT OF PURPOSE AND "FINDINGS"

Plan A (Admin)—None.

Plan B (House)—None.

Plan C (LPW)—"The Congress finds and declares . . . there is a need . . . to continue the present vital legal services program . . . to preserve the strength of the legal services program it must be insulated from political pressures; and (6) lawyers providing such services must have full freedom . . ."

Plan D (Brock)—Accessibility of the "institutions of government" to all. Court dispensed justice should inherently be available "regardless of race, religion, sex, national origin, or personal wealth."

ANALYSIS

The LPW Committee version seeks, through its "statement of findings and declaration of purpose" to establish a statutory prejudice in favor of all presently-funded activities and to negate restrictions on lawyer activities which may be found elsewhere in the bill.

CORPORATION STATUS

Plan A (Admin)—"established in the District of Columbia a private nonmembership non-profit corporation . . ."

Plan B (House)—"established in the District of Columbia a private nonmembership non-profit corporation . . ."

Plan C (LPW)—"established in the District of Columbia a private nonmembership non-profit corporation . . ."

Plan D (Brock)—"a nonmembership non-profit corporation chartered by the Congress . . ."

ANALYSIS

Only the Brock-Helms plan provides for a Federal charter. Under a non-Congressional D.C. charter, the Corporation would be subject to changes in the D.C. corporation act. With home rule, the D.C. government, rather than Congress, could have a major impact on the Corporation.

BOARD OF DIRECTORS

Plan A (Admin)—"Eleven voting members appointed by the President, by and with the advice and consent of the Senate" for staggered three-year terms.

Plan B (House)—"Eleven voting members appointed by the President, by and with the advice and consent of the Senate" for staggered three-year terms.

Plan C (LPW)—"Eleven voting members appointed by the President, by and with the advice and consent of the Senate" for staggered three-year terms.

Plan D (Brock)—"Seven members who shall be appointed by the President . . . to take office upon confirmation by the United States Senate" for staggered terms of seven years.

ANALYSIS

The object of the Brock-Helms plan is to accord board members insulation and independence like that of the judicial branch by providing that no board member may serve more than seven years, and that the length of a normal term be seven years.

There is the implication in the LPW Committee Report (93-495) that the Administration and the LPW Committee have an understanding on Board appointments. The Report says the Committee will act "on the basis of the following primary criteria:

"(1) a board membership which is adequately representative of the organized bar, legal education, legal services attorneys, the client community, and organizations involved in the development of legal assistance for the poor; (2) the selection of persons who are committed to the Corporation's freedom from political control; and (3) the assurance that the Board members understand and are fully committed to the role of legal assistance attorneys and support the underlying principle of this legislation . . . To assure that these criteria are met, it is expected that the initial nominations of the Board, including the nominee for chairman, will be presented together to the Senate, so that the President will have the opportunity to present and the Senate to consider the full distribution of membership qualifications for the Board."

CHAIRMAN OF THE BOARD

Plan A (Admin)—"The President shall select" a member of the Board to be its Chairman, each year, for a term of one year.

Plan B (House)—"The President shall select" a member of the Board to be its Chairman, each year, for a term of one year.

Plan C (LPW)—"The President shall select" a member of the Board to be its Chairman for an initial three-year term. Thereafter, "the Board shall annually elect a chairman" from its own membership.

Plan D (Brock)—A "Chairman to be appointed by the President" from the Board, for a term of one year, each year. "No Chairman may immediately succeed himself. A Chairman may be removed at any time by a vote of a majority of the members of the Board."

ANALYSIS

Annual Presidential appointment of the Chairman encourages political accountability to the President. *The LPW plan trades to the President one three-year appointment, after which the President's appointive power would be eliminated.* Under the Brock-Helms plan, the chairman can be removed by majority vote of the Board. The LPW Committee Report (93-495) says, ". . . the thrust of the Act is to remove the program from political interference . . . It is contemplated that the initial chairman will be selected from among those nominees for the initial board who have the most extensive familiarity with legal assistance programs and a demonstrated concern for the legal needs of the poor."

TAX-EXEMPT STATUS

Plan A (Admin)—No provision.

Plan B (House)—The corporation and its grantees "shall be eligible to be treated as an organization described in section 170(c)(2)(B) of the Internal Revenue Code of 1954, or as an organization described in section 501(c)(3) . . . which is exempt from taxation under section 510(a) of such Code. If such treatments are conferred . . . (grantees) shall be subject to all provisions of such Code relevant to the conduct of organizations exempt from taxation."

Plan C (LPW)—No provision.

Plan D (Brock)—No provision.

STATE ADVISORY COUNCILS

Plan A (Admin)—"Within six months" after at least six board members are "appointed," the board shall "request the governor of each state to appoint a nine-member advisory council for his state." The members "shall be subject to annual reappointment." The state councils are to notify the corporation "of any apparent violation."

Plan B (House)—"Within six months" after at least six board members are "appointed," the board shall "request the governor of each state to appoint a nine-member advisory council for his state." The members "shall be subject to annual reappointment." The state councils are to notify the corporation "of any apparent violation." Adds that at least thirty days' reply time be provided for "reply to any allegation contained in the notification."

Plan C (LPW)—"Within six months" after at least six board members are "appointed," the board shall "request the governor of each state to appoint a nine-member advisory council for his state." The members "shall be subject to annual reappointment." The state councils are to notify the corporation "of any apparent violation." Adds that at least thirty days' reply time be provided for "reply to any allegation contained in the notification." Requires that the Governor make his appointments only "after recommendations have been received from the State bar association."

Plan D (Brock)—No provision.

ANALYSIS

The House and *LPW Committee versions tend to preclude summary action* against a grantee which is found by a state advisory council to be in violation. The *LPW Committee plan could prevent establishment of a state advisory council if its bar association delays acting or fails to act.* It also establishes that all council members should be attorneys, thus negating the thrust of the Administration bill to permit a citizen check on program abuses.

The LPW Committee Report (93-495) also says, ". . . it is expected that the governor will appoint attorneys who have experience and knowledge in the delivery of quality legal services to the poor. The sole function of such advisory councils will be to notify the Corporation of any alleged violations of this legislation."

NATIONAL ADVISORY COUNCIL

Plan A (Admin)—No provision.

Plan B (House)—No provision.

Plan C (LPW)—"There shall be a National Advisory Council to consult . . . especially on all rules, regulations, and guidelines . . ." Its fifteen members "appointed by the Board to serve for terms of three years . . . shall be representative of the organized bar, legal education, legal services project attorneys, the population of eligible clients, and the general public." Provisions of "section 7(d) of Public Law 92-463" shall apply.

Plan D (Brock)—No provision.

ANALYSIS

The LPW provision reflects the view that the corporation should operate in a manner responsive not to the public as a whole but to a narrow interest of "client groups," employees, and professional beneficiaries. This would institutionalize special interest group pressures and assure a program "of the club, by the club, and for the club." The practical consequence of this provision, if past experience is any guide, would be to repose both veto and initiatory authority in the advisory council, for all policy issues, with the Presidentially-appointed part-time board becoming little more than a ratifying group for the NAC.

The LPW Report (93-495) says, "It is intended that the membership of the National Advisory Council will be selected after consultation with, and so as to be representative of, such national organizations as the American Bar Association, the National Bar Association, the American Trial Lawyers Association and other national lawyers groups, the Association of American Law Schools, the National Legal Aid and Defender Association, the ABA Standing Committee on Legal Aid and Indigent Defendants, the ABA Section on Individual Rights and Responsibilities, the Project Advisory Group, the Organization of Legal Services Back-Up Centers, and the National Clients Council and other client organizations, as well as individual legal assistance attorneys, client representatives, and others with expertise in providing legal assistance to the poor. In this way, the Council would be representative of the three basic elements which give special vitality to the program, as well as the general public.

"The Board and the president of the Corporation should consult in advance with the National Advisory Council on the activities of the Corporation, including proposed policies, rules, regulations, and guidelines."

CHIEF EXECUTIVE OFFICER

Plan A (Admin)—Selected by the Board.

Plan B (House)—Selected by the Board.

Plan C (LPW)—Selected by the Board.

Plan D (Brock)—Selected by the Chairman of the Board, subject to majority approval of the Board. Maximum term of four years.

ANALYSIS

A Chief Executive named by a group can avoid accountability or can manipulate the appointing authority. Selection by the Board

collectively can unduly enhance the power of "poverty law" professionals in controlling the Chief Executive. Under the Brock-Helms bill, accountability is structured through a single point. This encourages "Board control," rather than "staff control." Under systems of "staff control," special interests have an easier time in manipulating the organization's decisions. With Board Members serving normal terms of seven years, and Executive Directors a maximum of four (under the Brock-Helms bill), Board control would be further enhanced.

The Senate Labor and Public Welfare Committee Report (93-495) says, ". . . the Board should solicit and carefully consider recommendations from those principally involved in or served by legal services programs as to the selection of the initial president of the Corporation and, as to subsequent presidents, should seek the advice of the National Advisory Council, the person selected should be experienced in the legal assistance field and have previously demonstrated a commitment to the provision, in accordance with the highest standards of the legal profession, of quality legal assistance to the poor."

PUBLIC INTEREST LAW GROUPS

Plan A (Admin)—Permits direct funding, grants, or contracts to provide "(i) research, (ii) training and technical assistance, and (iii) to serve as a clearing house for information". But no grants or contracts may be made to "any public interest law firm which expends any resources and time litigating issues either in the broad interests of a majority of the public or in the collective interests of the poor".

Plan B (House)—Permits the Corporation to "undertake directly" but "not by grant or contract" research, training and technical assistance, and information clearinghouse functions. However, allows grants and contracts to public interest law firm, if less than "fifty per centum" of its resources and time is spent "litigating".

Plan C (LPW)—Permits direct funding, grants, or contracts for "research, recruitment, training . . . information clearinghouse . . . and for technical assistance". Also permits grants or contracts of "any public interest law firm" which spends less than fifty percent of its resources and time "litigating issues in the broad interests of a majority of the public".

Plan D (Brock)—Permits "making available information of a technical nature to those rendering legal services" and enables the Corporation "to contract with a private or public group, association or organization for the purpose of doing research into special legal problems encountered by those who qualify as eligible clients." Total funding for this category of activity to be set by Congress, through appropriations process.

ANALYSIS

The Administration bill bans support for Naderesque "public interest" law groups, while permitting training and technical assistance by grant. The House passed bill improves accountability for training, technical assistance, and research priorities, by requiring that they be done "in-house", rather than by grant or contract, but negates the safeguard by *allowing subsidy of "public interest" groups which spend less than half their time not actually litigating—virtually none would be disqualified. The LPW bill is the most permissive* on all scores, *negating the impact of any prohibition*, since in the words of the committee report, it merely disallows aid to those purporting to act in the interest of the majority, rather than such "minorities" as the poor, the radical, the perverse, or what have you. The Brock-Helms plan permits research activities, subsidized by contract, so as to clearly define what is sought.

TERMINATION OR SUSPENSION OF GRANTS

Plan A (Admin)—Allows the Corporation "to terminate, after a hearing" aid to a grantee "which fails to comply" with "provisions of this Act and the corporate charter and by-laws." If a grantee employee violates or causes grantee to violate provisions, grantee "shall take appropriate disciplinary action."

Plan B (House)—Allows the Corporation "to terminate, after a hearing" aid to a grantee "which fails to comply" with "provisions of this Act and the corporate charter and by-laws." If a grantee employee violates or causes grantee to violate provisions, grantee "shall take appropriate disciplinary action."

Plan C (LPW)—Permits termination only if a grantee "fails substantially to comply" and only "after other appropriate remedial measures have been exhausted." In addition, requires that the "Corporation shall prescribe procedures to insure that—(1) financial assistance . . . shall not be suspended" without "reasonable notice and opportunity to show cause . . ." Also says "a grantee's application for refunding shall not be denied, and a suspension of financial assistance shall not be continued for longer than thirty days" without reasonable notice and opportunity for a timely, full, and fair hearing."

Plan D (Brock)—Corporation has no power to terminate or suspend a recipient, except for "discrimination on the basis of race, religion, sex, or national origin" or "violation of the Code of Professional Responsibility." But civil penalty, making violation a misdemeanor, is established (up to $50 and six months).

ANALYSIS

The LPW bill makes it more difficult to terminate, suspend, or refuse to refund a grantee. "Procedural" provisions could endlessly tie up in the courts any attempts at remedial action. Brock-Helms involves itself only in violations of basic client rights, on the theory that client choice will impose constraint on free-wheeling activity.

LIMITATION ON SIZE OF NATIONAL STAFF

Plan A (Admin)—No limitation.

Plan B (House)—No limitation.

Plan C (LPW)—No limitation.

Plan D (Brock)—"In no event shall the Corporation have more than twenty-five employees."

ANALYSIS

Unlike the others, the Brock-Helms plan would focus virtually all resources on provision of assistance to individual clients. Barring an oversized national staff helps prevent development of a centrally dominated and directed program.

GRANT AND CONTRACT POWERS

Plan A (Admin)—To make grants to, and to contract with "individuals, partnerships, firms, organizations, corporations, state and local governments and other appropriate entities . . . for the purpose of providing legal assistance to eligible clients."

Plan B (House)—To make grants to, and to contract with "individuals, partnerships, firms, organizations, corporations, state and local governments and other appropriate entities . . . for the purpose of providing legal assistance to eligible clients."

Plan C (LPW)—". . . to provide financial assistance to qualified programs furnishing legal assistance to eligible clients, and to make grants to and contracts with: (i) individuals, partnerships, firms and non-profit organizations and corporations, and (ii) State and local governments (only upon application by an appropriate State or local agency or institution) and upon a special determination by the Board that . . . such agency or institution will provide supplemental assistance which cannot be adequately provided through non-governmental arrangements . . . and (B) to make such other grants and contracts as are necessary . . ."

Plan D (Brock)—"To render financial assistance to the states to enable the provision of legal assistance to qualified individual citizens . . ." States can qualify by enactment of enabling legislation, either to "Empower a State Instrumentality . . . to disburse such funds to attorneys representing eligible clients . . ." or to "Transmit the funds . . . to the Bar Association with overall jurisdiction in the State, which Bar Association shall have established a method for disbursal of funds to attorneys representing eligible clients . . ." or by "Establishment of a method of direct payment . . . based upon a voucher system . . ." If a State does not enact enabling legislation "within ninety days," the Bar Association may "submit a plan . . . to the court of highest jurisdiction in the State. . . ." If, within one hundred twenty days (120) there is either no court approved plan or legislatively enacted plan, the Corporation "may assign funds for expenditure within said State in a manner to be determined by the Corporation."

ADMISSION TO PRACTICE

Plan A (Admin)—Requires that "No attorney shall receive any compensation" unless "admitted to practice law in the state where the rendering of such assistance is initiated."

Plan B (House)—Permits compensation of attorneys "authorized" to practice law.

Plan C (LPW)—Permits compensation of attorneys "admitted or otherwise authorized by law, rule, or regulation" to practice law or provide "assistance."

Plan D (Brock)—Allows compensation "subsequent to admission to practice law in the jurisdiction where such assistance is rendered."

ANALYSIS

Only a strict limitation of compensation to those "admitted" to practice can assure that qualified, locally-based attorneys will render service. A high proportion of program abuses have stemmed from grantees hiring persons not known or qualified locally. The LPW plan, while purporting to be stringent, is, in effect, merely a semantic deception. Many instances of abuse can be traced to non-admitted lawyers who are authorized under law, rule, and regulation to provide assistance.

ANALYSIS

Under the LPW plan, revenue sharing with state and local governments is barred except in most remote circumstances. Under Brock-Helms, if a state fails to take affirmative action for a client-choice approach to legal services, the national Corporation may continue the staff-attorney grantee system.

The LPW Report (93-495) locks in present staff attorney grantees by stating:

"It is the expectation of the Committee that such grants and contractual arrangements will continue to fund legal services operations in the same general manner as they have been funded under the Economic Opportunity Act, with funds, at no less than the existing overall program level, allocated to staff-attorney programs which devote all their time and attention to the probems of the poor and which have demonstrated their ability to effectively carry out the provisions of legal services to the poor . . . it is intended that there should not be a significant shift of resources away from present types of recipients, and it is not intended that assistance should be provided through governmental arrangements where such assistance can be adequately provided directly through private, non-governmental arrangements."

PROHIBITION OF "STREET" ACTIVITIES

Plan A (Admin)—Bars staff employees "from participation in" and "encouragement of others to participate in . . . rioting, civil disturbance, picketing, boycott, or strike . . . activity which is in violation of an outstanding injunction . . ." or "any illegal activity." Termination or summary suspension is a possible remedy for non-compliance.

Plan B (House)—Bars "picketing, boycott, or strike" activity only *"while engaged* in activities carried on by the Corporation or a recipient." Prohibits rioting, civil disturbance, violation or injunction, and illegal activity "at all times." Termination or suspension possible, but *only grantee may take* action against one of its employees.

Plan C (LPW)—Bars "public demonstration or picketing, boycott or strike *"while carrying out* legal assistance . . . *except as permitted.* . . ." Bars "rioting or civil disturbance . . . violation of an outstanding injunction . . . or illegal activity" at any time. Provides for "remedial measures" and "hearing" in case of violation.

Plan D (Brock)—Bars use of resources for any "demonstration, boycott . . . rally, march, strike . . ." or compensation of persons who "during their service" advocate "disregard or violation of Federal or state law."

ANALYSIS

The Administration and Brock-Helms bills are most stringent, in terms of scope and remedy. *The LPW version has modifying language which renders meaningless all prohibitions except those on already illegal activity.*

CITIZEN SUITS TO ENFORCE THE LAW

Plan A (Admin)—"Any interested person may bring an action in a Federal District Court to enforce compliance with the prohibitions . . ." Also provides reimbursement of costs and legal fees if "a final judgment is rendered in favor of the plaintiff."

Plan B (House)—No provision.

Plan C (LPW)—No provision.

Plan D (Block)—No provision.

ANALYSIS

Grants standing to citizens to initiate action mandating compliance with the law if the Corporation fails to act or acts improperly.

USE OF CORPORATION FOR LOBBYING OR POLITICS

Plan A (Admin)—No litigation except on behalf of "the corporate entity itself." Lobbying permitted, in the form of testimony, "when formally requested by a legislative body, a committee, or a member." No personnel or resources may be channeled "to any political party, political association, or candidate for elective office," or "for use in advocating or opposing any legislative proposals, ballot measures, initiatives, referendums, executive orders, or similar enactments or promulgations."

Plan B (House)—No litigation except on behalf of "the corporate entity itself." Lobbying permitted, in the form of testimony, "when formally requested by a legislative body, a committee, or a member." No personnel or resources may be channeled "to any political party, political association, or candidate for elective office," or "for use in advocating or opposing any legislative proposals, ballot measures, initiatives, referendums, executive orders, or similar enactments or promulgations."

Plan C (LPW)—Same as Plans A and B with respect to corporate lobbying and political aid, but permits use of personnel and resources "for use in advocating or opposing any ballot measures, initiatives, or referendums" whenever deemed "necessary to the provision of legal advice and representation."

Plan D (Brock)—Incorporates all restrictions in Administration bill, adding prohibition of aid to "any group or association advocating or opposing any legislative proposals, ballot measures, initiatives, referendums, executive orders or similar enactments or promulgations."

ANALYSIS

Only the Brock-Helms bill bars aid to advocacy groups which are substantially involved in organizing or lobbying on issues of public policy. *LPW is most permissive, negating prohibitions whenever deemed "necessary" to aid a client.*

CLIENT ELIGIBILITY/FEE SCHEDULE

Plan A (Admin)—Establishes "a schedule of fees" requiring client "if able" to pay partial cost of assistance. Establishes ceiling for eligibility at twice OMB poverty level. Precludes aid to one whose "lack of gross income results from his refusal or unwillingness to seek or accept employment."

Plan B (House)—Gives Corporation, not OMB, power to set ceiling for eligibility. Eliminates "schedule of fees" provision. Precludes aid to poor who refuse to seek or accept employment "without good cause."

Plan C (LPW)—Gives Corporation, not OMB, power to set ceiling for eligibility, but gives recipients authority to set eligibility "in accordance with factors *related* to financial inability to afford legal assistance, which may take into account, among other considerations, evidence of a *prior determination* that a lack of income results from a refusal, without good cause, to seek or accept an employment situation *commensurate with* an individual's health, age, *education, and ability."* (emphasis added). Eliminates "schedule of fees" provision.

Plan D (Brock)—Imposes Medicaid eligibility standard or, if none applicable, OMB standard, while precluding aid to those unwilling to "seek or accept employment" except by reason of physical or mental disability. No "schedule of fees."

ANALYSIS

The "schedule of fees" proposed in the Administration bill would impose a token but useful economic constraint to help approximate the constraints which cause the non-poor to think twice before initiating legal action. The Administration and Brock-Helms plans set forth clearly defined, if liberal, standards for eligibility to prevent diversion of funds into "cause" litigation involving the non-poor.

LPW has no schedule of fees and allows grantees to serve those who are not poor, and those who are poor by choice.

ALLOCATION OF FUNDS

Plan A (Admin)—"Insure . . . adequate legal assistance to persons in both urban and rural areas."

Plan B (House)—"Insure . . . adequate legal assistance to persons in both urban and rural areas."

Plan C (LPW)—"Insure . . . the most economical, effective, and comprehensive delivery of legal assistance to persons in both urban and rural areas . . . assure equitable service to the significant segments of the population of eligible clients . . . provide special consideration for utilizing . . . organizations and persons with special experience and expertise in providing legal assistance to eligible clients."

Plan D (Brock)—Assigns funds "in amounts proportionate" to each state's share of the eligible poverty population.

ANALYSIS

Only the Brock-Helms bill establishes a formula for equitable apportionment of available resources, regardless of geographic location, racial, political, or religious considerations. *LPW affords preference to present grantees and other non-federal programs now active in the "poverty law" field.* Thus, the ACLU and Ralph Nader would be preferred recipients under the LPW plan.

OUTSIDE PRACTICE OF LAW

Plan A (Admin)—Totally forbids outside practice of law by staff attorneys.

Plan B (House)—Totally forbids outside practice of law by staff attorneys.

Plan C (LPW)—Prohibits only "compensated" outside practice of law. Uncompensated outside practice would be permitted subject to Corporation guidelines.

Plan D (Brock)—No provision.

ANALYSIS

The ban on outside practice is intended to prevent circumvention of prohibitions on improper activity, by attorneys purporting to act on their own time (e.g., coffee break, lunch hour, comp time, etc.). Brock-Helms does not include such a ban because it relies on attorneys in private practice, rather than staff attorneys. The LPW version would negate the ban on "uncompensated" outside practice by staff attorneys, if the corporation adopted permissive guidelines. Also, without statutory force, it would be easier for grantee employees to bypass with impunity any "guideline" prohibition.

LOBBYING

Plan A (Admin)—". . . no funds . . . at any time, directly or indirectly . . ." except to testify "when formally requested to do so by a legislative body, a committee, or a member thereof."

Plan B (House)—". . . no funds . . . at any time, directly or indirectly . . ." except to testify "or make a statement when formally requested to do so by a governmental agency, or by a legislative body or a committee or a member thereof, or (B) in the course of providing assistance to an eligible client . . ."

Plan C (LPW)—". . . no funds . . . at any time, directly or indirectly . . ." except where "necessary to the provision of legal advice and representation" or where "representations" are requested.

Plan D (Brock)—No use of funds or personnel "to influence the passage or defeat of any legislation" directly or through others.

ANALYSIS

The Administration bill allows testimony upon formal request of any legislator. The House bill allows testimony or statement upon formal request of governmental agency or legislator or in the course of client representation. *The LPW version allows more than testimony ("representation" can be virtually any form of lobbying), whenever requested (not formally) by a legislator or "in the course" of representing a client (NWRO).* The Brock-Helms bill totally bars lobbying. Inasmuch as groups are eligible clients under all except Brock-Helms, the nuances of definition become very important.

POLITICAL ACTIVITY

Plan A (Admin)—Bars "any political activity" "while engaged" except voter transportation and registration in the course of "legal representation", for part-time attorneys. Totally bans such activity by full-time staff attorneys.

Plan B (House)—Substantially the same as Administration bill.

Plan C (LPW)—Permits political activity, voter transportation and registration when not "engaged" or when "necessary to the provision of legal advice and representation". Limits definition of political activity to party and candidate politics; totally permissive on "issue" politics. Cites Hatch Act only with respect to use of "official authority and influence" or to coerce campaign contributions. Omits key Hatch Act provision barring "an active part in political management or in political campaigns."

Plan D (Brock)—All persons receiving principal compensation through the Corporation are covered by Hatch Act. Prohibits use of funds and personnel to "support or oppose, directly or indirectly, any candidate

. . . or any political party." Also bars aid to "any group or association participating in such activities". Prohibits "any activity organizing individuals or groups", as well as political activity, voter registration, and voter transportation, from being subsidized with Corporation funds.

ANALYSIS

Administration bill bans normal political activity, in an elective sense. Brock-Helms bans this kind of politics in the program, as well as aid to grass-roots political groups like the American Indian Movement, Black Panthers, Gay Lib, etc. *The Labor-Public Welfare bill, by careful wording, permits virtually all such activity.* For example, in classifying employees of the Corporation as state and local employees under Chapter 15 of Title V of the U.S. Code, the Labor and Public Welfare bill "does not prohibit political activity in connection with—(1) an election and the preceding campaign if none of the candidates is to be nominated or elected at that election as representing a party any of whose candidates for Presidential elector received votes in the last preceding election at which Presidential electors were selected; or (2) a question which is not specifically identified with a National or State political party. For the purpose of this section, questions relating to Constitutional amendments, referendums, approval of municipal ordinance, and others of a similar character, are deemed not specifically identified with a National or State political party."

PROCEDURE FOR APPEALS

Plan A (Admin)—"The Corporation shall establish guidelines for a system for review of appeals to be implemented by each recipient" to prevent "frivolous and duplicative appeals" and "insure the efficient utilization of resources."

Plan B (House)—Is silent on goal of preventing "frivolous and duplicative appeals", but established guidelines for consideration of appeals, "except that such guidelines shall in no way interfere with the attorney's responsibilities."

Plan C (LPW)—Places responsibility for appeals review guidelines directly with grantee.

Plan D (Brock)—No provision.

ANALYSIS

The LPW version destroys the intent of the Administration approach, in essence making it local option whether to allow "test cases" through appeals.

CRIMINAL REPRESENTATION

Plan A (Admin)—No funds may be used to provide "legal assistance under this Act with respect to a criminal proceeding or incarceration for a crime."

Plan B (House)—No funds "to provide legal assistance with respect to any criminal proceeding or to provide legal assistance in civil actions to persons who have been convicted of a criminal charge where the civil action arises out of alleged acts or failures to act connected with the criminal conviction and is brought against an officier of the court or against a law enforcement official."

Plan C (LPW)—No funds "to provide legal assistance under this title with respect to a criminal proceedings."

Plan D (Brock)—No funds to "provide legal services with respect to any criminal proceeding or, in the case of juveniles, procedings which would be criminal if involving adults . . ."

ANALYSIS

All are narrowly construed—the LPW version most of all—allowing, for example, aid to accused or convicted criminals on procedural issues or non-criminal matters which flow from, but are separate from, the "criminal proceeding".

JUVENILE REPRESENTATION

Plan A (Admin)—Bars aid to persons under 18 "without formal written consent" of parent or guardian except in special circumstances, which it spells out.

Plan B (House)—Bars aid to persons under 18 without "written request" of parent or guardian, except in special circumstances, which it spells out.

Plan C (LPW)—Permits juvenile representation "where necessary" to prevent loss of "benefits or services" or "in other cases pursuant to criteria which the Board shall prescribe."

Plan D (Brock)—Bars aid to persons under 18 "without formal written consent" of parent or guardian.

ANALYSIS

LPW offers the apperance, but not the reality of a prohibition since qualifying language can be used to prevent loss of legal "services". House bill is strictest, requiring that parent, rather than attorney, initiate request for representation. *Under the LPW bill, a teenager threatened with "loss" of sterilization "services" could get it without parental consent.* Under the other bills, parental consent would be required. The Administration prohibition was included to limit lawyer-initiated "students rights" and "student protest" uses of Corporation personnel and resources.

TRAINING IN POLICY ADVOCACY

Plan A (Admin)—Denies use of funds to "support or conduct training programs for the advocacy of . . . particular public policies or which encourage political activities, labor or anti-labor activities, boycotts, picketing, strikes, and demonstrations."

Plan B (House)—Similar to Plan A, "except that this prohibition shall not be construed to prohibit the training of attorneys necessary to prepare them . . ."

Plan C (LPW)—Prohibits only training for "illegal" boycotts, picketing, strikes and demonstrations, permitting all those which are "legal", with the further exception that encouraging political activities, labor or anti-labor activities, or any illegal boycotts, picketing, strikes, or demonstrations is *permitted* insofar as it involves "rendering of legal advice . . ."

Plan D (Brock)—Bars aid to advocacy training, publications, groups, and activities, including demonstrations, boycotts (legal and illegal), rallies, marches, and strikes.

ANALYSIS

All provide some prohibition except *the LPW version,* which *loses its content in loopholes* and is totally without effect. The Administration provision is intended to limit use of official travel and other T&TA program resources for political purposes.

ORGANIZATION OF GROUPS

Plan A (Admin)—Bars diversion of funds for organizing or otherwise aiding "any organization, association, coalition, alliance, federation, confederation, or any similar entity except as authorized by the Corporation."

Plan B (House)—Similar to Plan A, but slightly more stringent, excepting only "provision of appropriate legal assistance in accordance with" Corporation guidelines.

Plan C (LPW)—Similar to Plan B.

Plan D (Brock)—Total ban on such use of funds—no exceptions.

ANALYSIS

Past experience suggests that exceptions will be broadly construed and be honored more than the prohibitions. Only Brock-Helms is clear-cut.

GOVERNANCE OF GRANTEE GROUPS

Plan A (Admin)—Requires that "any recipient organized solely" to provide legal services be governed by a majority consisting of lawyers who are "members of the bar of the state."

Plan B (House)—Requires "two-thirds" lawyer majority, except when the Board allows a waiver.

Plan C (LPW)—Requires a "majority" of "attorneys who are members of the bar of any state in which such assistance is to be provided" except that all present grantees are excluded from this requirement.

Plan D (Brock)—No provision, since client choice would replace "guild" staff attorneys system.

ANALYSIS

All plans omit mention of process for selecting or replacing local boards, or making them subject to review by bar or elected officials. LPW provision is meaningless anyway, since it excepts all present grantees.

THIRTY DAYS NOTICE

Plan A (Admin)—Requires public announcement of grant and contract intentions thirty days in advance of approval.

Plan B (House)—Requires public announcement of grant and contract intentions thirty days in advance of approval.

Plan C (LPW)—Requires public announcement of grant and contract intentions thirty days in advance of approval.

Plan D (Brock)—No provision necessary, since specific decisions are generally accountable to state authority.

ANALYSIS

Replaces Governor's veto authority, which is part of the OEO legal services program.

CLIENT CHOICE

Plan A (Admin)—Promotes introduction of client choice and market constraints by requiring that "no less than ten percent" of its funds go to "activities which are non-staff attorney oriented". Also requires the Corporation to "conduct a study of alternative methods . . . including judicare, vouchers, prepaid legal insurance and contracts with law firms" with recommendations to President and Congress by June 30, 1974.

Plan B (House)—Requires the Corporation to "conduct a study" and report by June 30, 1974, as in PLAN A, but omits assignment of funds to "non-staff attorney" activities.

Plan C (LPW)—Omits assignments of funds to "non-staff attorney" activities and defers recommendations until "not later than two years after the first meeting of the Board".

Plan D (Brock)—Sets aside up to five percent "of the Corporation's annual appropriation" to be used for special incentive grants which will encourage States "to experiment with alternative delivery systems for legal services to eligible clients." Requires that State enabling legislation "Permit eligible clients to retain the individual attorney of their choice."

ANALYSIS

Only the Administration and Brock-Helms plans take actual steps to decrease exclusive reliance on the subsidized poverty lawyer and move toward client choice of private practitioner. *Under LPW, even formal consideration of moves toward client choice are deferred until 1976.*

FINANCING OF THE CORPORATION—COMMINGLING

Plan A (Admin)—Permits three-year appropriations. Bans commingling of "funds not made available by the Corporation" with those derived from appropriations under this Act.

Plan B (House)—"Funds appropriated pursuant to this section shall remain available until expended." Non-federal funds received by Corporation and grantees "shall not be expended by recipients for any purpose prohibited by this Act"—except to permit certain public defender activities.

Plan C (LPW)—Raises authorization to $100 million for FY1976, after $90 million—FY1975 and $71.5 million for the current fiscal year. "Funds appropriated . . . shall remain available until expended." Retains requirement of separate accounts for non-federal funds, but eliminates House ban on indirect subsidy of prohibited activities.

Plan D (Brock)—No provision necessary, because of reliance on private practitioners.

ANALYSIS

All prohibitions in the bill can be negated if it fails to include the *House provision* barring use of funds from other sources for actions prohibited with Federal funds. The LPW version does not include this at all. The Administration Plan is limited to requiring separate bookkeeping of potentially improper activity.

ACCOUNTABILITY TO CONGRESS

Plan A (Admin)—Right to repeal, alter, and amend.

Plan B (House)—"The Corporation . . . shall be liquidated on June 30, 1978, unless sooner terminated by Act of Congress." Right to repeal, alter, and amend.

Plan C (LPW)—"Except as otherwise specifically provided . . . the Corporation shall not be considered a department, agency, or instrumentality of the Federal Government for the purposes of any Federal law or Executive order." "Nothing contained in this title shall be deemed to authorize any department, agency, officer, or employee of the United States or of the District of Columbia to exercise any direction, supervision, or control with respect to the Corporation, any grantee, contractor, or person, or entity receiving financial assistance under this title, or any employee thereof, to the bylaws, rules, regulations, or guidelines of the Corporation, to the attorneys providing legal assistance under this title, or to eligible clients receiving legal assistance under this title." Right to repeal, alter, and amend.

Plan D (Brock)—Right to repeal, alter, and amend.

ANALYSIS

The Labor and Public Welfare bill denies the American people, through their elected officials, virtually all right and opportunity to hold the Corporation accountable for its use of public funds. At the same time, special interest groups of providers and consumers of services under the program are assured of prerogatives relating to refunding, political action, issue advocacy, etc. *The House bill sets a time, five years hence, when Congress would be required to specifically approve continuation of the program if it were to remain authorized.* The LPW Committee Report (93-495) asserts ". . . the reason for the establishment of the Corporation is the removal of legal services programs from political interference and control." It stresses accountability "to the bar and the poor", as an important goal, rather than simple accountability to the public as a whole.

REIMBURSEMENT OF COSTS TO LS DEFENDANTS

Plan A (Admin)—No provision.

Plan B (House)—If "a final judgment is rendered in favor of the defendant and against the Corporation's or recipient's plaintiff" the court may award reasonable costs and legal fees to the defendant, to be paid directly by the Corporation.

Plan C (LPW)—No provision.

Plan D (Brock)—No provision.

ANALYSIS

House bill seeks to redress inequity of private parties having to defend themselves at often great personal expense against tax-supported harassment by staff attorneys.

PREFERENCE TO LOCAL ATTORNEYS

Plan A (Admin)—No provision.

Plan B (House)—"Insure that recipients solicit the recommendations of the organized bar in the community being served before filling staff attorney positions . . . and give preference to qualified persons who reside in the community to be served."

Plan C (LPW)—No provision.

Plan D (Brock)—No provision necessary.

ANALYSIS

The House bill provision works to prevent "separate system" of law for the poor manned by roving "poverty lawyers". Encourages accountability to the local bar, by hiring attorneys with a stake in the community.

FEE-GENERATING CASES/INCITEMENT OF LITIGATION

Plan A (Admin)—No provision.

Plan B (House)—Require attorneys "while engaged" to "refrain from the persistent incitement of litigation . . . and refrain from personal representation for a private fee for a period of two years any cases which are first presented to them" while employed with Corporation funds. Also bars fee-generating cases, except according to guidelines.

Plan C (LPW)—No provision.

Plan D (Brock)—No provision.

ANALYSIS

The House provision is intended to reduce solicitation of clients, despite more liberal provisions of Code of Professional Responsibility and Canons of Ethics which apply to legal services attorneys.

BUSING—ABORTION—DESERTION—GRANTEE QUOTAS

Plan A (Admin)—No provision.

Plan B (House)—Bars use of funds to provide legal assistance "relating to the desegregation of any school or school system" as well as to "procure a nontherapeutic abortion or to compel" abortion. Also bans legal assistance involving "desegregation of any institution of higher education," or in matters "arising out of a violation of the Selective Service Act or of desertion from the Armed Forces. . . ."

Plan C (LPW)—No provision.

Plan D (Brock)—Bars discrimination "in favor of or against individual attorneys, employees, or clients on grounds of race, religion, sex, or national origin."

ANALYSIS

The anti-discrimination provision of the House bill would preclude resort to quota systems or "reverse discrimination" in hiring and assignment of program funds. It does not, however, ban lawsuits which seek to impose quotas.

TRANSFER PROVISIONS

Plan A (Admin)—No special provisions.

Plan B (House)—Places Secretary of HEW in charge of transition.

Plan C (LPW)—Transfers most OEO legal services personnel to Corporation. Existing union agreements remain in force.

Plan D (Brock)—No special provisions.

ANALYSIS

The LPW version perpetuates "club" control of the program by retaining "sensitized" personnel and limiting authority of the Board (management) under the terms of the existing OEO union contract.

USE OF GSA AND FTS RESOURCES

Plan A (Admin)—No provision.

Plan B (House)—No provision.

Plan C (LPW)—Permits a President to "direct that particular support functions of the Federal Government, such as the General Services Administration, the Federal telecommunications system and other facilities, be utilized by the Corporation or any grantee contractor or person or entity receiving financial assistance under this title. . ."

Plan D (Brock)—No provision.

ANALYSIS

The LPW bill presents a mind-boggling blank check through which a President could turn over free long-distance phone service, GSA facilities, vehicles, or other aid to any group being aided or employed by the Corporation, whether the United Farm Workers, Ralph Nader, the American Civil Liberties Union, or Young Americans for Freedom. This makes the Corporation's appropriations open-ended and places it beyond the normal checks of Congressional appropriations review.

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

I will admit a certain sense of weariness after a long day, and I know many of my colleagues share it. Perhaps it is compounded to a degree by the fact that some of the efforts we have made on this floor have been thwarted by those who disagree. I would say at the outset that I personally have great respect for the proponents of this legislation, for their sincerity and ability, and for the quality of the debate. Even though in most instances we have not been successful, I think the effort was worthwhile.

We come now to the point at which we really have to choose between programs that, while both seek to achieve the same purpose, are measurably different in application. On the one hand we have a Federal Corporation. Throughout that piece of legislation, which is the committee bill, are exceptions from any regulatory, executive, or congressional oversight. We treat the employees as Federal employees for compensation purposes, but we treat them as State employees for political purposes. We exempt them from application of any Executive order, for example, a civil rights order which required a certain standard of performance in minority hiring, and the like, yet we hire them under a Federal Corporation.

It is a Federal bill, providing for a totally independent, nonsupervised agency of Government, run without being subject to political jurisdiction or control.

We have tried, during the course of the debate, to insist that the Congress regularly review the progress of the program and its success in assisting the poor. We have asked that it cease in 5 years, so that the Congress would be required at that time to evaluate it. We were not successful in that effort. We have asked the opportunity for State governments to have a voice in the program. That effort was not successful. We have asked for some degree of supervision on the part of the President, and in each instance we have been turned down.

So we come to the point now where we have a totally independent branch of Government, operating under a tremendously broad franchise, without effective limitation, without any real safeguard to protect the very people the legislation is designed to serve.

On the other hand, the so-called Brock-Helms substitute attempts to deal with the same problem in a very different way. What does it do? It says, very simply, that we would create a Federal Corporation whose principal purpose was to assure accountability and equity in the disbursement of funds, but the utilization of these funds, the management of the program, is delegated, as long as it is consistent with Federal law, to the State and the community.

What is the logic of that? Why have we pursued continually this effort to decentralize the program down to the community level? Well, I speak only for myself, but I say, in all sincerity—I think this applies to States outside of my own—that people are up to their necks with Federal programs over which they have no control being crammed down

their throats. Their voice is absent. Yet their money is being spent.

We have a desire that serves the poor, and there is much that the Federal Government can do. However, there is a limit to Washington's ability to help the people of a community—whether they be poor, black, or disadvantaged—by some other condition. If they are to be truly assisted, the basic support must come from the other people who inhabit that community, from the individuals, the mayors, and the county judges, from the people who live next door.

It just seems to me that if we really want to solve the problems of this Nation, we have to motivate the community to respond to the needs of their fellow men and enhance its capacity to do so. We do not enhance that desire by saying: "We don't care what you think. We will have a new program whether you like it or not. We will meddle with your political system and lobby and use your tax dollars to enact this legislation which you happen personally to dislike." That is not going to get them to help the disadvantaged of this country.

The choice here is not one of how the system works in mechanical terms. It is not a choice of the statute itself in terms of the amount of dollars that will be spent, or who happens to serve on the board of directors. These are not the real questions.

What concerns me is how much support with we have at the community level. Millions of people in this country are not given access to due process of law today because they cannot afford it.

We show a concern for that fact by debating the issue itself. However, if we really want to get something down to the individual level, rather than force a little cash and a lot of control down through the bureaucratic sieve, we will design a measure which involves local response and involves people at the community level and gets them to help their fellow man, and not just bring in someone from outside of the community or from outside of the State to tell them how they think they should act, live, or with whom they should associate. We should do it by saying: "We care about you and care about providing for you access to the due process of law." We should give our fellow citizens an opportunity to enhance that opportunity for their fellow man, to help them to find a way out of poverty, out of welfare, out of the slums we describe as public housing in this country.

That is the fundamental choice we face in this legislation. I said at the outset that I was getting somewhat weary. That is perhaps an understatement. It is not easy to continue to debate a program in which one happens to believe deeply when he is opposed, not only by a majority of his colleagues, but also by his own administration. Yet I think it is important enough for us at least to make the case for an alternative concept of government, a concept which redignifies the community and the individual participation of that community.

I think it is important enough to try to restate again the basic concept of the federal system of government itself because that is really what it is all about.

I just do not believe that we ever will have the money or the power in Washington to do what has to be done to resolve the problems of this country unless we have the cooperation and the faith and the confidence of the American people to do their part at the local level.

The people just cannot have confidence in a system when they do not have a voice in it. They cannot believe in a system when it is used to thwart their desires and needs and to fight against the very things in which they believe.

Mr. President, I suggest that that is really the question we face here tonight and not whether or not we will help the poor, not whether or not we will give them access to due process of law.

I do not think there is any debate about that. We are all committed to equality of economic as well as legal and social opportunities for each of our citizens.

The question is by what device, by the device of motivation or by the device of control?

It is a choice that we face more and more often these days. I fear our tendency to assume even more power, not only with regard to legal services, but also with regard to wage and price controls, economic controls, and all of the rest of the impediments to freedom that this Congress has recently imposed upon the American people. This is wrong morally, ethically and politically. If we as representatives are to continue to merit our constituent's faith, we must act to enhance their freedoms, not to cripple even their most elementary choices.

I would urge the adoption of the substitute. I commend it to the Senate.

Mr. TOWER. Mr. President, the proposal we are discussing today to establish a permanent national system for the delivery of legal assistance to our Nation's poor is a proposal worthy of our most serious and thoughtful consideration. The goals envisioned by it are ones which we can all endorse. Why then are we engaged in controversy over something which would appear, on the surface at least, to be so universally acceptable? The answer to that question is a simple one. When we strip away our personal political and ideological motivations, the central focus of our differences here is the type of delivery system we will select to make these important services available to the American people.

While any number of bills have been introduced and discussed to varying degrees, two basic proposals have emerged for our serious consideration.

The first, S. 2686—or Javits-Nelson proposal—would establish a totally independent national corporation chartered under District of Columbia incorporation laws, with a permanent $100 million annual appropriation to provide legal services under the staff-attorney or staff-office system.

The second, S. 1990—or Brock-Helms proposal—would establish a Federal corporation chartered by the Congress—and accountable to the Congress through the annual appropriation process—to channel funds to the States for a judicare or client-choice system.

During the last several years we have seen a number of differing versions of the Javits-Nelson proposal and they have received considerable attention and have been rather thoroughly discussed. During this Congress, however, we have for the first time a thoughtfully and carefully developed new approach to the delivery of legal assistance to the poor.

For years it was presumed that the cost-effectiveness of a client-choice or judicare system, such as that being proposed by Senators BROCK and HELMS, would not be comparable to a staff-attorney or staffed-office system. Some careful investigation and research done by my friends from Tennessee and North Carolina, however, have resulted in a surprising contradiction of our original presumption. It is my understanding that they have presented or do intend to present a cost-analysis of the two types of delivery systems themselves. So I shall not do so here. However, the findings indicate not simply comparable cost-effectiveness figures for the two, but in fact a greater cost-effectiveness ratio under the judicare system.

Unfortunately, before a parliamentary question of proper committee jurisdiction for the various proposals to establish a legal services corporation could be resolved, and hearings held to consider the two alternatives in light of the information provided by Senators BROCK and HELMS, the Senate Labor and Public Welfare Committee hastily drafted S. 2686, and reported it to the full Senate for consideration.

As a result of that, Mr. President, my colleagues and I are faced today with making a decision between two types of delivery systems for legal services to the poor without the benefit of the wise counsel of the members of the Senate Judiciary Committee who under the rules of the Senate, have primary responsibility for, as well as unchallengeable expertise in, matters pertaining to our judicial process.

It was certainly my hope throughout this debate that some agreement could be reached whereby this measure would be referred to the Judiciary Committee for a limited period. I have been informed, however, that the managers of the bill are unwilling to agree to such a proposal.

I must admit that I am somewhat confused as to the reasons for their reluctance in this matter for it would appear that we have only to gain by a careful deliberation of the two proposed approaches to the delivery of Legal Services. On the one hand, those of us who question that the staff-attorney system is the best approach might be persuaded by rational discussion that it is, in fact, the best system, which would almost certainly lead to unanimity as we launch this new national effort. On the other hand, if the Senators from Tennessee and North Carolina have evidence that a client-choice system would provide the best approach, we should all be eager to hear what they have to say, for in the final analysis, our responsibility here should be to insure the best possible program to provide for the needs of the American people.

We apparently shall not have the opportunity to achieve this end, Mr. President: Consequently, I have decided on the basis of my own analysis of the two approaches that the Brock-Helms proposal carries the greatest promise of effectiveness, and I intend to support the substitute offered by my distinguished colleagues from Tennessee and North Carolina. Furthermore, on the basis of the information available to us today, I believe it deserves the support of the majority of the Members of this body. I urge the adoption of the Brock-Helms amendment.

The PRESIDING OFFICER. Who yields time?

Mr. JAVITS. Mr. President, may I know how my time stands?

The PRESIDING OFFICER. Will the Senator repeat his question?

Mr. JAVITS. How does my time stand?

The PRESIDING OFFICER. The Senator has used 17 minutes of his hour.

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

This is a proposal to literally—and the offerors of the proposal state it very frankly—change the basis completely as to this legal services matter and, generally speaking, shift it to the States, so that in lieu of a Governor's veto, we have programs which are operated by devolution through State authority. They might be operated privately; they might not. They might be operated by bar associations; they might not. They could be operated through a State agency.

Then, Mr. President, they do one other thing which is very interesting: They try in effect to immunize the State against litigation challenging its own power.

We just defeated that proposal in respect to the Nation. We defeated an amendment, Senator LONG's amendment, which sought to prevent the challenge to the power of the United States by an individual. How much more just is it, therefore, to defeat an amendment which seeks to prevent a challenge by an individual against the power of a particular State.

Again, that is a very essential part of our system. Indeed, it is the reason we say that a citizen has the rights of a citizen of the United States and the rights of a citizen of a State, so that he may juxtapose his rights as a citizen of the United States under, for example, the 14th amendment, as to which we have had 15 years of the most intense struggle in terms of equal opportunity exactly on that proposition. Here in respect of legal representation, a key element in the ability to assert rights, we are asked to take it away.

Mr. President, I do not need to reply upon my own authority in respect of this amendment. I would like to read to the Senate what President Nixon said about State involvement in his message to Congress May 5, 1971. Let me point out here and now that the administration bill takes our tack, that is, the tack of working on the national level with respect to legal services, rather than the State tack, but the door is left open to the extent of the nature of the involvement, and I shall deal with that in a moment.

But, Mr. President, here is what the President said:

> The Nation has learned many lessons in these six short years. This program has not been without travail. Much of the litigation initiated by legal services has placed it in direct conflict with local and State government. The program is concerned with social issues and is thus subject to usually strong political pressures.
>
> Even though surrounded by controversy, this program can provide a most effective mechanism for settling differences and securing justice within the system and not on the streets. For many of our citizens legal services has reaffirmed faith in our government of laws. However, if we are to preserve the strength of the program, we must make it a permanent part of our system of justice.

So, Mr. President, it seems to me that the President himself has made clear the line of distinction, as well as the support of the bar association, which I still refer to, and I refer again to the letter which we put into the RECORD dated January 30, 1974. We also have the testimony of Robert W. Meserve, then the president of the American Bar Association, on March 1, 1973, before the House Committee on Education and Labor to the same effect, and I ask unanimous consent that excerpts from his testimony with introductory comments on that point printed in the RECORD.

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

> In testimony before the House Committee on Education and Labor, on March 1, 1973, Robert W. Meserve, then President of the American Bar Association, said:
>
> "As you know, there has been a good deal of controversy surrounding the operations of the Legal Services program. Unfortunately, the criticism, most of which is unfair and overgeneralized, seems to get more public attention than the excellent client service which the more than 2,000 lawyers currently employed deliver to their previously unrepresented clients on a day-to-day basis. We have all heard the outcry against "law reform" activities of poverty lawyers who, according to the criticisms, neglect the legitimate needs of clients in order to pursue their own agenda of social and institutional reform. A look at the record may help to put that criticism in better perspective."
>
> He said also:
>
> "I think any limitation which would bar legislative activity on behalf of a client would violate the code of professional responsibility, if we talk about a client's wishes and a client's interest reasonably adapted to the program.
>
> "Limitations on lobbying for causes or issues not related to a specific client or group of clients would not appear to offend the code if such activity were prescribed as a condition of employment.
>
> "Surely political activity of individual lawyers which seek to promote their own interests of a particular party or individual should not be permitted in the program. I think this could safely be left to the judgment of the board of directors of the corporation which, as I suggested, would at least consist primarily of lawyers acquainted with the restrictions in the code of professional responsibility."
>
> Asked if the rule should be different because the federal government pays the fee, Mr. Meserve said:
>
> "No sir, I do not. I think the lawyer-client relationship does not change just because the Federal Government is paying the fee. There is only one code of professional responsibility. Its provisions are equally applicable to private lawyers and legal services lawyers. That is the way it should be. If we are serious about providing counsel to the poor, I think we should offer the same services as we give to our paying clients."

Mr. JAVITS. Mr. President, there will be a matter in conference on this question of what can be done with State Governors and State agencies. The Senate bill finds that there may be agreements between the new Corporation and State and local governments, where the State or local government applies and there is a special determination by the board of the Corporation that the arrangement to be made will provide supplemental service which cannot adequately be provided through nongovernmental arrangements.

The House bill leaves a very wide-open mandate.

The PRESIDING OFFICER. The Senator's 5 minutes have expired.

Mr. JAVITS. I yield myself 1 additional minute. The House bill leaves a very wide-open mandate between individuals, partnerships, and so on, and State and local governments, so that contracts can be made for the purpose of providing aid under the legal services program.

I have informed, Mr. President, the authors of this amendment, Senator BROCK and Senator HELMS, that in conference, as I will be a conferee, I will do my best to work out some way in which there may not be any inhibition to dealing with local governments, where they can make an effective and affirmative contribution to the program insofar as the corporation is concerned. It seems to me, Mr. President, that with this issue in conference, rather than to accept a totally different premise entirely, in my judgment highly invidious to the program, by adopting this substitute, we ought to reject it and endeavor to work out the situation in conference as I have described.

The PRESIDING OFFICER. Who yields time?

Mr. BROCK. Mr. President, may I yield myself 1 minute? I would just like to thank the Senator from New York for his contribution. The Senator is certainly a skilled member of this body in all matters, but particularly with reference to this matter, I want to thank him for the quality of the debate, and particularly the quality of his contribution and his very great interest and concern here.

Mr. HELMS. Mr. President, I join my colleague the Senator from Tennessee (Mr. BROCK) in appreciation of Senator JAVITS and others for their consideration of those of us who have not agreed with them, and to state that they have been gracious and cooperative in every way.

Mr. BUCKLEY. Mr. President, it should be apparent by now that, while there are many Senators opposed to the legal services proposal reported by the Labor and Public Welfare Committee, virtually all of us are committed to the general proposition of equal access to

justice for all citizens, and to the basic concept of some public assistance in the provision of responsible legal representation for those members of our society who are unable to bear the often heavy cost of legal counsel.

The issue here, Mr. President, is not "shall there be legal services," but, "what kind of legal services shall there be?" Shall there be legal services that deal with the legitimate legal problems of poor individuals, or shall there be legal services that on the record are often tailored to the personal political and social agendas and priorities of self-appointed, elite antipoverty lawyers?

The fundamental issues in this debate are:

First the nature and role of publicly-funded legal services for the poor;

Second. Improved provision of such services;

Third. Freedom of choice for poor legal clients;

Fourth. The best mechanism or structure for the delivery of such services;

Fifth. The builtin weaknesses and abuses found in S. 2686;

Sixth. The politicization of legal services for the poor;

Seventh. The accountability to the peoples' elected representatives of any publicly funded legal services program; and

Eighth. The extent to which the Government of all the people can constitutionally and properly go in subsidizing the agitation for social and political change of one group of people at the literal and figurative expense of the rest of the people.

All these basic issues are closely related to each other. The proper solution to one tends to produce the proper solution in another.

On virtually every one of these questions, Mr. President, S. 2686 fails the test. But the Brock-Helms substitute bill, amendment No. 885, passes muster on virtually all counts.

The current legal services program has been plagued with problems that have resulted from attorneys using the program as a base for promotion of political objectives unrelated to assuring the poor access to justice. Attorneys, on their own, have selected areas of public policy to which they have been opposed and proceeded to work for changes. This, they have tried to do in a number of ways: Recruitment of clients with relevant causes—and rejection of others; efforts to identify areas for class actions which fit their agenda; development of legislative coalitions to push issues of interest to the lawyers; creation of and assistance to quasi-political groups, such as chapters of the National Welfare Rights Organization, which, in turn generate grassroots political pressures and activities; encouragement of dissent in "establishment" institutions, such as prisons, schools, and the military; aid to underground and radical groups by circumvention of prohibitions against assistance to the nonpoor; organization of and assistance to political campaigns—including "nonpartisan", boycotts, demonstrations, et cetera; subsidization of training programs and publications to promote causes and develop technical skills in support of them; conversion of "backup" centers created for research and support purposes into "public-interest" law firms pushing private agendas in such areas as abortion on demand, busing, "prisoners' rights", dissent in the military, aid to conscientious objectors, gay liberation, the anti-Vietnam movement, voter registration, qualification of minority political parties, representation of revolutionary groups, rent strikes, opposition to welfare work requirements, and a host of others.

These abuses were not controlled by the Federal power of OEO, in part because it was a distant national bureaucracy, as would be set up under S. 2686. In addition, the sorry record of most regulatory agencies and independent Government corporations in terms of efficiency and serving the public interest hardly encourages high expectations in yet another such "independent, quasi-public" entity.

But more importantly, virtually all of the existing problems and abuses would continue under the corporation established by S. 2686, because they are either inherent in the structure and approach of S. 2686 or are permitted by the multiplicity of skillfully worded loopholes and exceptions written into nearly every prohibition in the bill.

These abuses stem from two major sources: First, the staff attorney system; and second, the heavy emphasis placed on "law reform" and legislative advocacy by the "old boy" club of activist Legal Services attorneys who dominate the field. These two features are not only implicit in S. 2686, but would be carried on by the "in toto" acceptance of current Legal Services grantees projects, methods, and goals which is encouraged by S. 2686.

The virtually universal staff attorney approach to Legal Services is seriously flawed and contains the incentive for abuse in the following respects:

First. The poor person seeking free legal aid is denied the same free choice of attorney which is available to the more affluent.

Second. The attorney gains dominance in his relationship with the potential client, since both understand the client has nowhere else to go for help.

Third. In the content of monopoly status, priorities for staff involvement are oriented to lawyer preferences, rather than client needs.

Fourth. Subsidized lawyers, with a federally assured income, yet professionally accountable, not to the public, but to themselves, are free to spend their time on high "impact" appeals and test cases, rather than "inefficient" individual representation.

When most Americans think of "legal services," they think of advice and representation provided to individual clients for various civil problems, with litigation used mostly as a last resort aimed at winning that individual's case. However, legal services lawyers and officials view their purpose much differently. A former director of OEO's legal services, E. Clinton Banberger, in 1966 indicated that the role of the legal services attorney was that of redesigning, reforming, and creating not only legal institutions but social, economic, and political institutions as well.

The second Director of the legal services program, Earl Johnson, said that:

> The primary goal of the war on poverty's legal services program should be law reform achieved by significant test cases that can revise the structure of the world in which the poor live.

OEO's former Director, Sargent Shriver, while in office declared that:

> OEO is in the process of making new law through test cases and legislative activity.

Nowhere in statute is there evidence that such a heady definition of the purpose of legal services was authorized or intended. I would suggest that such activities properly belong in the committees and Chambers of Congress and not in publicly funded adjuncts of the executive branch, however far removed.

OEO Director Shriver signalled the beginning of second thoughts about federally-funded test case litigation as an instrument of law reform, to legislative advocacy or lobbying. He wrote that:

> There are several methods of obtaining reform in the substantive laws affecting the poor, the most natural of which is the test-case . . . however, the limitations of the test-case technique when applied to the problems of changing a structure so broad and oppressive as that facing the poor are obvious. In order for real progress to be made, pressure must be brought to bear on Federal and State legislatures.

Fred Speaker, another former Director of the Office of Legal Services, in 1971 delivered a speech to the National Legal Aid and Defender Associaton in which he said:

> In many instances the frontiers of reform are the most open and the most attractive in the legislative halls. Statutory reforms are more permanent than administrative rule changes, and many of the early judicial victories have already been won.

Further evidence of the importance of law reform activities to legal services leaders can be found in the fact that it is one of the major criteria for evaluation of a legal service grantee's success. For example, in 1971 the North Mississippi rural legal services project was rated by OEO as one of the best in the Nation. The project's law reform efforts were prominently mentioned. In the same year the Monmouth County, N.J., legal services organization was criticized in an OEO evaluation for engaging in "little or no law reform."

The twisted logic and somewhat perverted efforts of legal services activists can be seen in the staff manual of the well-known, OEO-supported Dixwell Legal Rights Association of New Haven, Conn. The manual states that:

> The legal service program has realized that it is not fulfilling its mission by simply helping individual poor people. . . . Its answer to the problem has been to focus on test cases.

But, it continues:

> The central difficulty with test cases is that they really don't deal at all with the problem of the caseload. Nearly half of the caseload across the country consists of uncontested divorces.

Lawyers form only a portion of the staffs of legal services programs. Neighborhood workers . . . can also help amass and maintain a large enough pool of clients to assure successful prosecution of test cases.

There is more:

Organizing a rent strike, a welfare mothers' group, or a block club is an excellent task for a community worker, especially since after the group is formed, the neighborhood lawyer could represent it.

Explicit permission for such questionable law reform, lobbying, and organizing activities is written into the bill before us, S. 2686.

What has been the effect of all this law reform, test case, and class action effort on the individual poor client?

A partial answer can be found in the disregard for and manipulation of client interests as indicated in the Dixwell staff manual. Further indication is given by the GAO "Report on Legal Services" published last March. It stated:

There was considerable difficulty interpreting and analyzing the results reported by the grantees because (1) grantees had not defined their objectives in operational terms, (2) grantee records were inadequate, and (3) the confidentiality of the attorney-client relationship precluded our review of certain grantee records.

Adequate data was not available to determine the actual number and types of cases handled, to measure achievements in law reform, economic development, and education, and to compute the average cost for cases handled.

By far the most serious problem, however, was "the number and magnitude of the discrepancies . . ." noted in the grantee's data on accomplishments.

The GAO stated:

We could not establish the actual number and types of cases handled by the grantees during the 1971 program year nor could we measure grantee achievements in certain program goal areas.

Mickey Kantor, a former official in the legal services program and executive director of Action for Legal Rights, wrote the following in the Clearinghouse Review of Poverty Law in February 1972:

Litigation was initially viewed as the most relevant and productive forum for the poor. Indeed, the most traumatic and far-reaching decisions on behalf of the poor have been the result of litigation. With all of its benefits, litigation remains expensive, time-consuming, often frustrating and it nearly always results in less for the client than was pleaded for or anticipated.

A more damning complaint can be found in a recounting of an interview with Mary Ellen Hamilton, formerly president of the National Clients' Council. The comment is in an article by Richard Blumenthal in the Yale Law Review. According to Mr. Blumenthal, Ms. Hamilton says that:

Legal services attorneys have been known to place a high priority on some issues, such as their own status within the program, that are of less concern to the client community. Moreover, on certain issues the interests of the attorneys and the poor may be in direct conflict or at least may be felt to be so. Recently, for example, there have been increasing complaints from clients about attorneys who "exploit" clients to launch sweeping law reform actions, when the individuals may be seeking much more limited solutions to their problems within existing laws. The clients accuse the attorneys of taking law reform "ego trips" at their expense. The National Clients' Council has begun compiling documentation on this problem, and plans to make it a major issue.

Perhaps the most telling commentary was made in a recent lengthy article in the Public Interest entitled "The Uses and Abuses of Legal Assistance." The author, Prof. Harry Brill, was research director of the San Francisco Neighborhood Legal Assistance Foundation—OEO's second largest legal services agency. Professor Brill said:

The lawyers believe that they had a mission—to devote themselves to bettering the conditions of the poor not only locally but across the state and nation. So if in service to their idealistic aims they breached professional standards of conduct, they experienced no remorse. Though they often felt unappreciated, the lawyers also felt proud of their efforts. They seemed unaware that in the process of doing what they did—falsifying, distorting, and withholding information—these idealists were becoming cynical operators who paid little attention to the means they employed. So the class action strategy the lawyers pursued victimized not only the poor and the organizations that served them; ultimately, the strategy also made casualties of the lawyers themselves.

It is important for those who debate the fate of legal assistance to separate in their minds class action from more conventional legal services. It would be tragic for those who are outraged at government-funded class action to assess and determine the future of the program as a whole on the basis of one of its weakest components. On the other hand, the poor and their representatives, who often tend to regard any attack on existing social programs as an attack on themselves, should realize that, just because something describes itself as a service to the poor, it doesn't follow that, in actuality, it is.

Mr. President, I am not arguing against the merits of many of the causes involved in OEO legal services activism, nor even of the methods used.

What does concern me deeply is that maybe the effects on the nature and structure of a representative government such as ours, of the serious contraventions of the democratic, legislative process caused by the use of citizens' tax dollars to promote changes in our laws and institutions which are desired by a self-appointed vanguard of a group within our society.

The fundamentals of the issue have been cogently described by the highly respected Prof. Geoffrey Hazard of Yale Law School. In an article in the University of Chicago Law Review, Professor Hazard noted that:

The question in test-case litigation, as in legislation law reform, boils down to the propriety of constituting a publicly funded agency to lobby for the special benefit of a limited sector of the general community . . . there is a serious, if simple, question of principle involved, namely, whether government predicated on equal participation of all members of the electorate is compatible with providing some of them with special political equipage at public expense.

The fact remains that in a constitutional regime partisan political activity is supposed to be a matter of private initiative. For such a regime to survive it has to stay pretty much that way in fact. However inconstantly the principle is fulfilled, it rests on a recognition that a government which creates agencies to formulate what shall be taken as the people's will is no longer a government by the people.

The force of the point is suggested by asking what would be the consequences of generalizing the proposition that the poor should have lobbyists paid by the government; should similar lobbyists be provided the near-poor, the middle-class, the affluent? How does one rationally allocate the political resources through which resource allocation is made? One comes uneasily to the conclusion that the idea simply does not have sustaining attraction.

A review of the history of legal services and of the bill now proposed can only lead to the conclusion that the legal services program has been and will continue to be heavily, in fact, primarily involved in political activities broadly understood, political activities of a conspicuously consistent and pronounced persuasion.

The publicly funded legal services program, with its national network of lawyers attuned to a common agenda for political and social change through law reform efforts in litigation and legislative lobbying, with its wide opportunities for the selection of individual cases to make new law, and with its widespread capacity to mold and mobilize large numbers of people for various forms of pressure and political action, provides an unprecedented national mechanism for the systematic pursuit of their political agenda.

Because of this tacit understanding, those who argue that a so-called independent corporation must be set up free of what they call political control—but what is in reality public accountability for their expenditures and activities to the elected representatives of those citizens who pay the bills and their salaries—those who argue in this manner are guilty of begging the question. For in practice the legal services program is already "independent" and under the current bill, there is every reason to believe it will continue to be heavily involved in political control and politics. The legal services program is not now under the political control of elected politicians; it is in too many instances under the political control and manipulation of the directors who develop the programs and the radical attorneys who staff the projects. It is under the control of the political agendas and ideological biases of these men. This is largely the case now, and under S. 2686, the political control of the program by these individuals in all probability would be greater and much more secure from attempts to loosen it.

The argument for freedom from political control is a fraud, it is an argument to be free to act politically and irresponsibly with public tax money, with no accountability required.

It is also argued that publicly funded legal services lawyers must be free to pursue their cases in whatever manner they wish, with no requirement of public accountability for their actions. In normal, private practice this is certainly necessary and proper. But we have seen that the legal services lawyer is not in the same category as the private lawyer. And as I pointed out earlier, in my discussion of the staff attorney system,

that the legal services staff attorney enjoys, in effect, a privileged monopoly status vis-a-vis his poor client. The relationship is very significantly different than that between a private lawyer and his client.

Mr. President, the courts have taken a dim view of political activities by publicly funded organizations. In a case argued before the Pennsylvania Court of Common Pleas, the presiding judge, Judge Sweet, stated:

> We are gravely disturbed by the implications of the "non-service" function referred to indirectly in the application as education, training and research activities. The business of a lawyer engaged by such a nonprofit corporation is to represent indigent persons one by one as they have a need for representation. It is not a class representation of the indigent, as such, nor a collective representation, nor are the poor a single and collective client. To the extent that the Anglo-American legal system still espouses a philosophy of individualism rather than a philosophy of collectivism, rights belong to people, individual people, and not to any great gray mass of "the poor." We do not think that public money should be used to foment rent strikes, promote race riots or encourage civil disobedience.

A prohibition against any public support for political activities and lobbying efforts by particular groups is reflected in another Federal statute, the sections in title 26 of the United States Code which deal with a kind of indirect Federal subsidy, namely the exemption of certain organizations from the requirement to pay taxes. In 1959, in a case which involved this section of the tax code (*Cammarano* v. *The U.S.* 79 S. Ct. 524), the Supreme Court reaffirmed the taboo, noting that the use of tax money to promote the views of a particular group or organization is both unfair and dangerous. The unfairness of such a subsidy was emphasized by Justice Harlan who wrote:

> As early as 1934 Congress amended the code expressly to provide that no tax exemption should be given to organizations, otherwise qualifying, a substantial part of the activities of which "is carrying on propaganda, or otherwise attempting to influence legislation," and that deductibility should be denied to contributions by individuals to such organizations. And a year thereafter, when the code was for the first time amended to permit corporations to deduct certain contributions not qualifying as "ordinary and necessary" business expenses, an identical limitation was imposed. These limitations, carried over into the 1939 and 1954 codes, made explicit the conclusion derived by Judge Learned Hand in 1930 that "political agitation as such is outside the statute, however innocent the aim . . . controversies of that sort must be conducted without public subvention; the Treasury stands aside from them." Petitioners are not being denied a tax deduction because they engage in constitutionally protected activities, but are simply being required to pay for those activities entirely out of their own pockets, as everyone else engaging in similar activities is required to do under the provisions of the Internal Revenue Code.
>
> Nondiscriminatory denial of deduction from gross income to sums expended to promote or defeat legislation is plainly not "aimed at the suppression of dangerous ideas." Rather, it appears to us to express a determination by Congress that since purchased publicity can influence the fate of legislation which will affect, directly or indirectly, all in the community, everyone in the community, should stand on the same footing as regards its purchase so far as the Treasury of the United States is concerned.

Let me quote a portion of that decision again, Mr. President:

> Political agitation as such is outside the statute, however innocent the aim . . . controversies of that sort must be conducted without public subvention: the Treasury stands aside from them. Petitioners are not being denied a tax deduction because they engage in constitutionally protected activities, but are simply being required to pay for those activities entirely out of their own pockets, as everyone else engaging in similar activities is required to do under the provisions of the internal revenue code.
>
> Since purchased publicity can influence the fate of legislation which will affect, directly or indirectly, all in the community, everyone in the community, should stand on the same footing as regards its purchase so far as the Treasury of the United States is concerned.

I believe, Mr. President, that the basic constitutional principle enunciated in this case applies very appropriately to the proposed Legal Services Corporation of S. 2686, in spite of the fancy footwork attempted in the language of the bill.

Mr. President, the dangerous weakness and glaring deficiencies of S. 2686 are legion? Many of them have already been pointed out to this body and scores of amendments have been introduced in a vain attempted to correct them.

The absence of clear statutory guidance on parameters, prohibitions, and penalties regarding the corporation's activities and those of its prospective grantees, limitations placed on the authority of the legislative and executive branches, and the significant influence over the program's governance statutorily accorded private, special interest groups, and individuals, all contribute to the conclusion that the serious problems which now exist in legal services would, in all likelihood, not only be rendered insusceptible to reform, but would increase in frequency, scope, and magnitude.

In addition to the major problems which I have discussed, let me mention some of the lesser shortcomings of S. 2686:

Questionable committee jurisdiction; ratification of present legal services abuses; non-Federal charter; a dominating national advisory council or recipient interest groups; the virtual elimination of State and local governments as eligible grantees; the commingling of public and private funds, negating all prohibitions; permission for lobbying, political activity, aid to demonstration, picketing, strikes and boycotts; representation of minors without parental request; effective elimination of eligibility standards; organization and representation of advocacy groups—the list goes on and on.

With a great many of these loopholes insinuated into the bill by excepting clauses such as "if necessary to the provision of legal advice and representation," or when "deemed appropriate".

Mr. President, I think it is evident to those who will review and face the facts, that past publicly funded legal services programs have seriously exceeded their proper limits, and that S. 2686 would not only continue these serious breaches of propriety and public trust, but, indeed, compound them.

S. 2686 fails on all counts. It embodies an improper conception of the nature and role of publicly-funded legal services for the poor; it will not be an improvement over the careless and neglectful provision of legal services to poor individuals under OEO's programs; it will not provide freedom of choice of attorneys and legal approaches for poor clients; it is not the best mechanism or structure for delivery of such services; builtin weaknesses and abuses exist in it; publicly funded legal services for the poor will continue to be politicized by the political agendas and prejudices of the directors and staff members of the programs; the proposal contains essentially none of that accountability to the people's elected representatives which is both necessary and proper; and finally, the bill, in practice, will require the Federal Government to subsidize the agitation for social and political change on behalf of one group of people at the literal and figurative expense of the rest of the people.

Mr. President, this is one of the worst pieces of legislation I have seen. It attempts to set up a paragovernmental institution that will inevitably see as its objectives to effectuate social change without the usual checks and balances of representative government and without reference to its fundamental purpose of providing adequate legal representation to the poor as individuals and not as faceless members of a class. It establishes a program designed to effectuate major political changes. As the former Vice President commented in the Journal of the American Bar Association.

> What we may be on the way to creating its a federally-funded system manned by ideological vigilantes, who owe their allegiance not to a client, not to the citizens of a particular state or locality and not to the elected representatives of the people, but only to a concept of social reform.

The irreparable flaws of S. 2686 go to the very heart of its conception and structure. This bill would create an organization of social and political activists who would be virtually accountable to no one for their actions, who would enjoy the benefits of Federal tax dollars and Federal employment with virtually none of the concomitant responsibilities and obligations of public service. This bill theratens to short circuit and bypass democratic and constitutional practices.

I strongly urge the Senate to reject S. 2686 and to pass instead as a substitute S. 1990, which offers a proper, reasonable, and effective program for legal services; one that will satisfy the needs of the poor rather than the egos of a few who presume to know what is in the best interests of the poor.

The Brock-Helms bill would set up a small Federal corporation—limited to 25 employees—whose main functions would be to channel to the States funds for the delivery of legal services to the poor and to insure compliance. Each State would then pass enabling legislation to distribute the funds through a State agency, through the State bar association, or through a voucher system

directly to clients, for use in payment of legal services rendered by a practicing attorney freely chosen by client to advise and represent the poor. At one stroke, this system would accomplish two important reforms: first, it would restore to the client the normal freedom to choose a lawyer thus enhancing the lawyer-client relationship; and, second, it would restore the normal checks and balances of representative government to the highly political field of law reform.

Thus the Brock-Helms bill solves the abuses in the present legal services program by restructuring, rather than by excessive restrictions and prohibitions. Although overt political and lobbying activity is, of course, prohibited, the new structure tends to be self-enforcing and thus less likely to generate abuses.

The basic premises of this bill are, first, that no single rigid scheme imposed out of Washington is capable of meeting the needs of this Nation. The legal services program that will work best is not one which tries to force all projects into a single restrictive mold. The program that will work best is the one that helps the people in each community meet their own needs in the way they think best, and second, that the individual client should have the maximum freedom to select the attorney and approach of his choice.

This approach will tend to reduce the monopoly power of the present legal services club and its powerful network for social and political action.

It will restore some public accountability to the program by guaranteeing that the States had a voice in the structuring of the program and it would guarantee that poor clients had the same right to choose their attorneys as their more affluent neighbors. By setting up a reasonable eligibility standard—the medicaid formula—it would also provide a uniform basis for assessing need in each State, and guarantee that each State received an equitable share of the funds appropriated for the delivery of legal services.

The Brock-Helms bill contains a reasonable and proper conception of legal services, one which prohibits the worse excesses of law reform and political activism. It concentrates on delivering quality services to the individual poor client. It gives freedom of choice to the poor. It offers a superior mechanism of delivery which allows for variations in order to provide the best delivery of services. It avoids the built-in weaknesses and deficiencies of S. 2686, and it discourages the politicization of legal services by a coterie of political ideologies pursuing their own vision of social reform at public expense. It restores a measure of public accountability to this publicly funded program. And, finally, the Brock-Helms bill does not breach constitutional and democratic principles and does not subsidize the political goals of one group of citizens at the public expense of the rest of our citizens.

One of its most important elements to me is the freedom of choice potentially available to the poor under-voucher payments and judicare systems. These approaches provide a measure of economic empowerment to the poor individual.

The movement toward economic empowerment in other aspects of our anti-poverty and welfare programs would expand the freedom of choice and opportunity of the poor, and tend to do away with the need for the costly, wasteful, and oppressive welfare and social services bureaucracy which weighs so heavily upon the poor and tends to dehumanize them within the grip of its impersonality and insensitivity.

Mr. President, in the best interests of the poor and all our citizens, I strongly urge adoption of the Brock-Helms legal services bill.

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

The yeas and nays were ordered.

The PRESIDING OFFICER (Mr. CLARK). The question is on agreeing to the Helms-Brock amendment No. 885.

On this question the yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Alaska (Mr. GRAVEL), the Senator from Indiana (Mr. HARTKE), the Senator from Maine (Mr. MUSKIE), the Senator from Georgia (Mr. TALMADGE), the Senator from Mississippi (Mr. EASTLAND), and the Senator from Montana (Mr. METCALF) are necessarily absent.

On this vote, the Senator from Mississippi (Mr. EASTLAND) is paired with the Senator from Maine (Mr. MUSKIE).

If present and voting, the Senator from Mississippi would vote "yea" and the Senator from Maine would vote "nay."

Mr. GRIFFIN. I announce that the Senator from Kentucky (Mr. COOK), the Senator from Wyoming (Mr. HANSEN), the Senator from Maryland (Mr. BEALL), the Senator from Maryland (Mr. MATHIAS), and the Senator from Utah (Mr. BENNETT) are necessarily absent.

I further announce that the Senator from Virginia (Mr. WILLIAM L. SCOTT) is absent on official business.

I further announce that, if present and voting, the Senator from Kentucky (Mr. COOK) would vote "nay."

The result was announced—yeas 24, nays 63, as follows:

[No. 27 Leg.]

YEAS—24

Allen	Cotton	McClellan
Baker	Curtis	McClure
Bartlett	Ervin	Nunn
Brock	Fannin	Sparkman
Buckley	Goldwater	Stennis
Byrd, Harry F., Jr.	Griffin	Thurmond
	Gurney	Tower
Byrd, Robert C.	Helms	
Chiles	Hruska	

NAYS—63

Abourezk	Clark	Huddleston
Aiken	Cranston	Hughes
Bayh	Dole	Humphrey
Bellmon	Domenici	Inouye
Bentsen	Dominick	Jackson
Bible	Eagleton	Javits
Biden	Fong	Johnston
Brooke	Hart	Kennedy
Burdick	Haskell	Long
Cannon	Hatfield	Magnuson
Case	Hathaway	Mansfield
Church	Hollings	McGee
McGovern	Pearson	Stafford
McIntyre	Pell	Stevens
Metzenbaum	Percy	Stevenson
Mondale	Proxmire	Symington
Montoya	Randolph	Taft
Moss	Ribicoff	Tunney
Nelson	Roth	Weicker
Packwood	Schweiker	Williams
Pastore	Scott, Hugh	Young

NOT VOTING—13

Beall	Gravel	Muskie
Bennett	Hansen	Scott, William L.
Cook	Hartke	
Eastland	Mathias	Talmadge
Fulbright	Metcalf	

So the Helms-Brock amendment (No. 885) was rejected.

The PRESIDING OFFICER (Mr. ABOUREZK). The bill is open to further amendment.

AMENDMENT NO. 948

Mr. McCLURE. Mr. President, I call up my amendment No. 948.

The PRESIDING OFFICER. The amendment will be stated.

The second assistant legislative clerk proceeded to read the amendment.

Mr. McCLURE. 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:

Add as a new subsection (9) after line 24 on page 17:

"(9) insure that no funds appropriated under this Act may be assigned to any project, program, or activity employing staff attorneys deriving more than half their income from the Corporation, unless said project, program, or activity operates under the authority of a governing board whose members have been either designated or approved by the highest elected legislative and administrative officials of the jurisdiction(s) in which said projects, programs, or activities have their offices. This provision may be waived only by three-fourths vote of the national Corporation's Board of Directors. No funds shall be assigned to any project, program, or activity which assigns representation on its governing board to any organization which is involved in advocacy on questions of public policy.".

Mr. McCLURE. Mr. President, I have a number of amendments pending. It is my intention to offer this amendment and ask for yeas and nays on this amendment alone; and pending the action on that, I do not intend to ask for votes on the other amendments. With that, Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. McCLURE. Mr. President, I will be very brief with respect to this amendment, because I know it is getting late, and I know that the die is pretty well cast with respect to the opinions of the Members of the Senate.

Senators voting against this amendment will be doing a great service to their constituents. Those constituents will have then been notified that their Senators have no confidence in the elected officials back home. A vote against this amendment says, in effect, your mayors, your Governors and your State legislators are not responsible and not worthy of trust. Such a vote will say that you must place your trust in a Federal bureaucracy, responsible to no constituency—a Washington, D.C.-based group

which will decide for Senators' constituents how their States, counties, and cities may best spend their tax dollars.

If they chose, they could spend those tax dollars advocating strikes, boycotts, and demonstrations, instead of assisting the poor in their very real every day struggles against fraud, breach of contract, and discrimination. It may be that an individual citizen prefers one approach or the other, but he will have no means of expressing it effectively, whatever his preference.

If these remarks are primarily addresed to the citizens of this country and in particular to my own constituents, it is for two reasons: first, so that they may be put on notice to determine which Senators have confidence in the local officials in their State; and, second, because the Senate of the United States has already shown by its vote to shut off debate that it does not care to listen to the objections of those Senators who put their constituents first, especially their needy constituents. After all, the poor bear their greatest political leverage at the ballot box.

The assertion has been made that the structure of the corporation as outlined in the Senate bill would insulate the program from political control. There is excellent available evidence that instead of preventing political control, it would lock in and make invincible the political powers already entrenched. It is a matter of record that in one State, a group using money provided by OEO for purposes of establishing a health clinic and ancillary public health services used the money instead to provide the leverage with which an entire slate of public officials for one town was elected. These officials, not coincidentally, were all activists in a leftwing political third party which was fielding its own candidates at State and local levels. No one challenges their right to win a place on the ballot, to campaign, and to take office if they win. But to require the public to subsidize their efforts with the tax dollars taken from citizens of their own State—who might have preferred other candidates—or the tax dollars from citizens of a State 2,000 miles away is patently unconstitutional. Local control of legal services activities would assure that such activities were responsive to State, county, and municipal needs instead of the individual emotions of a single lawyer or the collective designs of a small group.

Let me cite a couple of examples of what the individual legal services lawyers have said about their own aims. Jim Lorenz, a founder and former executive director of the CRLA—California Rural Legal Assistance program said:

> In part we've been trying to begin reversing the legal processes now at work, but for that to happen requires a change in consciousness and in the larger political processes.

He added:

> For the next five years I want to go more into political organizing, trying to work with the people in the State who are split on the race and student issue.

Bob Gnaizda, who is another attorney in the main CRLA office, expresses himself this way:

> I have no respect for the institutions or the system per se, but I can't think of a viable alternative that isn't going to cause enormous bloodshed and not be acceptable to the majority of the people. As far as courts, I don't think the court system now is capable of remedying what's wrong with society, but I don't think there's ever been a court system that has been . . . Overall I have little respect for the legal services program.

Senators who are going to lock these lawyers and their organization into an untouchable legal services corporation are going to have to do some fancy talking to convince anyone that those statements are not political. They are not only political in the general sense; they are political in that their ideas demonstrate that they are using their positions as legal services attorneys and the public's money to institutionalize their own personal brand of politics.

Martin Spiegel, who practiced in CRLA's Santa Rosa office, provides us with this observation:

> The guys who run CRLA have real political moxie like I've never seen . . . the people in it are really able, fantastic lawyers, and they know how to get their friends to back them and how to confuse their enemies.

Here is clear evidence that these lawyers are political and are delighted with themselves and with one another for being so. Nobody speaking in good faith could possibly characterize those remarks as nonpolitical. Alan Houseman, the director of the Michigan legal services program, would be very upset if he thought that this bill would separate politics from legal services. He stated that obtaining justice—

> Can only be accomplished when groups of the poor become politically powerful, so we try to work with groups that are and ones that are beginning to grow in that direction.

Notice that he does not want the poor better fed, better housed, or protected from fraud or discrimination. He wants them politically powerful and is working to see that they become so.

How, may I ask, can politics be nonpolitical?

So it seems that as this bill is in the process of passage we will have a Legal Services Corporation. Since it locks in the lawyers and groups already funded by OEO, it will be political. Since it will be at least in part political, why is it asking too much to suggest that local officials have at least a part in reviewing those people whose decisions will have so much effect upon their counties and towns?

Does the Senate not trust the judgment of the Governors of the States?

Does the Senate not trust the judgment of the State legislatures?

Does the Senate not trust the judgment of the mayors in each community?

Does the Senate not trust the judgment of the elected city councils?

Must the Senate say it trusts only the nonelected, responsible-to-no-one Federal bureaucracy?

Local review would not assure us of a well-run program, but it could help to keep the people of any one locality at least in partial control of what happens in their own community. It could prevent special interest groups from preempting the individual direction that the program should have, and it could prevent the conflict of interest that has already occurred when such seats have been used for political leverage.

Mr. MONDALE. Mr. President, I yield myself 2 minutes.

The PRESIDING OFFICER. The Senator is recognized.

Mr. MONDALE. Mr. President, I hope the amendment is rejected. The amendment is the equivalent of the Governor's veto which we have just rejected by an overwhelming margin. Instead, this amendment would confer the veto on lower elected officials in a complicated process set forth in the amendment.

Once again, one of the fundamental concepts of the Legal Services Corporation is to try to separate from the political apparatus the legal judgments that are made on behalf of the poor clients sought to be served by the program. The reason for the separate corporation is so that we will not go through the process that has been so obviously dispiriting over the past number of years, when a perfectly good and decent lawsuit is brought and some politician in power tries to cut off the lawsuit before the case is heard.

We have dealt with this in several different forms today. The Governor's veto is the closest to this proposition. This amendment would give authority to local elected officials to block legal service programs for political purposes.

The American Bar Association and other groups are strongly opposed to this amendment and I am sure that under the canons of legal ethics it should be opposed because it interposes between the lawyer and his client a judgment which could be entirely alien to the lawyer's obligations and duties under the canons of ethics.

Mr. President, as we are nearing the close of debate on this bill, I would like to express my thanks to the distinguished majority leader (Mr. MANSFIELD) and the distinguished majority whip (Mr. ROBERT C. BYRD) for their cooperation throughout the long and sometimes difficult course of this legislation.

The PRESIDING OFFICER. The question is on agreeing to the amendment. 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 Mississippi (Mr. EASTLAND), the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Alaska (Mr. GRAVEL), the Senator from Indiana (Mr. HARTKE), the Senator from Maine (Mr. MUSKIE), the Senator from Georgia (Mr. TALMADGE), the Senator from Montana (Mr. METCALF), and the Senator from Missouri (Mr. SYMINGTON) are necessarily absent.

On this vote, the Senator from Mississippi (Mr. EASTLAND) is paired with the Senator from Maine (Mr. MUSKIE).

If present and voting, the Senator from Mississippi would vote "yea" and the Senator from Maine would vote "nay."

Mr. GRIFFIN. I anr ·unce that the Senator from Maryland (Mr. BEALL), the Senator from Maryland (Mr. MATHIAS), the Senator from Utah (Mr. BENNETT), the Senator from Wyoming

(Mr. HANSEN), and the Senator from Kentucky (Mr. COOK) are necessarily absent.

I further announce that the Senator from Virginia (Mr. WILLIAM L. SCOTT) is on official business.

I further announce that, if present and voting, the Senator from Kentucky (Mr. COOK) would vote "nay."

The result was announced—yeas 27, nays 59, as follows:

[No. 28 Leg.]

YEAS—27

Allen	Ervin	McClure
Baker	Fannin	Nunn
Bartlett	Goldwater	Roth
Brock	Griffin	Sparkman
Buckley	Gurney	Stennis
Byrd, Harry F., Jr.	Helms	Thurmond
Byrd, Robert C.	Hruska	Tower
Cotton	Johnston	Young
Curtis	Long	
	McClellan	

NAYS—59

Abourezk	Hart	Moss
Aiken	Haskell	Nelson
Bayh	Hatfield	Packwood
Bellmon	Hathaway	Pastore
Bentsen	Hollings	Pearson
Bible	Huddleston	Pell
Biden	Hughes	Percy
Brooke	Humphrey	Proxmire
Burdick	Inouye	Randolph
Cannon	Jackson	Ribicoff
Case	Javits	Schweiker
Chiles	Kennedy	Scott, Hugh
Church	Magnuson	Stafford
Clark	Mansfield	Stevens
Cranston	McGee	Stevenson
Dole	McGovern	Taft
Domenici	McIntyre	Tunney
Dominick	Metzenbaum	Weicker
Eagleton	Mondale	Williams
Fong	Montoya	

NOT VOTING—14

Beall	Gravel	Muskie
Bennett	Hansen	Scott, William L.
Cook	Hartke	Symington
Eastland	Mathias	Talmadge
Fulbright	Metcalf	

So Mr. MCCLURE's amendment (No. 948) was rejected.

Mr. JAVITS. Mr. President, I move to reconsider the vote by which the amendment was rejected.

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

The PRESIDING OFFICER (Mr. BIDEN). The question is on agreeing to the motion to lay on the table the motion to reconsider.

The motion to lay on the table was agreed to.

Mr. BUCKLEY obtained the floor.

Mr. BUCKLEY. Mr President, I yield to the Senator from Idaho (Mr. MCCLURE) without yielding my right to the floor.

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

Mr. MCCLURE. Mr. President, I have six other amendments pending at the desk, which I shall not call up: Amendments No. 842, 846, 848, 849, 843, and 845.

I think the pattern of the votes this afternoon and on the most recent amendment indicates the will of the Senate at this moment to get to final passage without consideration of these other amendments.

Therefore, I merely wish to make certain statements for the RECORD at this point.

AMENDMENT NO. 842

Mr. President, my amendment No. 842 pertains to that part of the bill which would supposedly outlaw political lobbying. The purpose of this section of the bill is ostensibly to: "Insure that all attorneys engaged in legal assistance activities supported in whole or in part by the Corporation refrain, while so engaged, from—

First, any political activity associated with a political party or association, or the campaign of any candidate for public or party office,

Second, any activity to provide voters or proposective voters with transportation to the polls or provide similar assistance in connection with an election,

Third, or any voter registration activity," but there follows an exception which neatly cancels the previous paragraph and leaves it up to legal services just what representation it should provide. The bill says:

Except as necessary to the provision of legal advice and representation by an attorney as an attorney for any eligible client with respect to such client's legal rights and responsibilities; and insure that all staff attorneys refrain, at any time, from any of the activities prohibited pursuant to paragraphs (1) and (3) of subsection (e) of section 1006 of this Act.

In other words, do not play politics. But if you do, do not get caught. If the purpose of this legislation is to provide campaign assistance to left wing candidates, why do we not come out and say so?

In this era when it has become obvious to even the leas' politically sophisticated citizen that political efforts must be made in the open, that the protective shields of secrecy and efforts to attempt one action in another's name must cease, it is ironic that anyone should vote to provide taxpayer's money to political agitators even if that is not the official intent of their bill.

This situation is typical of the entire bill in that unacceptable political behavior is hidden behir i a facade of good intentions. It would be far more straightforward for Senators to come out and say "Yes, I think it is good for poor people to be lobbied leftward." Many of the Legal Services lawyers have cheerfully admitted that this is precisely their goal. Why should we ignore them when they candidly admit their own intentions?

This legislation was carefully drafted so as to provide loopholes against many of its own strictures. Why does the Senate refuse to discuss the monsters that will emerge through these loopholes?

If the sponsors of this bill want to make it clear that we mean to prohibit political activity, then they should have no objection to my amendment which spells it out in unmistakable language.

AMENDMENT NO. 846

The purpose of this legislation is to give Federal sanctity to a new breed of lawyer. Many of the Legal Services lawyers announce proudly that they are no longer members of the club. They find it intelligent to announce this by appearing in court in bare feet and belching in public. They think that by defying rules of courtesy that their clients are in some way being assisted. And anyone who opposes them is, of course, guilty of indifference toward the poor.

If we say that the poor do not need lawyers who live up to the same standards as our own lawyers, are not we slandering the poor?

We should reexamine all our reasons for prohibiting lawyers the same freedom to advertise as brush salesmen. Were those prohibitions not initiated for our protection? Why should the poor have less protection?

Marlise James, the author of the "People's Lawyers," tells us what the good poverty lawyer's idea of his work is:

What happened was, a lot of these rights lawyers took their work seriously. Instead of just taking care of the personal civil problems of poor people—things like divorces, adoptions, name changes, consumer frauds—*as the government had intended*, they began to defend poor people in criminal prosecutions (which was illegal), and they even had the effrontery to bring class actions . . . against government agencies on issues that would affect the poor communities, that would give them power.

Poor people would rather have their divorces and fraud protection than be turned down in favor of drummed-up legislation on behalf of something they may never have heard of.

This whole notion of a new kind of lawyer exempt from the usual high standards of the profession implies that a new class of law is necessary for a static class of people. I have more faith in the American citizen than that and I have a great deal more faith in the ability of the legal profession as we have known it. Upward mobility is constantly occurring and will continue. All this amendment No. 846 does is to insure that Legal Service lawyers abide by the same standards as their counterparts in private practice. And there is no reason in the world why it should be defeated.

AMENDMENT NO. 848

Mr. President, it is virtually impossible to come up with a good definition of who is poor. Perhaps that is why this bill, already filled with contradictions and loopholes, has one of the most glaring loopholes in defining who is eligible to be served by the Legal Services attorney. The legislation quite commendably requires the establishment of guidelines that would take into account "a refusal—to seek or accept an employment situation commensurate with an individual's health, age, education, and ability."

Unfortunately, right in the middle of that phrase, the words, "without good cause" have been inserted. "Without good cause" is an empty phrase. Who defines it? Who decides on its application? It is obviously put in there to provide a loophole. We hear a lot about loopholes these days, and most of what we hear is unpleasant. My amendment No. 848 would strike those words and insert instead the following: "except for reason of physical or mental incapacity." These are words with intrinsic meaning; they intend to perform the proper function of language, which is to include and exclude specific meaning.

I doubt that there is a man among us who does not feel there is something wrong with the Nation's poverty laws. I am equally sure that most of us have, at one time or another, called for a tightening of the eligibility requirements. Do any of us want to return to our constitu-

ents and confess that once again we have passed legislation so fuzzily written that we made it easier for a man to remain poor than to become self-sufficient again? I think not.

The language I propose adding merely states the only valid reasons why an individual should refrain from accepting employment commensurate with his ability—reasons of physical and mental incapacity.

As sure as I am standing before you today, the American people have grown sick and tired, disgruntled, and impatient, with Congress for supporting with tax funds those who have made feeling at the Federal through a way of life.

This amendment gives you an opportunity to take the first step toward doing something about it.

AMENDMENT NO. 849

Mr. President, the purpose for writing qualifications for eligibility in the bill is to make sure that only the genuinely poor derive assistance under it. However, inclusion of the phrase "of prior determination" in the eligibility clause demonstrates again some of the lamentable weaknesses of syntax and intent which pervade S. 2686, and my amendment No. 849 strikes those words.

This phrase could be interpreted to constitute a waiver of any eligibility check intended to assure that only those clients who are truly poor could be assisted.

Now there is a great deal of difference between the voluntary poor and the involuntary poor. And the more I read this bill, the more I question just who it is designed to serve.

A good example of the voluntary poor are those college students who use the working man's tax money to indulge in political demonstrations.

The voluntary poor are the indolent who prefer to luxuriate in litigation rather than go to work.

Surely even the most dreamy-eyed among the bill's advocates cannot miss seeing the fallacy in serving those who merely masquerade as the needy.

AMENDMENT NO. 843

Mr. President, this amendment No. 843 merely says that Legal Services, at taxpayer's expense, will not be provided to anyone who is incarcerated on a felony conviction.

I doubt that the amendment needs a great deal of explanation. We know that attorneys for the present Legal Services program within the Office of Economic Opportunity have used Federal funds to try and free felons. But it seems to me that if we must turn to the Nation's prisons in order to find poor to serve, then the welfare roles are padded far more heavily than even I had imagined.

My amendment is narrowly drawn. It would permit aid to the accused or to convicted criminals on procedural issues, or noncriminal matters which flow from, but are separate from, the criminal proceeding. The filing of amicus curiae briefs, a technique long employed by radical lawyers, is not prevented.

If prison reform is what we want, then let penal authorities, not poverty warriors, attend to it.

But if serving the Nation's poor is our goal, then let us make sure the funds actually reach the truly needy. After all, he is most often the felon's victim.

AMENDMENT NO. 845

Mr. President, if there is one objective all of us should have in deliberations over this bill, it should be to see that the end result is beneficial to the poor—the genuinely poor. The do-gooder instinct which springs from the heart of so many Members of Congress unfortunately leads us down so many avenues that we often find our original objectives have not been met and that those in need of Federal assistance still go wanting. The Federal bureaucracy often reminds me of the way Jack Paar once described Zsa Zsa Gabor—as one who does social work among the rich. Be that as it may, the prohibitions in the grants and contracts section of this bill do not include any restrictions on assistance to those who are confined to prisons. This amendment No. 845 merely adds such a restriction by inserting a prohibition against legal assistance with respect to "incarceration for a crime, or the circumstances of incarceration for a crime."

Every dime that is spent in behalf of someone in prison denies some of the benefits of this bill to the genuinely poor. To say otherwise makes a mockery of the whole purpose of the legal services program.

The PRESIDING OFFICER. The Senator from New York is recognized.

Mr. BUCKLEY. Mr. President, I am conscious of the hour. I had three amendments, but I hasten to assure my colleagues two of them, I understand, will be accepted, and the third I will withdraw after having a colloquy, and a brief one at that.

The first amendment I call up is amendment No. 874.

The PRESIDING OFFICER. The clerk will state the amendment.

Mr. NELSON. Mr. President, may we have order so I can hear what the proposed amendment is? I think we can dispose of and accept two of the amendments, and discuss the third one in a brief colloquy, in about 7 or 8 minutes.

Mr. BUCKLEY. If that.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read amendment No. 874 as follows:

On page 15, after line 11, insert the following new subsection:

"(3) establish a schedule of fees which will require the client, if able, to pay at least a portion of the cost of legal assistance in accordance with his or her ability to pay.".

Mr. BUCKLEY. Mr. President, the bill as it has been reported establishes a short demarcation between those who are eligible to have full payment of legal services and those who cannot get any public support for legal services.

One of the common complaints, and a complaint with which I have enormous sympathy, these days comes from those who are hovering just above the arbitrary demarcations between those who will have full access to public payments and those who have no access.

In Head Start we make provision for a graduated scale of fees, with the idea that some people can contribute 5 percent of the cost of the service, other people 10 percent, other people 15 percent, and so on up. It seems to me that this is an approach that ought to be applied in the sphere of legal services. It would be fairer to those who would otherwise be excluded. It would also eanble lines to be drawn at the lower level of this gray area. It would also create a greater sense of quieter responsibility in seeking a lawyer's help in situations where there is a question whether it is worthwhile strictly on the legal basis.

For those reasons I ask adoption of the amendment, but I understand the proponents of the bill have a recommendation of their own.

Mr. NELSON. Mr. President, I will say the Senator raises a point which is valid. We have here the old notch question, of where we are to have a cutoff line for poverty program eligibility.

If the Senator is prepared to withdraw his amendment, I will undertake to assure him that, within a reasonable time, we will have hearings on that exact point and hear from all the interested parties, such as the American Bar Association, the clientele, and the proponents of this amendment. Perhaps we can then arrive at some provision that does what the Senator seeks to accomplish.

I think he raises a point that has considerable merit. I am willing to conduct hearings on it, but we have had no hearings on that precise question so far.

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

Mr. BUCKLEY. I yield.

Mr JAVITS. I should like to join in that assurance. I would like the record however, to show that there is concern by the bar associations about this matter professionally in perhaps assuring at a fuzzy line which may put people in doubt with respect to hiring a lawyer or getting legal services under the committee bill.

There is some difference between this and the fee schedule in Headstart. In Headstart, we wanted to get a mix of children, rather than tax people according to their capacity to pay, and hence give them a greater interest in cooperation.

But there is enough merit to the Senator's idea. I do not wish in any way to prejudice this matter by anything that I have said. However, just in fairness to the bar association, I have made the statement I made.

I will join in an effort to see if there is anything to it.

Mr. BUCKLEY. Mr. President, I very much appreciate the statement made by the Senator from Wisconsin and my distinguished senior colleague.

I do recognize the motivation between the start of the Headstart and the facts here. However, we now have a provision for an arbitrary limit between those who can initiate the most expensive kind of legal actions at public cost and those who are prevented from even modest legal actions because they cannot afford the expense that is entailed today.

Mr. President, I am delighted to learn that there is an undertaking to have appropriate hearings. On that basis, Mr. President, I withdraw my amendment.

The PRESIDING OFFICER. The amndment is withdrawn.

Mr. BUCKLEY. Mr. President, I call up amendment No. 875.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

On page 18, line 13, strike the word "consent", and insert the word "request".

Mr. BUCKLEY. Mr. President, this amendment deals with a provision dealing with the representation of minor children. In this particular area of the bill there is a provision that parents must consent to special representation by the legal services lawyer.

The word "consent" is a wobbly word. It can be implied. It is imprecise.

I believe that we should require from the parents an explicit act that is implied in the word request to assure us that the parent is fully cognizant of what is involved and indeed authorizes that the child be represented by a legal service attorney.

Mr. NELSON. Mr. President, I am prepared to accept the amendment.

Mr. JAVITS. Mr. President, the amendment is acceptable. I would like, however, to explain that the word "written" appears in the text of the bill. So it is a written request. We think that certainly nails it down.

Mr. President, the amendment is acceptable.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from New York [putting the question].

The amendment was agreed to.

Mr. BUCKLEY. Mr. President, I call up my amendment No. 879.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

On page 14, line 22, after the word "Budget", insert the words "and with the Governors of the several States".

Mr. BUCKLEY. Mr. President, this particular provision involves the machinery for establishing levels of eligibility.

The present provision requires, for example, consultation—and the word "consultation" I underline—with the Office of Management and Budget. However, there is no requirement that there be any consultation with appropriate officials in the States within which that level of eligibility will apply.

What this amendment does is to require that before that level be established, the Governors of the several States be consulted. I believe that this will assure us of a more precise understanding of who is really in need in any case.

Mr. JAVITS. Mr. President, I am in favor of the Senator's amendment. I have no objection to it. However, I would like the Senator to put an interpretation of the words on the record. The Senator used the word "several." Does the Senator mean respective? The Senator does not expect the Governor of Connecticut to consult with the Governor of New York?

Mr. BUCKLEY. No; it would involve just the Governor of the State involved.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from New York [putting the question]

The amendment was agreed to.

Mr. HATHAWAY. Mr. President, I ask unanimous consent to have printed in the RECORD editorials published in the Wall Street Journal, the New York Times, and the Washington-Star News, in support of this bill.

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

[From the Wall Street Journal, Jan. 29, 1974]

SURVIVAL OF THE FITTEST?—ANTIPOVERTY OFFICE SEEMS LIKELY TO BE ABOLISHED, BUT SOME PARTS, LIKE LEGAL AID, ARE ALIVE, WELL

(By Arlen J. Large)

WASHINGTON.—The rules of evolution shape not only biology but politics as well. A case in point is the "war on poverty" and what has been happening to it since President Johnson started it 10 years ago.

Parts of the original antipoverty program have shown political unfitness to survive criticism and face extinction, such as the Office of Economic Opportunity itself. But other antipoverty components, by changing bureaucratic colors and dropping controversial appendages, seem headed toward respectability and even growth.

The Senate this week is debating one such adaptive part—subsidized legal services for the poor. The program is one of the few remaining arms of the Office of Economic Opportunity, once a thriving command post for the whole catalog of Antipoverty Act activities. Up for expected passage in the Senate is an administration-backed bill transferring the legal-services operation to a new federal "corporation" assigned to dispense money to the poverty lawyers and keep them out of political trouble.

The Legal Services Corporation proposed by President Nixon would in the main allow the 2,200 full-time poverty lawyers staffing 900 neighborhood offices to keep functioning as they have been, although under different supervision. The plan is keenly supported by the American Bar Association, and it has been unanimously approved by the 16-member Senate Labor Committee. One committee Republican, Sen. Robert Taft of Ohio, originally had doubts about the bill but finally decided that it has enough safeguards to keep the lawyers lawyering and not politicking.

OBJECTIONS BY CONSERVATIVES

The Legal Services Corporation is opposed by a group of conservative Republican Senators echoing the objections of Howard Phillips, who a year ago headed the OEO with a presidential mandate to abolish it. Mr. Phillips complained particularly that legal-services lawyers were more interested in pushing lawsuits to achieve "social change" than in helping individual clients.

Mr. Phillips was triply thwarted in his efforts last year. A federal judge not only ruled that Mr. Phillips couldn't destroy an agency that Congress said should exist but also threw him out of office because he lacked Senate confirmation. And the White House ignored many of Mr. Phillips' recommendations for curbing what he regarded as too much activism in the legal-services program.

Sen. Jesse Helms, a North Carolina Republican, and other opponents of the legal-services bill successfully filibustered last month to prevent its passage during the 1973 session; this week's debate is a resumption of that fight. The Senate is scheduled to vote tomorrow on whether to stop the talk, and the bill's sponsors say they have a good chance to get the needed two-thirds majority. With Senate passage, the bill would go to a conference committee for merger with a different version already * * * are forcing some survival-of-the-fittest adaptations.

The House Labor Committee originally approved a bill providing for a legal-services corporation much like the Nixon administration requested. When it reached the House floor last June, however, members insisted on barring poverty lawyers from activities that have angered some people.

The House amendments would bar poverty lawyers from initiating some kinds of suit on school desegregation, abortion and amnesty for draft dodgers. The lawyers also would be forbidden to conduct voter-registration drives, even during their time off. Legislative lobbying would be sharply restricted to testifying before a committee when asked. Such was the mood of the House that it even went for a playful ban on legal-services assistance to "indigent, abandoned Watergate defendants."

THE "BACKUP" CENTERS

A key House departure from the administration proposal would stop any further federal money for 13 "backup" centers, mostly university-based research outfits specializing in legal problems of the poor. This work has led to successful suits requiring local housing and welfare officials to comply with existing law, as supporters of the backup centers see it. But to critics like Rep. Edith Green, an Oregon Democrat, the backup centers symbolize what she thinks is a poverty lawyers' penchant for suits seeking "sweeping social change" instead of sticking to divorce cases and other legal chores for individuals.

The program's supporters deny that the lawyers shun humdrum cases, citing OEO figures showing that of the 1.5 million legal problems handled annually, more than four-fifths are settled out of court.

The role of the backup centers and the exact restrictions on the lawyer's professional and personal behavior would have to be settled by House-Senate conferees. Some of the restrictive House amendments probably would be dropped. Nevertheless, the debate so far points toward a legal-services program concentrated somewhat more heavily on individual-client casework and supervised by a new control mechanism designed to dampen political controversy.

The OEO first began subsidizing lawyers for the poor in 1965, a year after the agency was created by Congress. The legal program was a hit with most of the organized bar from the beginning, being praised that year by Lewis F. Powell, then president of the American Bar Association and currently a Nixon-appointed Supreme Court Justice. But before long, the poverty lawyers were winning welfare cases in California that antagonized Republican Gov. Ronald Reagan.

A BATTLE WITH REAGAN

Existing law allows a governor to veto a proposed federally financed legal-services project in his state, but the OEO director in Washington can override the veto. In 1971 the Nixon administration got into an embarrassing scrap with Gov. Reagan, who vetoed a legal-services project on grounds that the OEO director thought had little merit.

The project finally got a go-ahead, but both the Nixon administration and the antipoverty program's liberal defenders in Congress decided that the lawyers should be protected from governors' vetoes and other political hazards by getting their money from an independent federal corporation.

In proposing this plan in 1971, Mr. Nixon told Congress: "The legal problems of the poor are of sufficient scope that we should not restrict the right of their attorneys to bring any type of civil suit." There was general agreement on ground rules banning political activity and forbidding poverty law-

yers from defending people accused of crimes. But there was a quarrel over the key question of who gets to appoint the corporation's directors. The board will decide which poverty-law groups get federal money (running about $71 million this year) and whether the lawyers are spending it as they are supposed to.

Mr. Nixon vetoed a 1971 bill that included the new corporate setup, in part because it would have let him name fewer than half the directors. An attempt to revive the bill with some changes failed in 1972. Last year, however, liberal lawmakers agreed to let Mr. Nixon appoint all 11 directors subject to Senate confirmation, and the administration agreed to let the corporation support backup centers and other functions wanted by the liberals.

ENDORSEMENT BY LAIRD

As a result, the bill pending in the Senate has been generally endorsed by Melvin Laird, Mr. Nixon's departing domestic adviser. Sen. Walter Mondale, a Minnesota Democrat and chief sponsor of the corporate-control concept, says that "while it doesn't thoroughly insulate the board from politics, I think it will help." Because the members must win Senate confirmation, he says, "I don't think the administration can load the board with wild ones."

To the Senator, that means people like Howard Phillips, who is decidely unhappy with the idea of insulating poverty lawyers from control by elected public officials. "When you extract money coercively from an American citizen, he should be able to look to his elected officials to hold the users of that money to account," he says. From an office-in-exile at the American Conservative Union here, Mr. Phillips has been writing Republican Party leaders around the country warning that the Senate bill is "a menace to your family, community and party. It is undermining the security of our nation."

Representing sharply different viewpoints, neither Mr. Phillips or Sen. Mondale is especially pleased with the evolution of Lyndon Johnson's entire antipoverty program over the years. One by one, various activities have been removed from the OEO's control and lodged in the traditional federal departments.

Head Start, the program of classes and health care for preschool children, is operating quietly in the Health, Education and Welfare Department. Job Corps centers for slum youths, cut to 65 from their heyday of 124 late in the Johnson administration, now are the property of the Labor Department, which also runs some job-training and recreational activities once under the OEO. Vista Volunteers, domestic counterparts of the Peace Corps, are under a different bureaucratic umbrella.

"As far as I can see, the programs are bigger than ever," Mr. Phillips says.

COMMUNITY-ACTION PROGRAMS

If, as expected, the OEO loses control of legal services to the new corporation, the antipoverty command post will have just one major activity left to supervise: community-action programs run by local groups for job training and other services for the poor.

Mr. Nixon didn't want any new money for community-action programs last year, but Congress voted $218 million, and the President has agreed to spend most of it. But both this money and the basic law authorizing the OEO run out next June 30, and it is questionable whether an increasingly uninterested Congress will sail an extension past Mr. Nixon's likely veto.

"The promise of the poverty program has been largely destroyed," Sen. Mondale says. "It assumed an administration that wanted to see it work." Mr. Mondale doesn't sound very optimistic about getting an extension of the OEO's life. "That's the one that Nixon's ego is involved with," he says. "He may take it down with him."

[From the New York Times, Jan. 29, 1974]

LAWYERS FOR THE POOR

Among the useful accomplishments of the "war on poverty" initiated by President Johnson a decade ago was establishment of a Government-funded but politically independent legal services program to assure high-quality legal assistance in civil cases to those who would not otherwise be able to afford it.

This program now embraces more than 2,250 lawyers operating in 900 neighborhood law offices. Much of their work is involved in challenging bureaucratic regulations that discriminate against the poor—a mission not calculated to make this branch of law popular with the public officials who find themselves called to account.

By way of safeguarding the program against new efforts to cripple it and to strip its lawyers of their necessary freedom of advocacy, a bipartisan group clearly representing a majority in the Senate has been trying vainly to get a floor vote on a proposal for a permanent Legal Services Corporation. The bill is the fruit of compromise between the White House and the Senate Committee on Labor and Public Welfare—a middle-of-the-road effort, in President Nixon's own words, to "protect and preserve a basic right of all Americans." Despite its balanced nature, however, the bill has been blocked by filibuster.

A third attempt to shut off the filibuster will be made in the Senate tomorrow. Its success is essential to keep alive and vigorous a program designed to remove the economic barriers to equal treatment and equal standing in the courts. The House passed a mangled version of the same bill last June; the first round in the redemption effort comes tomorrow on cloture.

[From the Washington Star-News, Jan. 26, 1974]

LEGAL SERVICES IMPASSE

One of Congress' lesser-noted failures in last year's session was its dismal performance on continuation of free legal services for poor people. This was, nonetheless, a sizable failure when measured by the scale of public justice, and the lawmakers should move speedily to correct it in this new session.

Legal services without doubt is the most successful of the anti-poverty programs conceived in the '60s. Both liberals and a great many conservatives are committed to its main premise—that citizens must not be deprived of access to the courts because of poverty, lest our claim of equal justice under law appear as something of a mockery. So more than 2,250 lawyers in 900 neighborhood offices across the country are giving free services, through this federal endeavor, which their clients otherwise could not accord. Mainly, the aid is in family law matters that are part of everyday life, along with a good many landlord-tenant cases. On a few occasions, legal-services attorneys have strayed too far into political areas, but legislation to reconstitute the program under a new Legal Services Corporation has safeguards against that.

And certainly this proposed system, designed to give the program independence from political pressures, deserves speedy approval. It is the product of much compromise between liberals and conservatives, and, most notably, between Congress and the Nixon administration. President Nixon vetoed an earlier measure, largely because it didn't empower him to appoint all members of the corporation's governing board, but Congress has bowed to him on this. The current legislation has strong support from the administration and the American Bar Association. Its passage is many months past due, because the legal services program has been hanging on precariously for a long while within the diminished Office of Economic Opportunity.

For this delay, the Senate is mainly to blame. In the final days before adjournment last month, it failed twice to shut off an astonishing filibuster against the bill by two of its more rigid conservatives, Senators Helms of North Carolina and Brock of Tennessee. One thread seems to run beneath all the obstructionist rhetoric: an aim to protect local and state officials from challenges by the poor to the administration of government programs. There is some intent, quite obviously, to make legal services attorneys subject to local interference, and this cannot be tolerated.

If the filibuster resumes when this measure is brought up again, the Senate should hasten to invoke cloture and pass the bill. For a nettlesome task will lie ahead, even after that, in reconciling the Senate version with a weaker bill passed by the House.

LEGISLATIVE REPRESENTATION

Mr. KENNEDY. Mr. President, legal services clients and their lawyers are coming to realize that State legislatures and the Congress are forums where they should be heard. In a number of States, clients have presented their problems to legal services lawyers, the lawyers have drafted legislative bills to solve those problems and both clients and lawyers have pursued passage of those bills. These developments only give recognition to the importance that legislatures play in the fortunes of poor people.

Those who have criticized the "judicial activism" of courts when they try to grapple creatively with the serious legal and social issues presented to them should be among the first to applaud this new emphasis on resort to the legislative branch of government. There are practical and constitutional limits on how far courts can go in promoting comprehensive solutions to these issues. The legislative and executive branches of government must fulfill their constitutional responsibilities to help solve these problems.

In terms of effective legal representation of poor people there are many benefits in resorting to legislative as well as judicial representation. Clients can initiate legislative suggestions, draft the bills, and discuss the bills with their own legislators. Legislation can more comprehensively cover the issues. More people and viewpoints are usually represented in the formulation of a legislative solution than is the case with a judicial solution. The product finally arrived at is approved by the elected representatives of the people and opposing points of view are usually compromised into a consensus solution. The legislature makes budget decisions which cannot be reached through the courts. And a legislature can address itself to an entire field in an organized and consistent manner, such as with a consumer code, a landlord-tenant act or a code on mental commitments. In sum, it makes eminent sense for low income people and their lawyers to be able to seek legislation remedies.

Despite these persuasive reasons why we should be encouraging our neediest citizens to participate in our legislative processes, there are some who would deny poor people the right to have their lawyers to provide legal assistance with regard to legislative matters. This would be highly unfair and unwise, for the following reasons:

A large amount of legislative business vitally affects poor people. Governmental benefit programs are shaped and funded there. Laws regulating such areas as landlord-tenant relations, the sale of consumer goods, domestic relations, and child care responsibilities are controlled primarily, if not exclusively, by State and Federal enactments. Poor people must have advice and technical assistance in presenting their positions in these forums. They must be advised what matters are appropriate for legislation, what legislative approach to take, how legislative bills should be drafted and how best to present their bills to legislators. This important assistance is only afforded by their lawyers. Just as other groups ask lawyers to represent them before the legislatures, low income people have turned to their lawyers to do the same.

The legislature is often the only available forum in which to overturn harsh or unfair laws and practices. For example, in Massachusetts, any tenant seeking to appeal a judgment of eviction in order to obtain a constitutionally required jury trial was required to post a bond. The amount of the bond was often set at $500 or more. Few poor persons could afford to post such a bond; many had to forfeit their right to jury trial. Legal services lawyers and their clients then went to the State legislature and persuaded it to pass a bill requiring the courts to waive the bond where the appealing tenant is indigent and asserts a nonfrivolous defense. As another example, Michigan tenants found that landlords were insisting on large security deposits, were in many cases not paying interest on them and sometimes refused to give them back when the tenancy terminated. These tenants asked legal services lawyers to draft a bill correcting these problems and now Michigan has a sensible and comprehensive statute making security deposit practices more fair and uniform.

Second, resort to legislatures is also necessary because courts suggest that it be done. In Minnesota, a court-ordered settlement agreement between the State and an Indian tribe required changes in State legislation. The legal services attorneys representing the Indians had to represent their client's position before the State legislature in order to see that an effective solution to their client's problem was reached.

In Massachusetts, low-income tenants challenged in Federal court the constitutionality of termination of gas and electric services because of the failure of their landlord to pay the bills. The judge suggested that the parties work out a complex settlement of the matter through State legislation and administrative regulation. The legal services lawyers involved had to engage actively in legislative representation in order to carry out successfully the judge's suggestion. In New York, lower court judges became concerned about the large number of cases raising a defense to eviction on the ground that the landlord was retaliating against the tenant because the tenant had reported alleged code violations. These judges asked legal services lawyers to prepare a legislative proposal that would clear up the courts' confusion over this issue, and these lawyers, on behalf of their clients, are in the process of doing so.

Third, access to legislatures is critical if poor people are to be able to participate in the shaping of programs designed to benefit people with special disabilities. Take the problem of lead paint poisoning. Medical people have only recently begun to discover the insidious effects which lead paint has on children who eat paint flakes in older housing. In Massachusetts, legal services lawyers and clients persuaded the legislature to set up a comprehensive program for the testing and regulation of the use of lead-based paint on surfaces to which children might have access. In New York, legal services lawyers who had won an important court decision declaring that handicapped children might have a right to special education have, on behalf of their clients, pursued implementation and funding of this program through State legislation.

What the legal services program has done is to begin to right a severe imbalance in the legal resources available to low income citizens in this country. The interests of business and government have been well represented in the legislatures and these interests are frequently adverse to the interests of low income people. Many of these same interests have their legislative expenses funded out of public money.

Examples are:

First. Public subsidy of private business lobbying exists by virtue of the income tax deduction for business expenses. [26 United States Code 162(e).]

Second, Public money regularly is used to finance directly a wide range of lobbying activities—for example, in California, more than 25 percent of the registered lobbyists are directly financed with public funds, including advocates of cities, counties, and school districts.

Third, tax exemptions are available to many organizations that use their income to pay attorneys to lobby. [See 26 United States Code 501(c) (4) and (5) (Labor, agricultural and horticultural organizations); 26 United States Code 501 (a) and (d)—religious organizations; 26 United States Code 501(c)(7)—nonprofit corporations; 26 United States Code 501(c)(3)—nonprofit tax-exempt corporations.]

Fourth, publicly regulated industries such as utiilties have their legislative expenses charged as business expenses and rate-making agencies charge them ultimately to the customers.

Furthermore, Government itself funds many agencies and organizations that watchdog or monitor the actions of Government itself. One need only mention the General Accounting Office, OMB, the FBI and various legislative watchdog committees. These institutions insure greater accountability in Government. Legal services lawyers often perform the same vital function on behalf of their clients.

In fact, legislative solutions promote greater efficiency in the use of scarce legal services resources The problems faced by the poor accumulate in large numbers every day in each legal services office. It is virtually impossible for everyone of these problems to be worked out for each person individually; to do so would require far more attorneys than are available and would clog court calendars. Thus, when faced with repeated problems or when patterns of problems begin to emerge, the most efficient and economical use of resources requires representation before legislative or administrative bodies. A recent report by the Government Accounting Office on legal services made exactly this point when it criticized the Legal Services program for not working harder in the legislative forum to solve the multitude of everyday problems plaguing legal services offices.

Fourth, the resources of legal services lawyers benefit the legislatures and legislators. Legislators realize how valuable it is to be able to look to legal services resources in shaping legislation. Legal services lawyers can help translate constituent concerns into legislative proposals and can help constituents present these proposals to the legislatures. These lawyers can provide expertise and information in areas where there is little other expert knowledge, such as landlord-tenant laws, public assistance programs and consumer problems. And these lawyers can assist legislatures in working out comprehensive solutions in major areas of the law, such as a uniform consumer code or a landlord-tenant code.

In recognition of the value of legal services lawyers and the high regard in which their legislative work is held, many State officials have contacted Congress to urge that legal services lawyers be permitted to represent clients in legislative matters. Included in this group are some 60 legislators from Michigan, 43 from Ohio, the Governor and legislative leadership from Massachusetts and numerous others from California to New Hampshire. This strong support would not be possible if people in the States had serious doubt about the propriety and value of legislative representation by legal services lawyers.

Fifth, permitting legislative representation only fulfills the ethical duties of a lawyer to his clients and the constitutional rights of his clients to equal representation before legislative bodies. Canon 26 of the lawyer's code of professional responsibility states:

> A lawyer openly and in his true character may render professional services before legislative or other bodies, regarding proposed legislation and in advocacy of claims before departments of government, upon the same principles of ethics which justify his appearance before the courts . . .

Most lawyers feel they have a duty to pursue legislative solutions to their clients' problems, just as they have a duty to advise their clients to resort to court in appropriate circumstances. In fact, a former president of the American Bar Association, Edward Wright, has stated that any government-imposed restriction on a lawyer's right to seek legislative solutions to his clients' problems would violate that lawyer's ethical duties to his client.

Furthermore, denial to poor people of

legal representation in legislative forums may violate their constitutional rights. Since Government subsidizes legal representation of other groups before legislatures, the denial of this right to poor people may deny them equal protection of the laws.

To conclude, there is every reason why we should encourage poor people to be heard and to involve themselves, as others have long done, in the legislative processes at the State and Federal levels. The legislatures are the tried and true forums where everybody's interests are weighed in the balance and the will of the people is expressed in a consensus and distillation of all viewpoints. To deny poor people the right to the technical and legal help that is so vital to effective presentation of their views is to deny them the tools to make their voice heeded. It makes no sense for the Congress to deny our low-income citizens their right to this kind of legal representation.

Mr. MOSS. Mr. President, Anatole France, the great French writer, once said that:

> The law prevents the rich as well as the poor from sleeping under bridges and stealing bread.

This is indeed true. Within any society where the division of labor dictates that processes of the administration of law are apportioned to legal specialists who benefit economically from their vocations, the poor are likely to suffer at the hands of justice. Because of this specialization there are those who are not able to utilize their rights through the legal process. This amounts to denial of their rights as individuals—in effect a negation of their liberties enunciated in the Constitution, the Bill of Rights, and our other legal codices. This effectual denial of rights is an affront to the ideological bases from which our form of government draws its strength.

It was in response to the problems of the poor that we in Congress enacted legislation which provided a means by which those who were "locked out," unable to participate in the legal system, could enjoy the full benefits of having their "day in court."

We are now faced with a bill to renew this program—a program that must continue. But the extensions of this bill must be made in such a way as to protect the rights of both the defendants and the lawyers who participate in this program. There have been attempts to make it as difficult as possible for the lawyers who would practice in this program to practice effectively. There were amendments proposed which would have gone far beyond the canons and code of practice. This is unacceptable. Should we require the attorneys who practice on behalf of the poor to operate under a different code of ethics than those who practice for the rich? The answer is, of course, a resounding "No." To proscribe a different standard for these lawyers makes folly of the motto "Equal justice under law." A motto so fundamental to the American legal system that it is emblazened above the entrance to the Supreme Court.

The experience of those attorneys who have been involved in this program in Utah has been a heartening one. What other task in our society is as important as bringing justice to those who have been deprived of it? The clients of these attorneys, I am sure, are also heartened, their faith in the American system restored, when they can experience a fair trial, in an open atmosphere, with proper representation. Through this system they are able to have representation before the bench in equal measure with their neighbors.

The legal services agencies in Utah have performed vital and necessary work for the citizens of the State. Through the legal skills internship program of the Salt Lake County legal services program, increased service on administrative problems of the entire community have been provided. This internship program has also provided an opportunity for prospective students of the law to develop skills which will bring an added dimension and background to their study.

Generally speaking, the legal services system in Utah has worked to bring about an assurance of rights for individuals in their dealings with government agencies. They have also undertaken necessary representation for juveniles in their dealings with our legal system.

The bill before us creates the much needed independent body to administer the National Legal Services Corporation. This corporation, if properly administered, will provide for an independence that is necessary for any form of legal services. The creation of a corporation will free the Legal Services Administration from political pressure, pressure from which could hamper the effectiveness in the delivery of legal services to the needy.

It is said that we are a nation of laws, not of men. But we revert to the status of a nation of men when any man is deprived of the benefits of our judicial system of his economic status.

So let us continue the legal services system through an independent corporation so that justice can be brought to all our people. And while bringing justice to our people let us hope that we can restore trust and confidence in our governmental system—trust which any form of government needs to survive, and trust which has been so badly undermined through the misfortunes of the past year. Let us pass this legislation in order that justice can still be served.

Mr. TAFT. Mr. President, I have actively supported the concept of an independent Legal Services Corporation during my service in the Congress and I am greatly encouraged by the adoption of S. 2686 by the Senate today.

I am especially pleased by the constructive leadership that the administration has shown on this issue. Melvin Laird has been particularly effective in stressing the importance of the independent corporation concept. Jim Cavanaugh of Mr. Laird's staff has constantly kept the committee staff advised as to administration's concerns on this issue and been equally receptive to considering views of members of the committee. Paul O'Neil of the Office of Managemnt and Budget has also performed an equally valuable role in this regard.

Congratulations are also in order to my colleagues on the Labor and Public Welfare Committee. Senators NELSON, CRANSTON, and HATHAWAY have shown excellent leadership on this issue and I am pleased to have had an opportunity to work with them on this legislation. Senator JAVITS provided exceptional leadership for the minority and all members of the committee. I am hopeful that the conference committee will expeditiously consider this legislation and send to the President for his consideration.

Mr. KENNEDY. Mr. President, I urge my colleagues to vote in favor of this measure to create an independent Legal Services Corporation.

It has been too long delayed, impeded and frustrated. The entire future of this bright and promising program which seeks to achieve equal justice for the 25 million poor rests on the passage of this legislation.

The record of the Legal Services program over the past 9 years has been astounding in its success, in its bringing to the poor access to competent legal counsel which they have never had.

This bill reflects the overwhelming belief of the organized bar, of the administration and of this committee, that providing access to the legal system on an equal footing to the poor is vital to the future of the Nation.

This bill reflects the mutual concern of Members on both sides of the aisle that Legal Services attorneys have the capacity and the independence from political pressure to provide to the poor, competent legal counsel.

The statement of findings and declaration of purpose of this legislation, which clearly enunciates the objectives which this measure seeks to insure:

First, there is a need to provide equal access to the system of justice in our Nation for individuals who seek redress of grievances;

Second, there is a need to provide high quality legal assistance to those who would be otherwise unable to afford adequate legal counsel and to continue the present vital Legal Services program;

Third, providing legal assistance to those who face an economic barrier to adequate legal counsel will serve justice far better and more rationally than leaving them with recourse only to less peaceful means;

Fourth, for many of our citizens, the availability of legal services has reaffirmed faith in our government of laws;

Fifth, to preserve the strength of the legal services program it must be insulated from political pressures; and

Sixth, lawyers providing such services must have full freedom to protect the best interests of their clients in keeping with the code of professional responsibility, the canons of ethics, and the high standards of the legal profession.

Business executives and corporations deduct from their income taxes the cost of legal expenses, including legislative representation, related to the conduct of their business. That deduction repre-

sents a subsidy by taxpayers to a wide variety of individuals, corporations, and organizations.

In this measure we are seeking to provide the poor the same right to competent representation of their interests that we have traditionally given to the economically powerful. It is the poor who are most vulnerable to economic pressures, to illegal acts, to the neglect of institutions, and it is the poor who are least able to seek a remedy through the laws which are supposed to protect all of our citizens equally.

I want to recall for my colleagues the language of the Supreme Court in Gideon against Wainwright:

> From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him.

Equal treatment in criminal matters is a matter of right, and I believe that this bill fulfills an equivalent need, the need to provide equal access to the legal system in civil cases is a matter of justice.

Mr. CRANSTON. Mr. President, this is the third time in as many years that the Labor and Public Welfare Committee has reported legislation creating an independent National Legal Services Corporation. This bill amends the Economic Opportunity Act of 1964—the authority under which the present excellent Legal Services program has developed—and provides for the transfer of the program to an independent private, nonprofit corporation.

This is a legislation that is long overdue.

I wish to take this opportunity—I sincerely hope for the last time with regard to this legislation—to express my admiration for the leadership and tireless work over the last 3 years contributed by Senator MONDALE and Senator KENNEDY, original authors of this concept with me; Senator NELSON, the distinguished chairman of the Employment, Poverty, and Migrator Labor Subcommittee; Senator TAFT, the ranking minority member of the subcommittee; and the chairman and the ranking minority member of the full Labor and Public Welfare Committee, Senator WILLIAMS and Senator JAVITS.

Additionally, a new member of the committee, Senator HATHAWAY, has contributed significantly to the development of S. 2686, and has proven to be an effective and knowledgeable advocate of the provision of unfettered legal services to those who cannot afford private counsel. I believe they have all done a magnificient job in debating and deleting the many debilitating amendments offered yesterday and today, and in working to secure the truly magnificient cloture victory we achieved—on only the third try 68 to 29.

Mr. President, the Legal Services program has been the most productive of all the war on poverty programs. It has provided the poor with vital tools to gain the opportunity for full participation in our society. But, even more importantly, the Legal Services program has helped to restore the faith of one segment of our population in the fairness and viability of our system of order and justice under law.

The commitment of the Legal Services program and the attorneys who staff it has begun to counter that image among the poor that the law is their enemy, not to be trusted, and designed and administered in a way to control them—and to protect others.

In my own State of California, Mr. President, I have witnessed again and again the tremendous impact of the legal services program. Successful proding of the established order has resulted in making food available to hungry citizens in every county in the State; senior citizens have been afforded essential health care to which they were entitled; various consumer fraud schemes preying on the poor have been successfully halted; discrimination in employment is being challenged; and 80,000 Spanish-speaking citizens were enfranchised by the elimination of an English literacy requirement for voting.

Prior to the establishment of the Legal Services program, as the committee report on S. 2686 points out—committee report No. 93-495—the poor had little or no access to civil representation before the courts. From rather uncertain beginnings, the provision of legal services for the poor through the Office of Economic Opportunity—OEO—has taken on a constantly expanding role. The original Economic Opportunity Act of 1964 did not mention the provision of legal services. Some legal services projects were inaugurated in 1965, however, as part of the community action program, but without a clear definition of the role of legal services in the war on poverty. In the EOA amendments of of 1966, the provision of legal services was specifically authorized by section 222(a) of the act, which served as the basis for setting up the Office of Legal Services within OEO. The program was set up in its present form, with restrictions upon representation in criminal cases, under the EOA amendments of 1967.

In 1966 the Legal Services program consisted of approximately 157 projects with about 1,000 attorneys. Today, the program has more than 900 offices staffed by 2,200 full-time attorneys. It is estimated that in 1973 the program will have served over half a million clients and handled upward of 1½ million separate legal problems. Well over 80 percent of these difficulties are satisfactorily resolved out of court—and nearly 85 percent of the cases that are actually litigated are won.

But the same effectiveness which has resulted in the many successes of the program, has also engendered strenuous opposition to the Legal Services program. Case after case won by legal services attorneys on behalf of their clients has compelled our institutions to be more responsive to the legitimate grievances of the poor. But such victories in courts of law have inevitably generated political opposition to Legal Services programs from those who see their roles as preserving the present state of things.

It has become all too clear—indeed it has been apparent for some time—that the Legal Services program must be isolated from political interference. The struggle to isolate the Legal Services program from the kinds of political pressures which its very success has generated is one in which I believe most fervently. The very integrity of the adversary system of justice in the United States, and of the attorney-client relationship, requires that the provision of legal services be free from political interferences.

Throughout the history of the Legal Services program it has been continually threatened by extra-legal pressure and reactions. There has been broad recognition of that fact.

In 1971 the Ash Council—the President's Advisory Council on Executive Reorganization—strongly recommended that the Legal Services program be set up as an independent Corporation, rejecting proposals that it be located permanently in the executive branch. This recommendation was shared by the consultant's report of the American Bar Association's Committee on the Right to Legal Services.

In March of 1971, following the Advisory Council recommendation, Senator MONDALE, Senator KENNEDY, Senator BROOK, Senator CASE, Senator JACKSON and I, and eventually 17 other Members of the Senate as well, introduced S. 1305, the first National Legal Services Corporation bill. Shortly thereafter, the President sent his message to the Congress also proposing the creation of an independent Legal Services Corporation. At that time, the President noted:

> Much of the litigation initiated by legal services has placed it in direct conflict with local and State governments. The program is concerned with social issues and is thus subject to unusually strong political pressures. . . . If we are to preserve the strength of the program, we must make it immune to political pressures and make it a permanent part of our system of justice.

The President further said:

> The attorneys in the program must have full freedom to protect the best interests of their clients in keeping with the Cannons of Ethics and the high standards of the legal profession.

Mr. President, there have been several issues in dispute between the administration and the Congress since we first began this long, long effort to establish the Corporation, but paramount among them has always been the composition of the Corporation Board of Directors. It is predominately that issue which resulted in the veto of the 1971 legislation—then proposed as a new title IX in the EOA—which would have established the Corporation.

Even in 1971, the Congress attempted to reflect a spirit of compromise with regards to the Board of Directors. S. 1305, as introduced, would have set up a 19-member board. The President would have named five members, and the Chief Justice of the United States would have been named one member after consul-

tation with the Judicial Conference of the United States. Six members of the Board would have been officials of legal organizations; the president and the president-elect of the American Bar Association, the president of the National Bar Association, the president of the National Legal Aid and Defender Association, the president of the American Association of Law Schools, and the president of the American Trial Lawyers Associations. Three members would have been selected by the Client's Advisory Council, and three by the Project Attorney's Advisory Council. The Board would then have chosen an Executive Director who would have been the 19th voting member of the Board.

In the administration's 1971 bill, the Board would have consisted of 11 members appointed by the President by and with the consent of the Senate. A majority would be members of the bar of the highest court of a jurisdiction, and none would be a full-time employee of the United States. Members would be appointed for 3-year terms, and serve no longer than 9 years consecutively. The Board chairman would be elected by the members from among their number and serve for 1 year.

Neither the President's proposal nor S. 1305 emerged intact from congressional deliberations. The Senate adopted a version that I supported—reluctantly because of my strong feelings about the need for a tri-partite board representing the organized bar and legal education, clients and project attorneys, and the general public—proposing 15 board members. Under the Senate bill, the President could appoint four plus an additional five selected by him from lists submitted by two new advisory panels: a client's advisory council, and a project attorney's advisory council. The five legal associations would each appoint one member, and the Chief Justice one.

The version adopted by the House proposed 17 members, all appointed by the President with senatorial consent. Of the 17, 10 would be selected from nominating lists provided by the 5 legal associations and the Judicial Conference. An advisory council would propose names of legal services clients and of legal services staff attorneys.

The final bill reported by the House and Senate conferees—as part of the EOA amendments—provided for 17 board members, of whom 6 were to be appointed outright by the President and the others from lists submitted by various groups.

The EOA amendments were vetoed in December of 1971.

From the very beginning of the second session of the 92d Congress, we were determined to achieve legal services legislation which could be acceptable to as many of the parties as possible. Again, the Senate modified its position with regard to the Corporation Board of Directors, adopting a measure, S. 3010, which provided for outright Presidential selection of 10 of the 19 Board members; the remaining 9 would have been selected, 5 from names submitted by the five law groups, and 2 each from names submitted by client and project attorney groups.

Agreement was reached by the House and the Senate conferees—in a July 26, 1972, conference report—to a Board composed of 19 members all of whom were to be appointed by the President with the advice and consent of the Senate, one of whom would be elected annually to serve as Chairman. Ten members of the Board were to be individuals in the general public, at least six of whom were to be members of the bar of the highest court of a State; five members were to be representative of the organized bar and legal education; two members were to be selected from individuals eligible for legal services assistance—that is, clients; and two members from among former legal services project attorneys.

The July 1972 conference bill further specified that the ABA, the American Association of Law Schools, the NBA, NLADA, and ATLA could submit recommendations to the President with respect to representatives of the organized bar and legal education to serve on the Board. The Client's Advisory Council and the Project Attorneys' Advisory Council were also both provided with the opportunity to submit recommendations to the President with respect to their representative members on the Board. It was also noted in the joint statement of managers that "representative of" did not mean that an individual appointed to the Board has to represent a specific organization, but rather meant an "outstanding individual."

Unfortunately, the July 1972, report was sent back to conference after the administration made clear the President would veto the bill in that form. Thereafter in conference, agreement on the nature of the Corporation legislation could not be reached, and the conferees reported back in disagreement on the legal services title. The result was that independent Legal Services Corporation legislation was not enacted in the 92d Congress.

Mr. President, throughout our attempts to gain agreement on the nature of National Legal Services Corporation legislation, support for the concept has not waned. Earlier this year in testimony before the House, then ABA president, Robert W. Meserve, stated:

> The current status of the program has to be a matter of great concern to the Congress, the Administration, the bar, and most importantly, the poor who have derived so much benefit from the services which it has provided . . . The program, its lawyers, and clients appear to have suffered the most serious threat to the continuing availability of legal services to the poor in its [the program's] eight-year history.
>
> The pendency of the legislation and the continuing debate over its provisions have resulted in a rudderless course in national program administration. Crucial decisions and policy directives have been postponed because of the continued anticipation that the new structural autonomy of a corporation was just around the corner.

Another past ABA president, Edward L. Wright, had testified in 1972 that—

> Recurring attacks on the Legal Services program have helped shape our view that the Legal Services program should be provided a new and independent home.

Mr. President, the concern of ABA presidents is well justified and widely shared.

Attacks on the Legal Services program have occurred persistently and periodically throughout the last 5 years under the present administration. During the first 6 months of 1973, the Legal Services program was seriously wounded by the attacks it suffered then. These recent blows to the program indicate once again that a free and independent Legal Services program cannot be guaranteed while it remains within the Office of Economic Opportunity—subject to the heavy hand of politics and political gamesmanship.

Let me hasten to add that since July, when Alvin Arnett assumed the helm of OEO, things have improved markedly for Legal Services programs. But the potential for abuse remains very real and continuing. And the authorization for appropriations for the present program under the Economic Opportunity Act expires next June 30.

The extra-legal pressures and reactions to which the Legal Services program has been subjected are anathema to a system of law which requires, under its code of professional responsibility and canons of ethics, that the lawyer be free from outside interference and be able to represent his client in the most effective and meaningful way possible—using all permissible legal tools and arguments. To provide any less is to tell legal services attorneys and their clients that they cannot share fully in the basic premises of our system of justice.

Through the Legal Services program we have demonstrated that the poor can participate in our society and have their grievances redressed within the governmental structure. We must continue to keep these avenues open and to expand them through a strong and independent Legal Services program.

It is to preserve this vital thrust of the program that we have moved again this year to try to create an independent, National Legal Services Corporation.

The committee has acted in developing the clean bill it reported, with a clear recognition of the essential need for the Corporation. The committee bill before us today, S. 2686, represents a very great retreat from the committee's previous position on the structure of the Board of Directors. I have serious reservations about the compromise we have now forged, but, at the same time, I am hopeful that we can enact reasonable legislation.

S. 2686 specifies that the Corporation will have a Board of Directors composed of 11 members, all appointed by the President by and with the advice and consent of the Senate. At least six of the Board members must be members of the bar of the highest court of a State. Political party membership will be relevant for the sole purpose of insuring that no one party dominates the Board—no more than six Board members may be members of the same political party—since the reason for the establishment of the Corporation is the removal of legal services programs from political interference and control.

Mr. President, these provisions are identical to those contained in the administration bill.

The committee report, I believe, clearly reflects the committee's expectation with regard to its review of Presidential nominees for Board membership. The report, on page 10, states:

> The Committee expects that, in exercising its advice and consent function, the Senate will want to review the nominations on the basis of the following primary criteria: (1) a board membership which is adequately representative of the organized bar, legal education, legal services attorneys, the client community, and organizations involved in the development of legal assistance for the poor; (2) the selection of persons who are committed to the Corporation's freedom from political control; and (3) the assurance that the Board members understand and are fully committed to the role of legal assistance attorneys and support the underlying principle of this legislation that it is in the national interest that the poor have full access under law to comprehensive and effective legal services.
>
> To assure that these criteria are met, it is expected that the initial nominations for the Board, including the nominee for chairman, will be presented together to the Senate, so that the President will have the opportunity to present and the Senate to consider the full distribution of membership qualifications for the Board.

Mr. President, I have worked on this legislation for the last 3 years, and have been deeply involved in the development of S. 2686 in its present form. The measure we have reported, is admittedly much less than I would have hoped for in other circumstances. But it will, I believe, provide a foundation for the continuation of quality legal services to the poor. Indeed, in light of the June debacle on the floor of the other body, the Senate committee bill is far more acceptable than seemed possible only a short time ago.

It is not a more perfect bill because we felt it was necessary to try to work out a settlement with the administration to secure prompt and favorable action on an acceptable bill. We believe we have done that. The alternative to this approach could well have been a replay of the past 3 years.

Although we have now had to accept an unstructured Corporation Board of Directors, those of us who forged this settlement—and who will be Senate conferees on the bill—intend to stand firmly behind the Senate bill. The room remaining for further accommodation is extremely minimal. We will staunchly oppose in conference with the House any proposals which would permit a second-class quality of justice for the poor.

I believe that enactment of this bill will free the provision of legal services from the stranglehold of governmental bureaucracy and the extraneous and extra-legal political considerations which have threatened the program over the years. At the same time, the bill seeks to insure that legal services lawyers will be free to offer their best efforts, consistent with professional ethics, on behalf of their poverty clients.

Mr. President, I would not—I will not—support legislation that would do any less.

Mr. President, I want to make one specific point with respect to the transfer of OEO personnel to the new Corporation. Although the only personnel mandated to be transferred to the Corporation are those OEO personnel employed directly in connection with any legal services function under the Economic Opportunity Act.

The Board of Directors of the Corporation, in consultation with the Director of the Office of Economic Opportunity, will have the task of determining the number and description of personnel positions necessary for the management and operation of the Corporation. It is our intention that the Corporation's Board, when employing personnel to perform necessary support functions—such as payroll, finance, and accounting—should retain those OEO employees currently effectively engaged in providing such support to the Office of Legal Services.

Mr. President, if the poor are to be meaningful participants in our society, they must have the same access to the courts and other tribunals, as those able to hire attorneys in order to pursue their claims and vindicate their rights through the judicial process.

Providing redress of grievances within legally constituted channels is the very cornerstone of our Republic.

In his well-known article in the ABA Journal, OEO's first Director, Sargent Shriver, pointed out this essential character of the Legal Services program when he wrote:

> The legal services program of the OEO is . . . a deeply conservative program which at once enables and admonishes us to take the most fundamental principles of our legal system seriously. It is only a first step. But it represents a new fruition for this generation of a centuries' old tradition.

Mr. President, S. 2686 is part of a new spirit of cooperation between the administration and the Congress. The provisions of the bill are the result of much communication, compromise, and cooperation between the Senate and the administration. It is a very hopeful sign that this bill has been worked out with the administration.

I hope that the veto-compromise-enactment cycle will be broken again with this bill as it was during consideration and with the enactment of the Rehabilitation Act of 1973, Public Law 93–112, the Veterans' Health Care Expansion Act of 1973, Public Law 93–82, and the Domestic Volunteer Service Act of 1973, Public Law 93–113.

If the administration will only continue to talk with the Congress—through reliable, authoritative, and reasonable representatives—about the legislation we are developing, I feel confident we can continue to accomplish the kind of cooperation that has characterized our work on the legislation before the Senate today and on these other measures over the last several months.

In the past, only after vetoes, have we been able to work out acceptable compromises with the administration on a number of bills with which I have been closely involved. I welcomed these negotiations, but they came much too late. I was deeply involved in a number of these bills: S. 50, the Older Americans Comprehensive Services Amendments of 1973—now Public Law 93–29—S. 59, the Veterans' Health Care Expansion Act of 1973, a bill I authored which is now Public Law 93–82; S. 49, the Veterans' Cemeteries Act of 1973—now Public Law 93–43—and S. 1875, the Rehabilitation Act of 1973, twice vetoed and now Public Law 93–112, and S. 1559, the Comprehensive Employment and Training Act of 1973, now Public Law 93–203. Senate and House leaders also last summer successfully negotiated with the administration on the August 15 Cambodia and Indochina bombing cutoff date.

In other areas, an accord was reached on the highway trust fund bill; the President signed two compromise health bills last June; the Emergency Medical Services Systems Act of 1973, which I authored in the Senate, vetoed in August, was signed as Public Law 93–154 this past fall, and similar progress seems possible on other pending measures. Coming up in the Comimttee on Labor and Public Welfare is a measure I am deeply involved with, S. 1708, the Family Planning Services and Population Research Amendments of 1973. We have tried to work out our differences with the administration on this bill, but thus far have not been able to do so.

I fervently hope, Mr. President, that the administration will continue to reflect the spirit of compromise which has characterized our deliberations on S. 2686.

Mr. MELVIN Laird, Counselor to the President for Domestic Affairs, has contributed greatly to our sucecss on this other legislation, as well as on S. 2686. After considerable discussion he sent the committee an October 4, 1973, letter, which I ask be set forth in the RECORD at this point.

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

> THE WHITE HOUSE,
> *Washington, D.C., October 4, 1973.*
>
> HON. GAYLORD NELSON,
> *U.S. Senate,*
> *Washington, D.C.*
>
> DEAR GAYLORD: We are pleased that the Subcommittee on Employment, Poverty and Migratory Labor has completed action on legislation to create an independent National Legal Services Corporation.
>
> While we differ with some of the specific provisions of the bill as reported, we believe it does include essential principles proposed in the Administration's bill such as independence and accountability of the Corporation, freedom of the attorney to represent his client, and maintenance of a vital program.
>
> Therefore, we urge that final action be taken on the bill in this general form by the full Committee and by the Senate followed by an expeditious reconciliation of issues with the House passed bill so that the best possible measure may result and a National Legal Services Corporation may be implemented at the earliest opportunity.
>
> Sincerely,
>
> MELVIN R. LAIRD,
> *Counselor to the President for Domestic Affairs.*

Mr. CRANSTON. Mr. President, I strongly believe that, although the struggle to establish a viable, independent Legal Services Corporation is by no means over, we are well on our way to

the end of a long, painful, and often frustrating road, which has been laden with innumerable roadblocks and detours.

Mr. President, the support for the enactment of an independent, unfettered, National Legal Services Corporation—in which attorneys for the poor are not hampered from providing the best and highest quality legal services—comes from all corners of our society. A basic consensus supports the most fundamental of concepts in our democratic system—that the test of the system is its capacity to remedy inequity and injustices through its legal and judicial processes.

Mr. President, I ask unanimous consent that a speech I delivered before the National Legal Aid and Defender Association on October 27, 1973—which details my very strong feelings about the implications of the legislation before us today—be printed in the RECORD at the conclusion of my remarks, followed by several resolutions and letters of support for the program, and several articles which I believe will help my colleagues in the Senate to gather the magnitude and broad, bipartisan nature of the support for the creation of the Corporation.

The PRESIDING OFFICER. Without objection it is so ordered.

(See exhibit 1.)

Mr. CRANSTON. Mr. President, in closing, I would like to quote from a recent telegram from former Attorney General Richardson—sent to the NLADA Convention the day after his resignation from the Cabinet. The telegram was occasioned by the former Attorney General's inability to attend the convention as previously scheduled. The telegram reads:

During my tenure as Attorney General and as Secretary of Health, Education and Welfare, Attorney General of Massachusetts, and United States Attorney—the work of your group, and specifically the movement to obtain fully adequate legal representation for the less privileged, whether as plaintiffs or defendants, has had my enthusiastic support. I applaud your current efforts to help secure passage of legislation in the current Congress establishing an independent, active, sufficiently funded Federal Legal Services Corporation to operate throughout the Nation. For Congress and the Administration to underwrite a vigorous legal services program is, to me, a necessary step in ensuring the continuing responsiveness of our legal institutions.

Mr. President, in closing, I want to pay special tribute to the outstanding cooperation which the leadership on our side, the distinguished majority leader (Mr. MANSFIELD) and the distinguished assistant majority leader (Mr. BYRD), as well as their counterparts on the other side, gave to us in moving this bill through to final passage today. Their assistance was indispensable to our success.

Mr. President, I urge all of my colleagues to give their strong support to the moderate provisions of S. 2686 as reported by the committee. It is a fair compromise.

EXHIBIT 1

NATIONAL LEGAL AID AND DEFENDER ASSOCIATION—51ST ANNUAL CONVENTION, OCTOBER 27, 1973, SAN DIEGO, CALIF.

(By SENATOR ALAN CRANSTON)

The opportunity to address the 51st annual convention of the National Legal Aid and Defender Association is indeed an honor. It is most appropriate that this convention is meeting in California. California has long been the Nation's leader in providing comprehensive legal aid to criminal defendants.

The attorneys here are representative of lawyers across this country who are in the forefront of the struggle for needed change—both in our society and in the legal profession itself. In particular, your steadfast contribution to the Legal Services program has provided strength and encouragement to the Congress in our continuing efforts to ensure the continued integrity of the process of providing legal assistance to the poor.

The Legal Services program has been the most productive of all the War on Poverty programs—it has provided the poor with vital tools to gain the opportunity for full participation in our society. But even more importantly, the Legal Services program has helped to restore the faith of one segment of our population in the fairness and viability of our system of law and order.

The commitment of the Legal Services program has begun to counter the image among the poor that the law is their enemy, not their friend.

One of the best measures of the great success of the Legal Services program is the opposition the program has engendered. Case after case won by legal services attorneys on behalf of their clients has compelled our established order and institutions to be more responsive to the legitimate grievances of the poor. Such victories in courts of law have inevitably generated political opposition to the program from those who see their roles as preserving the present state of things.

The struggle to isolate the Legal Services program from these kinds of political pressures which its very success has generated is one in which I believe most fervently. The very integrity of the adversary system of justice in the United States, and, indeed, of the attorney-client relationship, requires that the provision of legal services be free from political interferences.

The Legal Services program has been seriously wounded by the attack it suffered during the first six months of 1973. This type of attack has occurred persistently and periodically throughout the last five years under the present Administration. Recent blows to the program indicate once again that a free and independent Legal Services program cannot be guaranteed while it remains within the Office of Economic Opportunity—subject to the heavy hand of politics and political gamesmanship. Let me hasten to add that since July, when Alvin Arnett assumed the helm of O.E.O., things have improved markedly for legal services programs. But the potential for abuse remains very real and continuing.

The extra-legal pressures and reactions to which the Legal Services program has been subject are anathema to a system of law which requires, under its Code of Professional Responsibility and Canons of Ethics, that the lawyer be free from outside interference and be able to represent his client in the most effective and meaningful way possible—using all permissible legal tools and arguments. To provide any less is to tell Legal Services attorneys and their clients that they cannot share fully in the basic premises of our system of justice.

Through the Legal Services program we have demonstrated that the poor can participate in our society and have their grievances redressed within the governmental structure. We must continue to keep these avenues open and to expand them through a strong and independent Legal Services program.

It is to preserve this vital thrust of the program that the Congress has moved again this year to create an independent, National Legal Services Corporation. Many, if not all, of you here today are intimately familiar with what a painful—and, to my view, in the House of Representatives, unsatisfactory—process this has been so far.

The Senate Labor and Public Welfare Committee, on which I serve, has now ordered that legislation creating the Corporation be reported to the Senate. I expect it will be taken up on the Senate floor within the next few weeks. It is legislation on which I have worked laboriously for the last three years, and in the development of which, in its present form, I have been deeply involved. The measure we have reported, is admittedly less than I would have hoped for in other circumstances. But it will, I believe, provide a foundation for the continuation of quality legal services to the poor. Indeed, in light of the June fiasco on the House floor, the Senate Committee bill is far more acceptable than seemed possible only a short time ago.

Although we have now had to accept an unstructured Corporation Board of Directors, I pledge to you today that those of us who forged this settlement, and who will be Senate conferees on the bill, intend to stand firmly behind the Senate bill. The room remaining for further accommodation is extremely minimal. We will staunchly oppose in conference with the House any proposals which would permit a second-class quality of justice for the poor.

I believe that enactment of this bill would free the provision of legal services from the stranglehold of government bureaucracy and the extraneous and extra-legal political considerations which have threatened the program over the years. At the same time, the bill seeks to ensure that legal services lawyers will be free to offer their best efforts, consistent with professional ethics, on behalf of their poverty clients.

I would not support legislation that would do any less!

But while the legal services program has restored a measure of faith for one segment of our population under our justice system and the rule of law, we have not reached the vast majority of Americans. I fear that events of the past days and months have severely shaken the faith of most Americans in the integrity and non-partisanship of the administration of justice in this nation.

The cornerstone of the formation of an independent Legal Services Corporation has been to insulate from partisan political pressures, the process of dispute settlement and the avenue to evenhanded dispensation of justice through the courts.

Now, that same need confronts us with regard to the viability of the rule of law throughout our democratic system. The nonpartisan nature of the judicial system and the preservation of the concept of equal protection under law for all Americans now rests in the balance.

This Nation is experiencing a deep crisis of confidence in its criminal and civil justice system with charges of serious conflicts of interest, and sensationalized trials in which political overtones and influences are evident.

The capacity of government to administer justice in an even-handed fashion—so fundamental in our society of laws and the very basis of the people's delegation of the power

to govern—has come under an enormous cloud.

Lawyers have always held a special position in a society of laws. They are the essential ingredient of the adversary system—and crucial to ensuring that laws are respected and enforced, that the Constitution is upheld, and that our system of justice is truly even-handed. Attorneys are, in effect, private servants of the public interest. Never has their public responsibility been greater than today.

It is imperative that we find a way of institutionalizing fairness and equity and nonpartisan administration of justice in this Nation. A fundamental part of that is the fair and unbiased representation of the public interest before the courts by the Department of Justice, or, in extraordinary cases, by a Special Prosecutor.

Indeed, it is not called the Department of Selective Application of the Law, or of Equal Rights for those of Equal Means and Circumstances—but the Department of Justice.

Manipulation of the Department of Justice to serve particular political ends is not unique to the present Administration—but the magnitude of that manipulation has never before been so gross. Never before was the Office of the Presidency itself so deeply involved in twisting the system which was investigating possible criminal conduct by the incumbent himself and his principal assistants.

The Attorney General of the United States—and in fact the entire Justice Department—wields great power which, if not used judiciously, threatens the basic rights and liberties of Americans, either as individuals or as members of groups.

The person who holds the position of Attorney General should, in my judgment, be especially sensitive to and protective of our constitutional rights because of the enormous power of his office. His dedication to law and justice should be no less compelling than his enthusiasm for law and order. Such a man has Elliot Richardson proven to be.

It is important to recall that the Department of Justice under its prior leadership showed a pattern of being "soft" on certain repressive practices which, if given further license, could be the precursors of an authoritarian society—practices we should be particularly wary of in this age of electronic snooping devices and computerized data banks.

The chaos of the past week follows several years of tolerance for wiretapping, mass arrests, and preventive detention. Former Attorney General Mitchell's thinking was fuzzy, at best, when it came to distinguishing between people who threatened our nation's security and people who merely disagreed with Nixon policies. There was manifested a disturbing desire to have us all rely entirely on the good will of members of the executive bureaucracy as the ultimate safeguard of our freedoms.

I believe that partisanship must stop at the doorways of the Justice Department.

It is ironic, and more than a bit frightening that the office of Attorney General has become more and more politicized during the very time when more and more power over the lives and the liberties of our people has become concentrated in a Federal bureaucracy in Washington.

For the sake of democracy and of freedom, we should have been heading in the very opposite direction over the past 40 years.

If political power was to become more and more centralized, then it was all the more vital that the men named to the one Cabinet post charged with upholding the law and the Constitution against the oppressive power of government be men far removed from the pressures and the temptations of partisanship. This has been less and less the case over the past twenty-five years.

And instead of more protections of our liberties and our privacy, the past four decades have seen a steady intrusion of government into all facets of our lives and a steady erosion of individual rights and liberties.

It is no wonder that the people of America doubt the credability of our adversary system. The Vice President has resigned after conviction of a felony; a past Attorney General, a former Secretary of Commerce and the ex-White House Domestic Counsellor to the President are all under indictment for illegal activities; the President's former Chief Counsel has pleaded guilty to obstruction of justice. And now, the most recent Attorney General and his Deputy—both men of high integrity—have been forced from office because they could not conscientiously carry out a Presidential order. One of the most chilling incidents in the latter development came when General Haig, who is called the White House "Chief of Staff" in the paramilitary jargon which seems so alien to our civil government—informed Mr. Ruckleshaus that he was getting "a direct order from the Commander-in-Chief". To those on the ordering side it was irrelevant that the order to fire Cox was in clear violation of a pledge, through the United State Senate, to the people, that the whole Watergate-related affair would be investigated and prosecuted totally independently.

I believe that of all the remarkable statements of the past remarkable week, the original statement of the Special Prosecutor most clearly describes the issue at hand. In his one sentence comment upon notification of his abrupt dismissal he said:

"Whether ours shall continue to be a government of laws and not of men is now for the Congress and ultimately the American people."

Various alternatives are now under consideration in the Congress. Many, many members in both the House and the Senate have indicated their refusal to accept the President's actions.

It is absolutely essential to the maintenance of our system of justice that the independent, publicly accountable prosecution of the Watergate and related crimes be pursued.

President Nixon himself last April 30 agreed to that concept. The Senate in confirming Elliot Richardson as Attorney General insisted on it.

Mr. Richardson in his recent press conference again confirmed his own view that an independent prosecutor is necessary. Mr. Ruckleshaus has expressed the same view.

It is not enough to say that the Justice Department will prosecute the Watergate crimes with the same independence provided Mr. Cox. Even if the Justice Department is, in fact, given that independence, the suspicion will remain that these men, appointed by President Nixon, will be doing *his* will and will not be acting independently.

We cannot survive still more doubt about the integrity of the system of justice in this matter.

In a 1972 opinion of the Supreme Court, Mr. Chief Justice Burger outlined the basic contours of the respective Constitutional powers of the branches of government and the neutral authority of the judiciary as follows:

"The check-and-balance mechanism, buttressed by unfettered debate in an open society with a free press, has not encouraged abuses of power or tolerated them long when they arose. This may be explained in part because the third branch has intervened with neutral authority."

It is imperative that faith in that neutral authority be re-instituted.

We cannot allow the sacrifice of the principle of equal justice for the profits of political power. The corollary of the essentially apolitical preservation of the judicial system is that political leaders must willingly accept that neutral authority. When the Supreme Court invalidated President Truman's seizure of the steel mills, the fact that U.S. Marshalls could not overcome the U.S. Army was not an issue in the matter. President Truman believed in the rule of *law*—not of might. So he accepted the judgment of the neutral arbiter despite the fact that it was without the power to enforce its decision. Contrast that to the events of the past four days!

Only after the Court of Appeals forcefully reminded the President that "he does not embody the nation's sovereignty"; that "he is not above the law's commands"; only after scores of impeachment resolutions were filed in the House of Representatives; only after the Judiciary Committee of the House had launched an investigation of impeachment proceedings; only after an absolutely unprecedented outpouring of almost unanimous condemnation of the President's weekend actions (as of this Friday, my California and Washington offices had received 13,625 pro impeachment communications from Californians—and 599 opposed; and only after former Attorney General Richardson explicitly refused to rule out impeachment or to defend the President's actions;—only then did the President finally agree to abide by the principle acceptance of the neutral authority of the courts.

That's hardly a reassuring commitment to the rule of law!

The American people must be assured that the Department of Justice will pursue a full investigation. As its chief, Mr. Bork, is, to my mind, unacceptable—his first act as Acting Attorney General was to fire an honest man. Indeed, our experiences with the appointments by the President have been most unsatisfactory. I remember all too well what we went through in the Senate to prevent Judge Haynesworth's elevation to the Supreme Court—only to be confronted by the nomination of Judge Carswell.

President Nixon miscalculated badly yesterday when he declared that he was confident that the Congress would drop its consideration of separate legislation to ensure the appointment of a truly independent prosecutor.

Yesterday I joined with Senator Bayh, Senator Hart and 50 other members of the Senate in introducing legislation which directs that a new Special Prosecutor be selected by Judge Sirica—totally independent of any direction from the Executive Branch, and removable only by Judge Sirica and only for "Extraordinary Improprieties". I believe, contrary to the President's prediction, that the Congress will pass this important legislation, and if necessary, override any Presidential veto.

I have believed for some time that we need some permanent mechanism which will restore in the long run public confidence that wrongdoers in positions of public trust will be investigated and prosecuted.

The best first step would be for Congress to study ways to set up a permanent means of triggering independent investigations and prosecutions of breaches of the public trust by persons who hold high positions of power. Some way must be found to overcome the built-in conflicts of interest which exist, or appear to exist, whenever the powerful are asked to investigate themselves.

I have confidence that we eventually will overcome the crisis of Watergate. Our system of government is strong enough to do that task.

But the record of official misconduct during past decades is not good. Few cases have been prosecuted.

Too often, there is an appearance that corruption in high places is being swept under the rug. Because of the political nature of the office, an Attorney General can come under enormous pressure not to prosecute some cases.

There is another reason why an independent permanent agency to look into and prosecute charges of official misconduct can restore credibility to government. As former Special Prosecutor Archibald Cox has remarked, often the most important decision a prosecutor makes is the decision not to prosecute.

Such a decision affecting persons in high public office, even if taken by an Attorney General as outstanding as Elliot Richardson, might lack general public acceptance. Such a decision by an independent special prosecutor would have greater credibility.

The restoration of public confidence in the administration of justice, and in our institutions responsible for order and justice under law, is vitally important to the future of our Nation. No one political party today commands a consensus capable of restoring the degree of confidence necessary. We must seek to establish some independent institutions which would guarantee to the public that those in positions of high trust will not abuse that trust.

I have consulted with other Senators, and will push ahead. As, hopefully, we determine how best to replace Mr. Cox, some light may be shed on the best procedure to follow in dealing with the long range problem.

Lloyd Cutler, distinguished Washington attorney, has called for the establishment of an office of permanent prosecutor to investigate and prosecute cases of political corruption. Mr. Cutler persuasively argues that we need to address official and campaign misconduct on a continuing basis, not once every 50 years.

A permanent special prosecutor is one way. It may be that a bipartisan independent commission empowered to appoint an ad hoc special prosecutor in a case of unusual national dimensions would be the soundest approach. I am sure that Mr. Cutler would agree that there are other ways which ought to be examined as well. But his proposal is well worth considering.

I know that all of us here today are dedicated to justice. Justice is a reality only when all people have equal access to that system and to the protections of that system, and are subject to its ultimate judgments.

I call on you and your colleagues across the nation—in your capacity as private servants of the public trust—to lend your knowledge to the American people. I call on you to help them to clarify the many, many, complex legal issues which have arisen in the past weeks, so that public opinion may be an informed public opinion.

The alternatives we in the Congress are faced with—and our choice from among them—are important for two reasons. Not merely because of the very serious ramifications they have in terms of the present crisis—but also because our choice and the judiciousness of our actions will set a course for our Nation for decades to come.

The Congress, like the community at large, needs the support, counsel, and wisdom of the legal profession in the national dialogue in the days and weeks ahead. I urge you to provide that substantial assistance—by whatever means you have at your disposal, with all of the many talents you possess.

We must all summon up the very best that is within us to decide with the greatest care how best to meet this paramount national crisis.

THE STATE BAR OF CALIFORNIA,
San Francisco, November 20, 1973.

Re National Legal Services Corporation.

Hon. ALAN CRANSTON,
Senate Office Building,
Washington, D.C.

DEAR ALAN: I understand that S 2686, to establish an independent, federally funded national legal services corporation, is now before the full Senate for action, and that once passed it will go to conference committee to resolve differences between it and HR 7824.

As you know, legislation to establish a legal services corporation consistent with the principles of equal justice and the professionalism and independence of legal services lawyers continues to be of great interest to the State Bar of California. The July 18th statement of former State Bar President Leonard Janofsky contains an excellent exposition of those principles as applied to the deficiencies and restrictive provisions of HR 7824. A copy of his statement was previously sent to you and another copy is enclosed for your convenient reference.

Doubtlessly you are also aware that Leonard's statement has been endorsed, or similar statements have been adopted, by several local bar associations in our State. For example, the Trustees of the Los Angeles County Bar Association specifically approved the statement and Bill Shea, Los Angeles County Bar President, in announcing the approval, praised the statement as a well-reasoned and proper analysis of the several problem areas in the House bill.

We are well aware of your deep interest in equal justice and an effective legal services program for our nation's poor. I appreciate your sincere and dedicated efforts in shaping the Senate bill and your future efforts to enact a corporation bill consistent with the principles you have outlined.

Sincerely yours,

SETH HUFSTEDLER,
President.

STATEMENT BY LEONARD S. JANOFSKY, PRESIDENT OF THE STATE BAR OF CALIFORNIA

"For some time the Board of Governors of the State Bar of California has closely watched the developments affecting the future of federally funded civil legal services for the poor. We have become increasingly concerned that the pending legislation to establish an independent, nonprofit corporation to continue that funding does violence to equal justice for all our citizens and the independence and professionalism of attorneys who would participate in legal services programs funded by that agency. This nation cannot tolerate one system of legal representation for the rich, and another, inferior system for the poor.

"The State Bar has supported the OEO program of funding local agencies to provide legal services to the poor virtually since the inception of that program. The State Bar has maintained an active, ongoing interest throughout the approximately eight years of the program's existence, and has opposed politically motivated efforts to restrict the independence and professional integrity of the attorneys who have labored throughout California and the rest of our nation to bring effective legal representation to the poor.

"We have recognized for some time that continued federal funding is essential. Experience since the institution of OEO funding has demonstrated that volunteer services and funding from the private sector are not adequate to meet the legal needs of California's poor.

"The State Bar has endorsed, for the last two years, the concept of an independent national legal services corporation to continue that funding free from political influences and interference. This endorsement was conditioned on the authorizing legislation containing strong safeguards to assure the professionalism and independence of lawyers in the program.

"Independence and professionalism are not empty platitudes or concepts created for the benefit of lawyers. They are essential parts of our system of justice—a system premised on the lawyer's ability and obligation to represent his client's interests and to use the full scope of resources which are available to him as an advocate acting within our system of law.

"We are a nation of laws and adhere to the principle of equal justice for all. There can be no equal justice without equal representation before our judicial and legislative bodies. We cannot, as citizens or members of the legal profession, tolerate two systems of justice—one for the affluent and an inferior one for the indigent.

"I am concerned that various provisions in the present form of the proposed legal services corporation bill would contradict or undermine the basic principles of equal justice for all and the professionalism and independence of legal services attorneys. Specifically:

"By restricting the involvement of legal services attorneys in the legislative process, the bill would deny the poor person effective access to his Congress or state legislature in seeking resolution of legitimate problems.

"The bill would have the corporation establish guidelines governing when appeals can be taken on behalf of clients. It also calls for guidelines governing when legal assistance can be provided to poverty groups and to poor people who want to form an organization for legitimate and socially useful purposes, such as an economic self-help group or day care center. This approach of requiring guidelines is potentially dangerous, especially in the case of group representation where the statutory language is virtually a mandate to the corporation to limit an important form of legal assistance.

"The bill would prohibit continued funding of 'backup centers'—programs which provide invaluable research, technical assistance, training and guidance for the many neighborhood legal services programs. The backup center concept is sound from an efficiency standpoint and the worth of these centers has been proven in practice.

"The corporation would be subject to court awards of legal fees to defendants who prevailed in actions brought against them by legal aid programs funded by the corporation. In the vast majority of cases under our present judicial system the prevailing party is not entitled to an award of attorney fees. Why should the rule be different when poor people are being represented? This provision could bankrupt the already underfunded legal services program and stifle legitimate litigation—except in cases where victory is assured from the inception. We all know that those cases are few and far between. This provision would practically guarantee that poor people would be represented only when they are defendants.

"The House has deleted from the bill references to the ABA's Canons of Ethics and Code of Professional Responsibility—insofar as they had reference to legislative advocacy and review of appeals. This must be disturbing to the legal profession. The deletion of these references manifests a lack of understanding that independent and professional representation of every client is mandated by the bar and the judicial system under which we operate.

"The bill would effectively delegate to local bar associations the discretion and responsibility for hiring staff attorneys which properly belongs to local program boards of directors and directing attorneys. Input from, and involvement of local bars is essential but this dispersal of operational responsibilities is organizationally unsound.

"The House has deleted from the bill a

provision for three-year appropriation of funds for the proposed corporation. If the already drastically underfunded program of legal services for the poor is to be further subjected, on an annual basis, to political pressures and apparent lack of sensitivity to independent, professional legal services for the poor, then the future is indeed bleak.

"The bill is now in the hands of the Senate where we hope for a version of legislation which is consistent with the basic principles required by the legal profession and its clients. But this is no cause for the legal profession to be optimistic or even temporarily complacent. We must all speak out now, in the strongest of terms, if our national leadership is to be responsive to the basic need for an effective system of justice for the poor. Without equal justice for all, justice for anyone is an illusion."

THE BAR ASSOCIATION OF SAN FRANCISCO,
San Francisco, Calif., November 8, 1973.

Hon. MIKE MANSFIELD,
Hon. HUGH SCOTT,
Hon. ALAN CRANSTON,
Hon. JOHN V. TUNNEY,
Hon. JAMES O. EASTLAND,
Senate Office Building,
Washington, D.C.

GENTLEMEN: On November 7, 1973, the Board of Directors of The Bar Association of San Francisco unanimously endorsed the pending bill to establish a National Legal Services Corporation in the form reported from Committee to the Senate floor the week of November 5, 1973.

The Bar Association of San Francisco has been a consistent supporter of the OEO legal service programs in San Francisco, the State of California and in the nation. Through appointment of our members to the Board of the governing body for the OEO legal service program in San Francisco, we maintain close liaison to that program. In addition many of our members have worked with a variety of other OEO legal service programs as employees, volunteers or Board members. By these contacts we are convinced that the program continues to improve. If its relative independence from the vicissitudes of politics can be assured through the proposed corporation, we have no doubt that legal services to those who cannot afford to pay for them will be materially improved.

The Bar Association of San Francisco urges Senate passage of the pending bill.

Very truly yours,

MICHAEL TRAYNOR,
President.
ROBERT H. FABIAN,
President-elect.

AMERICAN BAR ASSOCIATION,
Chicago, Ill., November 12, 1973.

Re S. 2686, National Legal Services Corporation.

Hon. GAYLORD A. NELSON,
Chairman, Subcommittee on Employment, Poverty and Migratory Labor, Washington, D.C.

DEAR MR. CHAIRMAN: On behalf of the American Bar Association I commend you for your leadership in securing favorable committee action on S. 2686 now before the Senate.

The American Bar Association has long been interested in the creation of an independent national legal services corporation and has on three occasions adopted policy positions in support of this concept. I am pleased to inform you that S. 2686, as reported, fully complies with the Association's insistence on assuring the independence of lawyers for the poor to provide professional legal services to clients. I urge that the legislation be speedily and favorably acted upon by the Senate and that any amendments seeking to restrict the independence of lawyers or the access of their clients to our processes of justice be resisted.

Sincerely,

CHESTERFIELD SMITH.

TELEGRAM ON THE CRISIS IN OEO LEGAL SERVICES

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

DEAR MR. PRESIDENT: We write in urgent concern that full access to our system of justice be maintained for low income citizens. We write in particular to ask your personal intervention to reverse the present acute trends which threaten the legal services program.

1. *The immediate crisis.* We are concerned, first, with the uncertain state of funding for legal services operating programs. Some 16 California legal services programs face refunding shortly. Their closure would leave tens of thousands of cases now pending in California courts without counsel, jeopardizing those clients and their sense of justice, and jeopardizing the integrity of the legal system.

2. *The direction of the legal services programs.* The refunding of operating legal services programs has been slowed. Back-up centers and training programs have been placed in danger of defunding. These actions are expressive of deeper problems. Callow assertions have been made about the functions and professional obligations of the lawyer, which affront the deepest traditions of the legal profession. Statements recently made by some OEO officials betray ignorance of the proper role of a government in guaranteeing access to its courts for all—a role which dates to the 1495 Statute of Henry VII; and which has been acted upon now in virtually all democratic nations of the west.

3. *Restructing national funding.* We write also to seek your aid in shaping whatever corporate or other form the national administration of funds for legal services may take. Lawyers must be free to fully execute their duty to their clients under the Code of Professional Responsibility, in whatever forums and against whatever parties the clients' interest may require.

You so eloquently expressed a judgment in November 1962, addressing the National Legal Aid and Defender Association which is exactly in point:

"There is . . . no subject that is more important to this nation than . . . the realization of the ideal of equal justice under law for all."

You also spoke about legal services at San Clemente on August 11, 1969; we ask a return to that proper conception of the lawyers' role which you then expressed:

"The Office of Legal Services [will] be strengthened and elevated so that . . . it will taken on central responsibility for programs which help provide advocates for the poor in their dealings with social institutions. The sluggishness of many institutions at all levels of society in responding to the needs of individual citizens is one of the central problems of our time."

We ask the careful attention of your administration to extending legal services for the poor to those many still denied it. As Mr. Justice Harlan wrote for the Supreme Court in *Boddie* v. *Connecticut*, 401 U.S. 371 (1971):

"American society, of course, bottoms its systematic definition of individual rights and duties, as well as its machinery for dispute settlement, not on custom or the will of strategically placed individuals, but on the common-law model. It is to courts, or other quasi-judicial official bodies, that we ultimately look for the implementation of a regularized, orderly process of dispute settlement. . . . Without [the] guarantee that one may not be deprived of his rights, neither liberty nor property, without due process of law, the State's monopoly over techniques for binding conflict resolution could hardly be said to be acceptable under our scheme of things. Only by providing that the social enforcement mechanism must function strictly within these bounds can we hope to maintain an ordered society that is also just."

Very truly yours,

Eadie Deutsch, Dean, University of San Fernando Valley, College of Law, Sepulveda, Calif.

Jerome Sack, Dean, Lincoln University, Law School, San Francisco, Calif.

George J. Alexander, Dean, University of Santa Clara, College of Law, Santa Clara, Calif.

Thomas A. Ehrlich, Dean, Stanford University, School of Law, Stanford, Calif.

Daniel J. Dykstra, University of California, School of Law, Davis, Calif.

Edward C. Halbach, Jr., Dean, University of California, School of Law, Berkeley, Calif.

Murray L. Schwartz, Dean, University of California, School of Law, Los Angeles, Calif.

Paul L. Wildman, Southwestern University, School of Law, Los Angeles, Calif.

Dorothy W. Nelson, Dean, University of Southern California, School of Law, Los Angeles, Calif.

RESOLUTION OF THE AMERICAN G.I. FORUM ON NATIONAL LEGAL SERVICES CORPORATION FOR THE POOR, H.R. 7824

Whereas, the American G.I. Forum has always displayed a deep concern for justice for Chicanos and minority groups and for the poor generally; and

Whereas, OEO legal service programs have provided the poor, especially Mexican-Americans, with access to legal services which have increased their sense of dignity, enlarged their experience of human rights and enhanced their hope in and support of the American system of justice; and

Whereas, the structure of any legal services corporation enacted into law will significantly affect the quality and effectiveness of legal services available to the poor; and

Whereas, the American G.I. Forum has repeatedly endorsed OEO legal services programs free from political interference; Therefore, be it

Resolved, that the American G.I. Forum:

Reaffirms its support of OEO legal services free from political interference; and

Strongly urges that the Bill establishing a National Legal Services Corporation will generally assure the poor, especially the Chicano poor, access to effective, independent, professional legal services and, specifically, the G.I. Forum urges that the legislation contain the following provisions:

1. An assurance that attorneys employed by legal services programs funded by the corporation have all the latitude to advise, counsel and represent their clients in *all* civil matters before judicial, administrative or legislative branches, as fully as any private attorney being paid by his clients, consistent with the canons of ethics and code of professional responsibility of the American Bar Association; and

2. An assurance of the protection of the First Amendment rights of employees of projects funded by the corporation; and

3. An assurance that legal services offices funded by the corporation be permitted to carry on educational programs in client communities to alleviate legal and social problems associated with poverty; and

4. An assurance that legal services offices may assist eligible clients to organize themselves into effective groups to seek their goals through the legislative, judicial or administrative process and especially to develop business or other economic entities to

develop the resources of the low-income community; and

5. An assurance that a majority of the eleven-member corporation board of directors is made up of representatives of the minority and poverty community served by the programs funded by the corporation and representatives of national bar associations.

RESOLUTION OF THE MEXICAN-AMERICAN POLITICAL ASSOCIATION ON H.R. 7824, NATIONAL LEGAL SERVICES CORPORATION FOR THE POOR

Whereas, the United States Senate will soon consider legislation to establish a legal services corporation; and

Whereas, the House of Representatives has considered such legislation and has taken such action as to severely limit the ability of attorneys for the poor to maintain adequate and full representation; and

Whereas, the Mexican-American Political Association strongly supports the concept of a truly independent corporation to provide legal services to the poor; and

Whereas, the Mexican-American Political Association supports the statement by the President of the United States that "[t]he legal problems of the poor are of sufficient scope that we should not restrict the right of their attorneys to bring any type of civil suit." * Therefore, be it

Resolved, That the Mexican-American Political Association call upon the Members of the U.S. Congress to establish a corporation which includes the following provisions:

1. That the programs funded by the legal services corporation should provide full and adequate legal assistance to the poor;

2. That services provided by the attorneys for the poor should be limited only by the Code of Ethics and Canons of Professional Responsibility of the American Bar Association to insure the poor equal access through our civil laws before judicial, administrative or legislative branches of local, state or federal governments;

3. That no specific issue, due to its "controversial" nature, be singled out as an issue for which attorneys will not be available to represent the poor;

4. That attorneys for the poor have equal latitude in representing client interests before any legislative bodies as do attorneys in private practice, consistent with the Canons of Ethics and the Code of Professional Responsibility of the American Bar Association;

5. That costs and attorneys' fees not be charged against legal services attorneys, programs nor the corporation where such costs and fees would not be so charged against a private attorney nor private law firm;

6. That legal services attorneys have full latitude to advise clients of their First Amendment rights as would any private attorney;

7. That the First Amendment rights of all employees of legal services programs be protected.

THE BAR ASSOCIATION OF SAN FRANCISCO,
SAN FRANCISCO, CALIF., *July 26, 1973.*

DEAR SENATOR CRANSTON: The Bar Association of San Francisco strongly supports the State Bar of California in its advocacy of an independent and effective national legal services corporation, in contrast to the organization that would result if the bill pending in the Senate is not substantially revised.

The State Bar's position is set forth in President Leonard Janofsky's statement of July 18, 1973, which we understand has been communicated to you. We agree with the State Bar's summary of the major defects of the pending bill:

The bill unnecessarily restricts legal services attorneys seeking legislative relief for problems affecting their clients' interests.

The bill tends to cripple appellate advocacy by legal services attorneys, and their advocacy on behalf of groups.

The bill arbitrarily cuts off important poverty law research and training, the back-up centers, without guaranteeing any efficient alternative.

The bill deletes references to the ABA's Canons of Ethics and Code of Professional Responsibility—insofar as they relate to legislative advocacy and appeals.

The bill improperly subordinates the responsibility of program boards of directors for hiring staff attorneys to the discretion of local bar organizations.

The bill continues the annual political war over funding of legal services programs, even though the corporation has been proposed primarily to overcome the fundamental inequities of this funding process.

We join State Bar President Janofsky in his conclusion regarding the bill as proposed: "This Nation cannot tolerate one system of legal representation for the rich, and another, inferior system for the poor."

The current version of the bill, in these discriminatory and unfair provisions and in its deletion of references to accepted ethical standards, is a matter of particular concern to the profession and the public at this time. In this context, the very least that our government can do is to insure that lawyers for the poor are permitted to represent their clients responsibility, ably, and vigorously within the highest ethical traditions of our adversary system of justice.

We urge you to vote against any proposal that would prevent adequate legal representation for the poor and to take all steps necessary to assure that an adequately funded, independent, and effective legal services corporation is established.

Sincerely,

MICHAEL TRAYNOR,
President.
ROBERT H. FABIAN,
President-Elect.

FRIENDS COMMITTEE ON NATIONAL LEGISLATION,
Washington, D.C., October 25, 1973.

Hon. ALAN CRANSTON,
U.S. Senate,
Washington, D.C.

DEAR SENATOR CRANSTON: The Senate will soon consider on the floor the whole question of a Legal Services Corporation and under what conditions it should exist. I would like to take this opportunity to express very simply what I have already expressed to a number of you or your legislative assistants personally.

The Friends Committee on National Legislation strongly endorses the concept of a Legal Services Corporation as long as the lawyers working for that Corporation enjoy the same working legal privileges as any other member of the legal profession.

While it is obvious to most senators that "equal access" to legal services is a right in America today, it seems odd that some of these same senators can turn around and demand that the lawyers who represent the poor should practice under different conditions than those in private or business or government employ.

To be specific, it looks as if the biggest challenge is going to come from those who feel that public money should not be spent to salary any form of legislative advocacy. While this as an abstract principle might be interesting to pursue, it is a matter of realistic fact that business and governments have (and many times pay for out of public monies) public and governmental lobbying efforts. Governors' offices, state governments, even the "Defense" Department provide lobbyists at tremendous expense to the public. Does it seem too much to allow our poorest citizens' lawyers the same rights that everybody else already practices?

In essence we strongly urge the passage of the Legal Services Corporation bill without amendments. We also would urge strong support of Conference appointees to get the bill out of conference as close to the Senate version as possible. Needless to say, the House bill is a disaster, but many House members realize today that they bought a package from Howard Phillips and the rest of this Administration's "law and order" people that they now recognize for what it was—a different law and a different order dependent on your wealth. We know you cannot accept the assumptions therein and will insist that "equal justice under law" is not an approachable ideal if the poor do not have untrammelled equal access to counsel.

Sincerely yours,

HAROLD B. CONFER.

[From the Fresno Bee, Oct. 19, 1973]

EFFECTIVE LEGAL SERVICES FOR POOR WOULD ENCOURAGE PEACEFUL CHANGE

Those who wish to see the poor and powerless obtain the rights to which everyone is entitled under the law will be watching the poverty subcommittee of the US Senate Labor and Public Welfare Committee closely as it draws up a Legal Services bill.

The committee holds the last hope of salvaging one of the most useful, effective and economical pieces of what is left of the poverty program.

The measure, to provide legal services for the poor for whom the ordinary benefits of our judicial system have been out of reach, is an integral part of any sincere and enlightened attempt to alleviate the harsh consequences of poverty by peaceful change.

The antipoverty program itself, administered by the US Office of Economic Opportunity, has been emasculated by the lockjaw right wingers President Richard Nixon has put in charge of the OEO since his second term.

The proposal before Congress to take legal services to the poor out of the OEO and put them in an independent corporation whose board Members would be appointed by the President essentially would be a good move.

However, in June the House of Representatives, in an atmosphere reminiscent of an end-of-the-session rampage by a state legislature, amended the measure to make it virtually impossible for the legal services corporation attorney to provide effective representation for impoverished clients.

Under the OEO, the Legal Services program, demonstrated effective and constructive change can occur peacefully within the system through court action.

About 2,500 lawyers in 900 offices around the country participated in the OEO program. They helped the impoverished with the everyday problems which are the bane of the poor—landlord-tenant disputes, debtor-creditor problems, domestic matters. The government-funded lawyers were especially successful in securing for the poor rights guaranteed by law but denied them by administrative directive.

The bill passed by the House would so hobble lawyers for the poor they would not act forcefully for their clients.

Legal rights are worth nothing if those who possess them lack effective legal representation.

The Senate committee has before it the difficult task of drawing up a bill which would be meaningful for the poor, by keeping open the avenues of orderly redress of grievances for those who cannot afford to hire a lawyer.

[From the Santa Barbara News-Press, Sept. 25, 1974]

LEGAL AID FOR POOR IN DANGER

Legal services for the poor, a program introduced by the "war on poverty" legisla-

* President Nixon's message to the U.S. Congress, May 5, 1971.

tion a decade or so ago, has proved effective in equalizing the right of the poor to legal counsel and in correcting customs and precedents that now are seen as contrary to constitutional principles. It has been so effective that powerful enemies have been made among state and federal officials, legislators and bureaucrats.

The Nixon administration, aware of complaints from governmental figures who were defeated in many class-action cases in the courts, decided to abolish the legal services from the anti-poverty program, and instead set up a semi-autonomous corporation to provide legal services for the needy under certain limitations. The announced purpose was to take the legal services out of the arena of social political action, and to free it from political pressure.

A bill was introduced in the House, which was mildly restrictive, but still generally acceptable to those firmly committed to the principle of equal legal rights. But before it was passed it was loaded down with restrictive amendments in a frenzied session just before the summer recess, so that now even the American Bar Association spokesman regards it as violating the rights and obligations of lawyers, and compromising their professional independence.

William R. Klaus, chancellor of the ABA's standing committee on legal aid, declared against any limit on a lawyer's activity as a legislative or administrative advocate. "The bar's code of professional responsibility specifically states that representation before municipal, state and legislative bodies is part of the obligation of a lawyer if he is to represent his client well," Klaus said. The Connecticut state bar head commented: "What this bill says, essentially, is that if you're a poor person, you can have a lawyer, but you can't have a 100 percent lawyer." The president of the New York City Bar said "legal service lawyers will be coming into court with one hand tied behind their backs," and he charged that the anti-lobbying provision and bans on certain kinds of lawsuits are "constitutionally suspect," violating both First Amendment rights of free speech and Sixth Amendment rights to effective assistance of counsel.

This week the bill comes up for hearing in the Senate Committee on Labor and Public Welfare, where moderates of both parties will try to remove the crippling amendments imposed by the House. They will be encouraged and advised by spokesmen for the American Bar Assn. and various state bar organizations, who are ready to fight to protect the prerogatives and ethical responsibilities of all lawyers.

[From the Los Angeles Times, Sept. 25, 1973]

MAIMING OF LEGAL AID FOR THE POOR

Everyone is equal before the law in theory. In fact, some are more equal than others. Those who have money to hire a competent lawyer enter the fray with a great advantage over those who do not. In recognition of this, the federal government established a legal services program for the poor eight years ago.

During these eight years, the program has been under constant attack, and may soon be emasculated. Success may be its downfall. Legal service lawyers have won too many cases—about 85% of them. More than that, they have frequently gone to the Supreme Court and have achieved precedent-setting victories that established not only the rights of clients but, through them, have advanced the cause of the poor in general.

This came about not because the program's attorneys were decisively superior to opposing counsel in every case but because the courts recognized the injustices suffered by the poor and acted to redress these wrongs.

During the controversy this year over the poverty legal services, President Nixon proposed legislation to continue the program under an independent federal corporation. The House, shortly before Congress recessed for the summer, approved the bill but, in doing so, maimed it almost beyond recognition. In its present form the bill would: (1) prohibit lawyers for the poor from lobbying before state legislatures and Congress or even testifying unless subpoenaed; (2) stop these attorneys from filing school desegregation, abortion and amnesty cases or representing any juvenile without consent of parents; (3) deny federal funds to "backup centers," which provide poverty lawyers with research materials, and (4) require the corporation to pay court costs and attorneys' fees of defendants who win suits brought against them by legal service lawyers.

The purpose of these restrictions is clear. They are designed to cut the heart out of the legal defense of the poor. Orville Schell, president of the New York City Bar Assn., points out that this bill means that poverty lawyers will be going into court "with one hand tied behind their backs."

President Nixon, in endorsing legal assistance for the poor, said last spring that "justice is served far better and differences are settled more rationally within the system than on the streets." If that is so—and it is—the Administration, which apparently is wobbling in support of its own bill, and the Senate should come to the rescue of the legislation and cut off the crippling amendments imposed by the House. The rescue operation should begin this week when the bill is taken up by the Senate Committee on Labor and Public Welfare.

[From the Sacramento Press-Journal, July 26, 1973]

LEGAL SERVICES CORPORATION BILL CRITICIZED BY STATE BAR

SAN FRANCISCO.—State Bar President Leonard S. Janofsky today called upon the Senate to adopt a national legal services corporation bill consistent with the principles of equal justice and the professionalism and independence of legal aid attorneys. His remarks were addressed to legislation introduced by the Nixon Administration, amended by the House of Representatives, and recently sent to the Senate.

Janofsky noted that two years ago the State Bar endorsed the concept of a legal services corporation which assured the independence of participating lawyers. He expressed deep concern, however, about several provisions in the corporation bill as it was sent to the Senate.

"For some time the Board of Governors of the State Bar of California has closely watched the developments affecting the future of federally funded civil legal services for the poor," the State Bar President said. "We have become increasingly concerned that the pending legislation to establish an independent, nonprofit corporation to continue that funding does violence to equal justice for all of our citizens and the independence and professionalism of attorneys who would participate in legal services programs funded by that agency. This nation cannot tolerate one system of legal representation for the rich, and another, inferior system for the poor."

PROBLEM AREAS

In pointing out problem areas in the present form of the bill he highlighted:

1. Prohibitions on legislative advocacy which, he said, would deny poor people any "effective access" to their elected representatives "in seeking resolution of legitimate problems."

2. Prohibitions against the continued funding of "backup center." Janofsky noted that these specialized research and training programs have proven their worth and provided "invaluable assistance for the many neighborhood legal services programs."

3. A provision which would subject the corporation to court awards of legal fees to defendants who prevail in actions brought against them by legal aid programs funded by the corporation. Janofsky explained that this is inconsistent with the general rules in civil litigation and could bankrupt the legal services programs. Its practical effect, he said, would be to "guarantee that poor people would be represented only when they are defendants."

4. Provisions which encourage the corporation to adopt "guidelines" severely limiting legal assistance to poverty groups and require it to set standards governing when appeals can be taken. He characterized these proposals as "potentially dangerous."

THE STATE BAR OF CALIFORNIA.

STATE BAR CALLS FOR EFFECTIVE LEGAL SERVICES CORPORATION

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[From the Los Angeles Times, July 6, 1973]

CRIPPLING OF LEGAL AID FOR THE POOR

The House of Representatives has approved the independent federal corporation proposed by President Nixon to provide legal services to the poor. But in so doing, the House has

attached such restrictive amendments that the bill little resembles the original proposal and would, in effect, deny the poor the quality of legal services intended.

What makes the House action particularly shocking is that it was encouraged and abetted by Howard J. Phillips, while acting director of the Office of Economic Opportunity, without so much as a public reprimand from Mr. Nixon. This open sabotage left the suspicion that the Administration was talking out of both sides of its mouth.

It is time that Mr. Nixon made clear where he stands. Phillips is now out of office—driven out by the courts, not Mr. Nixon, because he had never been confirmed for the job. He has been succeeded by Alvin J. Arnett. Within the White House itself, Melvin Laird has succeeded John Erlichmann as principal domestic adviser. If the President intends to keep his earlier promises on legal services, he must speak, and with him Arnett and Laird, loudly and clearly, opposing what the House has done and encouraging the Senate to get on with a bill to provide truly effective services.

House amendments are crippling to a strong and useful service. Poverty lawyers would be denied the right to back legal reforms, would be prohibited from entering integration, school busing and abortion cases, their hands further tied by more than 20 floor amendments.

Anyone familiar with the American system of law knows that the priority today is not to restrict legal action in behalf of the poor. The need is to encourage it, broaden it. The codes and canons of the American Bar Assn. provide adequate safeguards as to the ethics and activities of lawyers for the poor as they do for lawyers serving the rich.

The hope for reasonable regulations for the corporation now lies with the Senate, which is expected to take up the legislation immediately after the present recess. In the meantime, legal services apparently are assured a continuation under OEO through special legislation. An interruption of these services would have been an injustice. But it would also be an injustice to create a corporation that could not contribute to the ultimate goal, the goal of equality before the law for all regardless of income.

[From the Washington Star-News, Apr. 11, 1973]

CONTINUE LEGAL SERVICES? BY ALL MEANS

(By James J. Kilpatrick)

There are times, sad to say, when American conservatives appear to constitute "the stupid party," as John Stuart Mill once labeled their British counterparts a century ago. By their failure to give active support to a continuing program of legal services for the poor, my brother conservatives are abandoning their principles and exhibiting a dull-wittedness that makes a man despair.

Of course a legal services program should be extended! Let the Congress, if it pleases, scrap everything else that has been funded through the Office of Economic Opportunity. Let the administration, if it can, dismantle a hundred boondoggling, paper-shuffling programs of grant-in-aid. But in one form or another, the Neighborhood Legal Services must be maintained.

Chiseled in stone above the great white columns of the U.S. Supreme Court are four famous words: Equal justice under law. No concept in our public life is nobler and no concept has been more poorly served. The grim truth is that for all practical purposes we still have two systems of law in this country, one for the rich, another for the poor. Every newspaperman who ever has covered the small claims and criminal courts of his city knows this is so.

Granted, much has been done in recent years. Indigent defendants, even in serious misdemeanor cases, now have a right to counsel. Bail reform has remedied some of the most flagrant evils of the criminal justice system. Since 1965, the federally assisted legal services program has greatly benefited the poor in areas of civil litigation. Now this civil program—a program seeking to promote equal justice under law—is threatened with abandonment. Conservatives, dedicated in principle to this elementary proposition, ought to be in the forefront of a fight to push the cause along.

But where are they? They are grumbling that in recent years the program of legal services has been abused. Doubtless this is true. It would be incredible not to discover abuses in a program involving 2,500 lawyers in 900 neighborhood law offices.

But these occasional abuses, while serious, have been few. Viewed on the whole record, the legal services program has helped to foster a sense of confidence not only in the courts, but also in what is known vaguely as "the system." In a message two years ago, urging creation of a wholly independent Legal Services Corporation, President Nixon made that point. "This program can provide a most effective mechanism for settling differences and securing justice within the system and not on the streets."

Unhappily, Nixon now seems to be dragging his heels. The present $70 million program is to expire in June, and nothing is yet in sight to take its place. It would be calamitous to let the concept go. As a recent report from the General Accounting Office made clear, the great bulk of case-work by the NLS lawyers involves legal problems arising from housing, domestic relations, employment, and consumer grievances.

What is needed—and needed promptly—is a bill to create an independent legal services corporation, generously funded, with authority to provide essential representation for the poor. Such a corporation should have backup facilities for research. It ought not to be denied a hand in "law reform." Neither should it be prohibited from bringing the class actions that often provide the most effective remedies at law.

Conservatives should back such a bill, in the full awareness that from time to time they will be irritated, harassed, and outraged by the "zeal and adrenalin." Mistakes will be made. Incidents of bad judgment can be expected. But if we truly believe in equal justice under law, we ought not to be deterred from supporting an effort to make those words in stone something more than an empty phrase.

[From the Los Angeles Times, Apr. 15, 1973]

LEGAL AID PROGRAM MUST GO ON

A bipartisan group of senators is moving to make sure that there is no interruption in federal funds for poverty legal services, and so it should. This is a program of unquestioned merit, one of the most successful of the experiments dealing with poverty, and it must not be handicapped by an interruption of funding during consideration of reorganization.

President Nixon has suggested that the program, now part of the Office of Economic Opportunity, be continued under an independent corporation. He has proposed a budget of $71.5 million for next year, the same as this year. But he has not sent to Congress any details of his proposal. So there are legitimate concerns that the program may be left without money at the end of this fiscal year while the new plan is being debated.

Senator Jacob K. Javits (R-N.Y.) has rounded up a group of senators, including Sen. Alan Cranston (D-Calif.), to support an amendment to the second supplemental appropriation bill to continue funding next year at the level proposed by the President. The administration of the program during this interim period would be left to OEO, if it survives, or handed over to the Department of Health, Education and Welfare.

This is a sensible procedure that will allow time for adequate consideration of the new legislation. It is already clear that there will be a confrontation on the details between Mr. Nixon and Congress. The President has insisted in the past on absolute authority to choose the directors of the legal services corporation. Congress, which has approved several bills to set up such corporations, has required the President to choose the board members from representative lists, submitted by interested groups, to assure balance on the board. This seems to us a reasonable restriction on the powers of the President.

[From the Washington Post, Oct. 2, 1973]

LAST CHANCE FOR LEGAL SERVICES

This week the poverty subcommittee of the Senate Labor and Public Welfare Committee will begin to mark up the Legal Services bill. This is probably the last chance to salvage one of the most useful, effective and economical pieces of the poverty program. Last summer, in a late night temper tantrum generated largely by the deposed bully-boy of OEO, Howard Phillips, the House virtually gutted the program. Yet, any fair reading of the history of Legal Services would have to result in the judgment that it was the most conservative part of the anti-poverty effort and that it helped prove that effective change can occur peacefully within the system. Thus, the Senate is faced with the question of whether our concept of "the system" is even broad enough to include effective legal representation of the rights and interests of the poor.

The fact that more than 20 state bar associations have passed resolutions calling for a strong legal services program and that some of them denounced the House bill attests not only to the program's essential conservatism, but also to its past effectiveness. If effectiveness is to be retained, however, there are a number of issues which the Senate must face squarely. The first is the independence of the program. The President has insisted for a number of years that he wants Legal Services to be housed in an independent corporation which would shield it from politics. Few would argue with that concept and, indeed, Legal Services advocates have accepted it.

The problem has been just how independent the President has wanted the corporation to be. Would the board be completely independent, representing the interests of the organized bar and other groups logically interested and involved in the program or would it be appointed solely by the President? A presidentially appointed board, it has been argued, would seriously undercut an independent and professional effort. The House not only imposed the presidentially appointed board, but went on to add such severe restrictions on the activities of the poverty lawyers that their work can no longer fairly be called a legal services program.

Conceding, a board controlled by the President, as legal services proponents may have to, the only way to preserve the professional integrity of the new corporation is to remove the stifling restrictions on its lawyers' activities imposed by the House. One of those restrictions was the elimination of the backup centers, usually located at law schools, which provided the lawyers with much more effective research capabilities in major poverty law areas than the program could otherwise muster.

The importance of another legal function eliminated by the House was illustrated, ironically, last week by the case of Vice President Agnew, one of the program's leading opponents. A lawyer, in properly representing his client's interests must have as wide a range of options as possible, including representation before administrative, legislative and executive bodies. The House bill eliminates representation in some of those forums. If the Vice President's lawyers had been operating under the House's restrictions, he could not have obtained their advice in preparing his appeal to the House last week.

Finally, the House has imposed a virtually impossible burden on the program by requiring a legal services office to pay court costs and attorneys' fees whenever it loses a case—no matter how meritorious—that sought affirmative relief. It is a formula for bankrupting the program or turning the lawyers into legal eunuchs.

Legal rights are worth nothing if those possessing the rights lack effective representation. The House has made it virtually impossible for the legal services attorneys to provide effective representation, so the real challenge to the Senate and the White House is whether they believe sufficiently in the system to restore effective representation to the poor. The new team at the White House has a remarkable opportunty to turn away from the thuggishness that characterized the Howard Phillips approach to this problem and to help put together a corporation that has real integrity. Some weeks ago, Domestic Counselor Melvin R. Laird may have signaled a new attitude by naming legal services legislation among four priority domestic items on his agenda. Let us hope that it was a real signal, because White House determination coupled with the resolution the Senate has shown in past years on this issue, can turn the House's disaster into a credible indication that the administration believes the system should be open to all.

[From the Sacramento Bee, Feb. 17, 1973]

DISMEMBERING OEO: "BLOODY BUSINESS"

(By Jack Anderson)

WASHINGTON.—Howard Phillips, the young arch-conservative whom President Richard Nixon picked to demolish the Office of Economic Opportunity, has in two weeks turned the war on poverty into a purge of moderate Republicans.

Phillips is supposed to be dismantling OEO and reducing the staff. Actually, he has been hiring dozens of arch-conservatives who, collectively, are earning tens of thousands of dollars per month to advise Phillips where to aim his wrecking ball.

Phillips' demolition crew is replacing moderate Republicans who are being summarily dismissed—some without even a wave of the hand from the new "acting" poverty chief.

"Phillips isn't dismantling OEO. He's dismembering it," one outgoing OEO official complained. "It's a bloody business. It could have been done with dignity."

A typical firing took place late one afternoon when a phone call from Phillips' eighth floor suite came down to Rodger Betts, an able Republican administrator who served as a deputy assistant director. Betts was told he and his staff had 30 minutes to clean out their desks and move across the street where OEO outcasts are now in a holding pattern until they can find new jobs.

DIRECT OPERATIONS

The next morning, New York Sen. James Buckley's administrative assistant, David Jones, took over Betts' fifth floor offices and began to direct operations. Buckley's office tells callers that Jones is "on temporary leave of absence."

Conservative consultants earning $100 a day are invading other OEO offices. "My office has actually doubled," an OEO administrator told us. "I've got three consultants now, and three professional staff people."

The "consultants" are busily creating thousands of OEO documents—some for the warehouse, others for the incinerator.

AGNEW MEMO

Meanwhile, Vice President Spiro Agnew's office has sent over a document which Phillips' wrecking crew is guarding closely. In no uncertain terms, the memo spells out what Phillips should attack first.

"Of all the OEO programs, Legal Services is the one most capable of fundamentally altering America," states the memo. "For that alone, it should be the first eliminated."

This program has been providing free legal services to the poor—much to the consternation of landlords, employers, banks and local officials, who have been hauled into court by the disadvantaged and deprived.

The White House has assured liberals on Capitol Hill the President will submit a bill to Congress soon to establish a legal service corporation. But Phillips' people apparently are ignoring the President's promise and considering alternative ways of reforming legal services.

In the memo which vice presidential aide David Keene forwarded to Phillips' office last week, President Nixon's legal corporation is dismissed as "not salable politically." In place of the corporation, the memo suggests that the federal government channel "seed money" to "more traditional" private legal aid groups.

"First," the memo points out, "control of the traditional legal aid societies rests with the ABA-type lawyers, a group not noted for a penchant for radical reform. Second, the local groups are necessarily fragmented, and with no special focus. Although national coordination by law reform povertyists is still possible, it is made considerably more difficult."

Footnote: A spokesman for the vice president insists Agnew personally endorses the President's idea of a legal services corporation. "The memo," added the spokesman, "was sent to OEO without the vice president's official endorsement."

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

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

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass?

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

The PRESIDING OFFICER. Is there a sufficient second? [Putting the question.]

The yeas and nays were ordered.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass? On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk proceeded to call the roll, and several Senators voted.

Mr. MANSFIELD. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. MANSFIELD. Mr. President, has third reading been conducted?

The PRESIDING OFFICER. Third reading has been conducted.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate return to third reading of the bill. I had left word that I was to be notified. Unfortunately, I was absent for a second.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Montana? The Chair hears none, and it is so ordered.

Mr. MANSFIELD. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on H.R. 7824, and ask unanimous consent that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER laid before the Senate H.R. 7824, to establish a Legal Services Corporation, and for other purposes, which was read twice by title.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Montana?

Mr. ALLEN. Mr. President, reserving the right to object, as I understand what the distinguished majority leader is asking, it is that the House bill be brought up and used as a vehicle for putting the Senate version on the House bill, thereby preventing the House from having another opportunity to consider the provisions of the bill. In other words, the bill would go to conference, rather than to the House?

Mr. MANSFIELD. The Senator is correct.

Mr. ALLEN. Mr. President, further reserving the right to object, I feel that there is a time to flee and there is a time to fight. On a legislature measure, I believe that the time to fight would be when one has more than two-thirds of the Senators in his corner. And inasmuch as the Senator has disclosed that he wants to pass this bill, an objection to the majority leader's request would leave open to the opponents of the Legal Services bill the opportunity to discuss at length the motion to bring up the House bill?

Mr. MANSFIELD. The Senator is correct.

Mr. ALLEN. And that would probably take 2 or 3 days?

Mr. MANSFIELD. At least 2.

Mr. ALLEN. And then there would be an opportunity to discuss the House bill after it had been brought up, and that might take 2 or 3 days.

Mr. MANSFIELD. At least.

Mr. ALLEN. Mr. President, if I should withdraw my reservation it would save the Senate some 5 or 6 days in which it could grapple with other problems; would it not?

Mr. MANSFIELD. At least.

Mr. ALLEN. It might leave the Senator in a frame of mind where, when another cloture motion is up, the efforts of the Senator from Alabama and his willingness to withdraw his reservations and accommodate the wishes of the majority leader might be brought to mind.

[Laughter.]

Mr. MANSFIELD. No. Knowing the Senator from Alabama as we all do, it would just be another affirmation of his parliamentary skill and tenacity. However, as I gathered from the indications which he has thrown out here and there along the way, he intends to withdraw his reservation. I would deeply appreciate it if he would allow this request to stand at this time.

Mr. ALLEN. I thank the majority leader.

Mr. President, one further parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. ALLEN. Mr. President, this bill is not on the calendar. It has been indicated that a request was made that it be held temporarily at the desk when it came from the House.

Mr. MANSFIELD. The Senator is correct.

Mr. ALLEN. Mr. President, may I inquire of the Chair how long this bill has been held temporarily?

The PRESIDING OFFICER. The bill has been here since June 22, 1973.

Mr. ALLEN. Mr. President, I thank the Chair. I withdraw my objection.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Montana?

The Chair hears none and it is so ordered.

Mr. MANSFIELD. Mr. President, I move that all after the enacting clause of H.R. 7824 be stricken and that the text of S. 2686, as amended, be substituted therefor.

The PRESIDING OFFICER. The question is on agreeing to the motion.

Mr. DOMINICK. Mr. President, I am not sure what the parliamentary situation is. To begin with, we have not even voted on this bill. Yet, somehow or other, we are moving on to some other bill. I have not read the measure.

Mr. MANSFIELD. Mr. President, it is the House bill. We are amending the House bill by substituting the language of the House bill as amended.

Mr. DOMINICK. Mr. President, I understood that the way to do it was to pass the bill and then to proceed to the consideration of the House bill.

Mr. MANSFIELD. No. This is the usual way. I raise my right hand.

Mr. DOMINICK. The Senator does not have to do that.

Mr. GOLDWATER. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. GOLDWATER. Mr. President, I was not in the Chamber. Do I correctly understand that the rollcall vote had started?

The PRESIDING OFFICER. That is correct. There was a unanimous consent request to vitiate that rollcall.

Mr. GOLDWATER. Can we, under the rules, stop that rollcall vote?

The PRESIDING OFFICER? Had anyone insisted to the contrary, it could not have stopped. There being no objection, it could be stopped, and it was.

Mr. GOLDWATER. What does the Chair mean by there was no objection?

Mr. MANSFIELD. I was detained off the floor.

Mr. GOLDWATER. I was, too.

The PRESIDING OFFICER. At the time unanimous consent was requested, there was no objection heard in the Chamber.

Mr. GOLDWATER. Does not this establish a rather bad precedent?

The PRESIDING OFFICER. This has occurred a very few times in the history of the Senate on prior occasions. This is not the first time.

Mr. GOLDWATER. Mr. President, I do not like the proceeding. I think it is bad, but I am not going to prolong the matter.

Mr. PASTORE. Regular order, Mr. President.

The PRESIDING OFFICER. The regular order has been called for. The question is on agreeing to the motion to strike out all after the enacting clause and substitute the language of the Senate bill as amended therefor.

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

The PRESIDING OFFICER. Is there a sufficient second?

Mr. MANSFIELD. This is on final passage, now.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Montana.

Mr. MANSFIELD. I withdraw the request for the yeas and nays.

The PRESIDING OFFICER. The question is on agreeing to the motion to strike out all after the enacting clause and substitute the language of the Senate bill as amended.

Mr. ALLEN. Mr. President——

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. ROBERT C. BYRD. Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will be in order. Senators will please take their seats.

Mr. ALLEN. Mr. President, the parliamentary situation now is in the condition that the proceedings have reached the stage that the bill as passed by the House of Representatives, which is a much superior bill to the Senate bill, is now before the Senate, and the majority leader is offering the provisions of the Senate bill as a substitute for the House bill. This would give the Senate an opportunity to vote down the proposed amendment, and then go ahead and proceed to pass the House bill.

Those who want instant legal services have their opportunity to get them by voting down the amendment of the distinguished majority leader, and then going on to pass the House bill as it came over to us—which is, as I say, a much superior bill, with a much superior Legal Services Corporation, and it would not require a conference. It would not require that the conferees meet. It would allow the bill to become law if the President would sign it, as I understand he would, and we could have a Legal Services Corporation in a matter of a day or so.

So, Mr. President, I am going to request the yeas and nays, so that we will have an opportunity to vote down the Senate bill and take the House bill. Let us face whether we want the House bill or the Senate bill, keeping in mind that in the latter case we will have to send it to conference, where we will have an uncertain situation, where we might have as a result a hybrid sort of bill as between the two versions, or we might not have a bill at all, if the House should reach the conclusion that it does not want a Legal Services Corporation.

By voting down the amendment of the distinguished majority leader, we can get the House bill on the next vote, if the Senate wants an instant Legal Services Corporation.

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

The PRESIDING OFFICER. The yeas and nays are requested on the question on agreeing to the motion of the Senator from Montana.

The yeas and nays were ordered.

The PRESIDING OFFICER (Mr. BIDEN). The question is on agreeing to the motion of the Senator from Montana to strike out all after the enacting clause of H.R. 7824, and substitute therefor the language of the Senate bill, as amended.

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 Virginia (Mr. HARRY F. BYRD, JR.), the Senator from Mississippi (Mr. EASTLAND), the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Alaska (Mr. GRAVEL), the Senator from Indiana (Mr. HARTKE), the Senator from Maine (Mr. MUSKIE), and the Senator from Georgia (Mr. TALMADGE) are necessarily absent.

On this vote, the Senator from Mississippi (Mr. EASTLAND) is paired with the Senator from Maine (Mr. MUSKIE). If present and voting, the Senator from Mississippi would vote "nay" and the Senator from Maine would vote "yea."

Mr. GRIFFIN. I announce that the Senator from Maryland (Mr. BEALL), the Senator from Maryland (Mr. MATHIAS), the Senator from Utah (Mr. BENNETT), the Senator from Wyoming (Mr. HANSEN), and the Senator from Kentucky (Mr. COOK) are necessarily absent.

I further announce that the Senator from Virginia (Mr. WILLIAM L. SCOTT) is absent on official business.

The result was announced—yeas 66, nays 21, as follows:

[No. 29 Leg.]

YEAS—66

Abourezk	Haskell	Moss
Aiken	Hatfield	Nelson
Baker	Hathaway	Packwood
Bayh	Hollings	Pastore
Bentsen	Huddleston	Pearson
Bible	Hughes	Pell
Biden	Humphrey	Percy
Brooke	Inouye	Proxmire
Burdick	Jackson	Randolph
Byrd, Robert C.	Javits	Ribicoff
Cannon	Johnston	Roth
Case	Kennedy	Schweiker
Chiles	Long	Scott, Hugh
Church	Magnuson	Stafford
Clark	Mansfield	Stevens
Cranston	McGee	Stevenson
Dole	McGovern	Symington
Domenici	McIntyre	Taft
Dominick	Metcalf	Tunney
Eagleton	Metzenbaum	Weicker
Fong	Mondale	Williams
Hart	Montoya	Young

NAYS—21

Allen	Ervin	McClellan
Bartlett	Fannin	McClure
Bellmon	Goldwater	Nunn
Brock	Griffin	Sparkman
Buckley	Gurney	Stennis
Cotton	Helms	Thurmond
Curtis	Hruska	Tower

NOT VOTING—13

Beall	Eastland	Mathias
Bennett	Fulbright	Muskie
Byrd, Harry F., Jr.	Gravel	Scott, William L.
Cook	Hansen	Talmadge
	Hartke	

So Mr. MANSFIELD's motion was agreed to.

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

The yeas and nays were ordered.

The PRESIDING OFFICER (Mr. BIDEN). The question is on the engrossment of the amendment and the third reading of the House bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

The PRESIDING OFFICER. The question is, Shall the bill (H.R. 7824) pass?

On this question the yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Virginia (Mr. HARRY F. BYRD, JR.), the Senator from Mississippi (Mr. EASTLAND), the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Alaska (Mr. GRAVEL), the Senator from Indiana (Mr. HARTKE), the Senator from Wyoming (Mr. MCGEE), the Senator from Maine (Mr. MUSKIE), and the Senator from Georgia (Mr. TALMADGE) are necessarily absent.

On this vote, the Senator from Maine (Mr. MUSKIE) is paired with the Senator from Mississippi (Mr. EASTLAND).

If present and voting, the Senator from Maine would vote "yea" and the Senator from Mississippi would vote "nay."

On this vote, the Senator from Indiana (Mr. HARTKE) is paired with the Senator from Virginia (Mr. HARRY F. BYRD, JR.).

If present and voting, the Senator from Indiana would vote "yea" and the Senator from Virginia would vote "nay."

Mr. GRIFFIN. I announce that the Senator from Maryland (Mr. BEALL), the Senator from Maryland (Mr. MATHIAS), the Senator from Utah (Mr. BENNETT), the Senator from Wyoming (Mr. HANSEN), and the Senator from Kentucky (Mr. COOK) are necessarily absent.

I further announce that the Senator from Virginia (Mr. WILLIAM L. SCOTT) is absent on official business.

I further announce that, if present and voting, the Senator from Maryland (Mr. BEALL) and the Senator from Kentucky (Mr. COOK) would each vote "yea."

The result was announced—yeas 69, nays 17, as follows:

[No. 30 Leg.]

YEAS—69

Abourezk	Burdick	Domenici
Aiken	Byrd, Robert C.	Dominick
Baker	Cannon	Eagleton
Bayh	Case	Fong
Bellmon	Chiles	Griffin
Bentsen	Church	Hart
Bible	Clark	Haskell
Biden	Cranston	Hatfield
Brooke	Dole	Hathaway
Hollings	Metcalf	Ribicoff
Huddleston	Metzenbaum	Roth
Hughes	Mondale	Schweiker
Humphrey	Montoya	Scott, Hugh
Inouye	Moss	Sparkman
Jackson	Nelson	Stafford
Javits	Nunn	Stevens
Johnston	Packwood	Stevenson
Kennedy	Pastore	Symington
Long	Pearson	Taft
Magnuson	Pell	Tunney
Mansfield	Percy	Weicker
McGovern	Proxmire	Williams
McIntyre	Randolph	Young

NAYS—17

Allen	Ervin	McClellan
Bartlett	Fannin	McClure
Brock	Goldwater	Stennis
Buckley	Gurney	Thurmond
Cotton	Helms	Tower
Curtis	Hruska	

NOT VOTING—14

Beall	Fulbright	Muskie
Bennett	Gravel	Scott, William L.
Byrd, Harry F., Jr.	Hansen	Talmadge
Cook	Hartke	
Eastland	Mathias	
	McGee	

So the bill (H.R. 7824) was passed.

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

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

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the title of the bill H.R. 7824 be amended to reflect the title in S. 2686 as reported.

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

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Secretary of the Senate be authorized to make technical corrections and clerical corrections in engrossing the bill.

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

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the bill, H.R. 7824, as amended by the Senate, be printed.

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

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

Mr. ROBERT C. BYRD. I yield.

Mr. JAVITS. Mr. President, it is always fitting in these matters to pay tribute to our staffs. Senator NELSON, I know, would wish me to pay that tribute to the members of his staff and the staff of the subcommittee—Richard Johnson and Larry Gage, who serve him as experts, and John Scales, of the minority staff, who serves me as an expert. These are always the real architects of these bills, and I should like to express our gratitude to them.

ORDER FOR THE PRESIDENT'S STATE OF THE UNION MESSAGE TO BE PRINTED IN THE RECORD

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the state of the Union message which was handed by the President to the Vice President last evening be printed in full in the RECORD.

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

The President's message is as follows:

To the Congress of the United States:

We enter 1974 not at the beginning of an historical cycle, but in the middle of one. Beginnings have been made in many vital areas, beginnings which we now must build upon. New needs have arisen which we are in the process of addressing. Opportunities are coalescing which give us a chance to make historic progress toward a stable peace and expanding prosperity.

In looking at the agenda for 1974, we cannot consider the work of this or of any one year in isolation. What we select as our tasks in 1974 must build on the work of the years before, and anticipate needs of those ahead. Indeed, one of the continuing challenges facing us in the legislative process is that of the timing and pacing of our initiatives.

It would be as false to pretend that we could do—or afford to do—everything at once, as it would be to maintain that we can do nothing. Therefore, we must strive to maintain steady progress, selecting each year among many worthy projects those that are ripe for action at that time, and that can be accommodated within the constraints of our budget—but pressing to ensure that the most that can be done is done.

In discussing my legislative recommendations for this Congressional session, therefore, I shall do so in the context of the advances that have already been made, the problems that remain, and the special opportunities we have in 1974 to make further progress.

I have started with certain basic premises:

—The basic tax burden on the American taxpayer should not be increased.

—Our new initiatives, therefore, should be scaled to what can prudently be spent given the level of revenues that would be generated by the existing tax structure at full utilization of our resources.

—Increases in Federal spending should be kept to a minimum, but the budget should be flexible enough to be used, if necessary, to maintain jobs and prosperity.

—It is essential that we break the old habit of regarding any Federal program, once established, as permanent; we must learn to scrap old programs that are no longer effective or needed in favor of new ones that are. This is the only way we can afford to do what must be done.

Within these guidelines, there are a number of major new initiatives which are ripe for action in 1974—several of which can be milestones on our march to a life of greater freedom, greater opportunity and greater prosperity for all.

In particular, 1974 can be the year in which:

—First, we not only break the back of the energy crisis, but also, through Project Independence, lay the foundation for our future capacity to meet America's energy needs from America's own resources—at reasonable prices and with adequate environmental protection.

—Second, we take another giant stride

toward lasting peace in the world—not only by continuing our policy of negotiation rather than confrontation where the great powers are concerned, but also by helping toward the achievement of a just and lasting settlement in the Middle East.

—Third, we will check the rise in prices, without administering the harsh medicine of recession, and move the economy into a period of steady growth at a sustainable level.

—Fourth, we establish a new system of comprehensive health insurance that makes high quality health care available to every American in a dignified manner and at a price he or she can afford.

—Fifth, we continue to build a new era of achievement and responsiveness in State and local government, by cutting the strings of too tight Federal control that have bound the hands of State and local officials in community and economic development programs.

—Sixth, we make a crucial breakthrough toward better transportation by strengthening the ability of local communities to deal with their transportation problems.

—Seventh, we reform our system of Federal aid to education to provide it when it is needed, where it is needed, and so that it will do the most for those who need it most.

—Eighth, we make an historic beginning on the task of defining and protecting the right of personal privacy.

—Ninth, we start on a new road toward reform of a welfare system that bleeds the taxpayer, corrodes the community and demeans those it is meant to assist.

—And tenth, together with the other nations of the world, we establish the economic framework within which Americans will share more fully in an expanding world trade and prosperity in the years ahead, with more open access to both markets and supplies.

MEETING OUR ENERGY NEEDS

At the start of this Congressional session, the number one legislative concern must be the energy crisis.

The cooperative efforts of the American people, together with measures already taken by the Administration, have significantly reduced the immediate impact of the energy crisis. There has been some economic dislocation and some individual hardships, but these have been minimized by our policy of encouraging broad conservation measures and allocating scarce energy resources so as to do the least possible harm to jobs and the economy. The object has been to keep our farms and factories producing, to keep our workers on the job, and to keep our goods and services flowing, even if this means that we must live and work in somewhat less comfortable surroundings and drive fewer miles at slower speeds.

Even with the full cooperation of most Americans, however, we will still face real challenges—and genuine shortages—in the months and years immediately ahead. To meet these challenges, we must change our patterns of energy consumption and production, we must press forward with the development of reliable new energy sources, and we must adjust to the fact that the age of unlimited supplies of cheap energy is ended.

The immediate energy crisis began with the oil embargo imposed in the Middle East last fall. But the embargo only hastened a shortage that was already anticipated. For a number of years our fuel consumption had been climbing while our production of domestic energy supplies declined. We became more and more heavily dependent on oil imports and, consequently, more vulnerable to any interruption or reduction in those imports, as well as to sudden increases in foreign prices. Today, we have an interruption in supplies and we face sharply increased prices for those supplies when they are restored.

Irrespective of the possibility of restoring the flow of Middle East oil, we must act now to ensure that we are never again dependent on foreign sources of supply for our energy needs. We must continue to slow the rise in our rate of consumption, and we must sharply increase our domestic production.

The effects of energy conservation can be felt at once. Already the responsiveness of the American people to the recent crisis has proved to be the major factor in helping to avoid the serious consequences that the winter might have brought. That conservation must continue.

The required increase in domestic supplies cannot be achieved so rapidly. It will involve the development of entirely new sources of energy as well as the expanded development of oil and coal resources; it will require a significant expansion of our research and development efforts; it will require a shift from the use of scarce fuels to those which are more plentiful but also more expensive than the cheap energy to which we have been accustomed; it will require that we encourage both exploration and production; it will mean that as we act to prevent the energy industry from making unconscionable windfall profits, we must also avoid crippling that industry with punitive legislation; and finally, it will require that we make some difficult decisions as we sort out our economic and environmental priorities.

As we seek to act domestically to increase fuel supplies, we will act internationally in an effort to obtain oil at reasonable prices. Unreasonable increases in the cost of so vital a commodity as oil poses a threat to the entire structure of international economic relations. Not only U.S. jobs, prices and incomes are at stake, but the general pattern of international cooperation is at stake as well. It is our hope that we can work out cooperative efforts with our friends abroad so that we can all meet our energy needs without disrupting our economies and without disrupting our economic relationships.

Last week I sent to the Congress a comprehensive special message setting forth our energy situation, our energy prospects, our energy needs, and the legislative measures I consider necessary for meeting those needs. I shall not repeat that analysis nor the full list of those recommendations today.

I do want to urge, however, that the critical energy measures which I have proposed be made the first order of legislative business in this session of the Congress, and that work go forward expeditiously on the others. Those measures which I request be given the highest priority are the following:

—A special energy act which would permit additional restrictions on energy consumption and would postpone temorarily certain Clean Air Act requirements for power plants and automotive emissions;

—A windfall profits tax which would prevent private profiteering at the expense of public sacrifice;

—Unemployment insurance for people in areas impacted by serious economic dislocation; and

—Mandatory reporting by major energy companies on their inventories, their production and their reserves.

I am also asking that the Congress quickly establish the Federal Energy Administration and the Energy Research and Development Administration to provide the appropriate organizational structure for administering the national energy policy, as we work toward the establishment of a Department of Energy and Natural Resources.

The 13 other energy measures I requested last week deal with longer-term needs, extending beyond the present emergency. But these also require expeditious action if we are to achieve the goal of Project Independence—a capacity for energy self-sufficiency by 1980. The success of Project Independence is essential to the continued strength of our position in world trade, and also to our independence of action as a great power.

I hope that our joint efforts now to resolve the energy crisis and to move toward a capacity for self-sufficiency in energy will enable the President who addresses the 98th Congress a decade from now to look back and say we made it possible for American to enjoy continued peace and prosperity in the 1980's

THE NATION'S ECONOMY

The world economy

During the past three years the United States has reached an unprecedented level of material prosperity. Industrial output has set new records. Trade has flourished. Consumption has risen to the highest levels in history. Even our inflation rate—the most serious economic problem we now face—has been one of the lowest in the industrialized free world.

The major policy decisions we took in 1971 contributed significantly to this

prosperity—both here and in other countries. It was clear, for example, as we moved into the 1970s that the international monetary system adopted after World War II needed major adjustments. Unsustainable imbalances had developed, threatening a resurgence of protectionism and a disruption of world trade. This is why I decided to take some very strong measures in August of 1971, measures that have resulted in a major realignment of world currency values, progress toward new and more flexible international monetary management, and negotiations toward a more open and equitable trading system.

These adjustments, while essential, were not easy. But now we have finally entered into a more flexible and realistic international financial system. Much remains to be done to complete the transition, but its beneficial results are already clear.

The realignment of currency values helped produce an increase of 80 percent—or more than $50 billion—in the rate of U.S. exports during the past two years, along with a major improvement in our trade balance. This improvement was good not only for us, but also for the rest of the world. In addition, the shocks to the world economy arising from reduced food supplies in 1972 and 1973, and in recent months from the oil embargo and the arbitrary increases in the price of oil, all were managed without panic under the new arrangements. Indeed, world trade has continued to expand, despite these temporary difficulties.

INTERNATIONAL TRADE BARRIERS

A vigorous international trade is vital to the American economy. Jobs for American workers depend on our ability to develop foreign markets. Moreover, American consumers deserve access to foreign-made products that might be less expensive, or more interesting, or unavailable in the United States. But if trade is to be advantageous over the long run, it must be conducted on a basis which is fair to all participants.

There are still many unnecessary barriers to trade which need to be lowered or removed. While improvements have been made in this situation during the last 10 years, we need now to build on this progress and to negotiate for more open access both to markets and supplies. This is why I call upon the Congraess with special urgency to complete action on my proposed Trade Reform Act, in order to provide the authority we will need to negotiate effectively for reductions in barriers to trade, to improve the trading system, and to manage trade problems at home more effectively.

As the Senate considers this legislation, I would draw its attention particularly to provisions added in the House which would seriously impede our efforts to achieve more harmonious international relationships. These provisions would effectively prevent both the extension of nondiscriminatory tariff treatment and of credits to certain Communist countries unless they followed a policy which allowed unrestricted emigration. I am convinced that such a prohibition would only make more difficult the kind of cooperative effort between the United States and other governments which is necessary if we are to work together for peace in the Middle East and throughout the world. I am confident that by working with the Congress we can find a solution to this problem that will avoid a major setback in our peacemaking efforts.

At the same time, we must move forward with current negotiations to reform the international payments system under the auspices of the International Monetary Fund. These negotiations are designed to increase the opportunities for all nations to trade and invest profitably. The U.S. has already presented proposals for deterring the growth of significant imbalaces in international monetary affairs while preserving for each nation a wide freedom in choosing how necessary adjustments can best be accomplished. In addition, the system will also have to accommodate the increased payments flow and prospective reserve accumulations occasioned by higher oil prices. If, however, other nations share with us the will to preserve a healthy and growing world economy, I am confident that a mutually acceptable solution to this problem will be achieved.

In practice, this means that our markets must increasingly be open to imports from developing countries—a condition that would be significantly facilitated by enactment of the Trade Reform Act. It also means that the Congress must continue to authorize and appropriate our fair share of both bilateral and multilateral economic assistance, including a substantial contribution to the International Development Association which helps the poorest countries. In 1973 we successfully negotiated a reduction of the United States share from 40 percent to one-third of IDA funds. We cannot let the action of the House in voting against IDA stand as our final answer. We will work hard with the Congress to ensure that this country continues to play a leadership role, consistent with our own economic situation, so that long-term economic development can continue to be planned in an orderly manner.

Along with trade and monetary problems, new international agreements on investment policies and new mechanisms for dispute settlement are high on our negotiating agenda for the coming year. We must continue to work for economic arrangements which permit the beneficial flow of international investment so that all may derive the maximum benefit from their own resources. To that end, I am glad to be able to note that this week the United States completed the phaseout of controls on flows of capital from this country.

The recent oil embargo and especially arbitrary increases in the price of oil have created major economic problems for many countries, including the United States. If continued, these policies would require enormous transfers of goods and assets from oil importing nations, transfers which would represent a serious burden for even the wealthiest countries and which would be virtually unbearable for the less developed countries.

Our objectives are clear—we must get world oil prices down from levels that are arbitrary and exploitative. We must also cooperate to ensure that the international and domestic economic policies of the advanced countries do not compound the economic disturbances created by the current emergency but rather that we do all that can be done to contain and limit those disturbances.

THE DOMESTIC ECONOMY

Despite our general prosperity, inflation remains a most serious economic problem, not only in the United States but also for the rest of the world. We see clear evidence of this problem at every hand. World oil prices have gone up recently at dramatic rates. World food, metals and other commodities prices are also up sharply. Because domestic prices cannot be isolated from international prices, worldwide inflationary pressures have helped to drive up prices here at home.

Inflation has been a continuous problem for nearly a decade, and it got worse in 1973. The result has been that people have come to expect continuing price increases—and to behave accordingly in their own economic life. Their behavior, in turn, adds further to inflationary pressures, contributing to a vicious inflationary spiral which is difficult to break.

Some people have said that the best way to wring these inflationary expectations out of our economy is by taking the economy into a recession. I disagree. It is true that a lower level of economic activity would reduce demand and thus lower the pressure for higher prices. However, the cost of such a policy in terms of increased unemployment would simply be unacceptable.

By the same token, I also reject the notion that we should totally ignore inflation and concentrate solely on stimulating higher levels of employment. This policy would also involve too high a cost since it would unleash a further acceleration of the inflation rate.

In developing my economic policy for 1974, I have chosen what I believe is a sound middle road: to cushion the economic slowdown we expect during 1974 without providing additional stimulus for inflation. We expect this policy to reduce the rate of inflation by the end of the year. Should there appear to be a serious threat of a severe slowdown, then we will act promptly and vigorously to support the economy.

As we cope with the challenge of inflation, we must recognize the clear lesson of recent years: While direct controls over prices and wages can help fight inflation in the short-run, they have a very limited useful life. Inevitably, their eventual effect is to create or aggravate significant distortions in production and distribution. Accordingly, I will continue

to watch the wage-price situation closely and to pursue a policy of gradual, selective decontrol except in particularly troublesome areas.

At the same time, those Federal programs that will help reduce inflation by increasing the supply of scarce resources will be strengthened. One key area where we can look forward to expanded supplies is that of food. With a new national farm policy that encourages rather than discourages output, we achieved a record harvest in 1973 and another record harvest now appears likely in 1974. Increased agricultural output is the only sure way to bring food prices down—and increased output is what our new policies are producing.

Rapid inflation is not inevitable and it must not be tolerated. To regain control of inflation, however, will require patience and persistence over the long course. My Administration is dedicated to achieving this objective and we are confident that with the help of the American people we will succeed.

Another most pressing economic problem—and a major contributor to inflation—is the energy crisis. As the cost of using our own fuel resources came to exceed the cost of imports in the 1960's, it became increasingly attractive for us to import oil and petroleum products. Unfortunately, our growing dependence on imports made our entire economy more vulnerable to outside forces. That vulnerability has been tested in recent months—as has the even greater vulnerability of the developed countries of Western Europe and Japan and the less developed countries which have no oil. Every American has learned the consequences of this vulnerability: short fuel supplies and higher fuel prices.

To a large extent, our flexible, adaptable economy will solve the longer run energy problem through the normal workings of the marketplace. As energy prices reach somewhat higher levels than the bargain rates of the past, conservation will be encouraged while domestic energy production will be expanded. One example of normal market forces at work has been the recent shift of smaller cars with better gas mileage. Over the next few years we can also expect to see an expansion of coal production and new output of oil and natural gas.

Nevertheless, we will still have to import some of the oil we will need in the immediate future. It is essential, therefore that we seek a more reasonable price for oil in the world market.

It is also imperative that we review our current and prospective supplies of other basic commodities. I have therefore directed that a comprehensive report and policy analysis be made concerning this crucial matter so that governmental actions can properly anticipate and help avoid other damaging shortages.

Even with the inflation and energy problems, 1973 was a year of many important economic gains for American people.

First, employment in 1973 increased by 2.7 million persons; this 3.3 percent rise in employment was the largest since 1955. New job opportunities greatly benefited all categories of workers, including women, non-whites, teenagers, and Vietnam veterans. Unemployment reached low levels, especially for skilled workers.

Second, the purchasing power of the American people reached new highs last year. Even after allowing for price increases, people are now consuming more goods and services than they did a year ago, or in any other year in the entire history of the United States.

Not everyone's purchasing power went up, of course. Inflation took its toll on many families whose income did not rise as fast as that of the average American. It is for this reason that we continue to regard inflation as a very serious enemy. At the same time, however, we should not ignore the substantial economic gains that have been made.

PERSPECTIVE ON 1974

We have known for some time that a slowdown in economic growth is inevitable in 1974. It has been clear that our economy has simply been growing at an unsustainable rate. Shortages of skilled workers, full utilization of plant and equipment in key industries, and short supplies of a number of essential raw materials have all provided clear indications that our rate of growth would have to taper off. Unfortunately, the very mild slowdown which we anticipated for 1974 now threatens to be somewhat more pronounced because of the oil embargo, the resulting shortages, and the oil price increase.

We expect, therefore, that during the early part of this year output will rise little if at all, unemployment will rise somewhat and inflation will be high. Our objective, however, is to turn this situation around so that later in the year output will be rising more rapidly, while unemployment will stop rising and will then decline, and the rate of inflation will slow.

ROLE OF THE FEDERAL BUDGET

The budget that I will recommend to the Congress next week will help us achieve our goals for this period. It will support the economy, resisting a major slowdown, but it will not provide a degree of stimulation that could accelerate inflation. If future events suggest that a change in fiscal policy is desirable, I will promptly recommend the appropriate changes. In particular, I will not hesitate to use the stimulus of fiscal policy if it becomes necessary to preserve jobs in the face of an unexpected slackening in economic activity.

For fiscal year 1975, my budget recommends total spending of $304.4 billion, an increase of $29.7 billion over the current year. The increase is being held to the minimum level necessary—nearly 90 percent of the increase is unavoidable under existing law. The budgeted increase in relatively controllable outlays is only 4.2 percent.

Federal receipts should reach $295 billion during fiscal year 1975, an increase of $25 billion. The projected budget deficit is $9.4 billion. Under conditions of full employment, however, Federal receipts would be substantially higher and there would instead be a moderate budget surplus.

The Federal budget remains an essential tool in the fight against inflation. With the energy supply limitations we are experiencing and the price pressures they create, budget discipline is still required.

I have noted with satisfaction that most Members of the Congress have also recognized the need for budgetary discipline, and that work is going forward to establish a more systematic budgeting procedure. The Congress devoted considerable effort in 1973 to developing a mechanism for coordinating its individual spending decisions with the budget as a whole. I continue to support this effort, although I have been troubled by some of the extraneous amendments which have been added to some of the measures for achieving this goal. I urge the Congress to enact workable budget reform in this legislative session.

TAX REFORM

Our entire economy is affected by the incentives for job-creating investments that are embodied in our tax laws. Major steps have been taken to reform our tax laws in the past five years, but much remains to be done.

Since 1969—primarily through the Tax Reform Act of 1969 and the Revenue Act of 1971—major changes have been introduced to make the personal income tax system conform more nearly to contemporary standards of fairness. Both the higher level of personal exemptions and the low income allowance have worked to free more than eight million low income families from their entire Federal income tax burden. The difference in the tax liability for single and married taxpayers has also been reduced. As a result of these and other tax changes, individual income taxes will be about $25 billion less in 1974 than they would have been under the old tax laws. The saving in the tax burden for a typical family will be more than $270, or the equivalent of two weekly take-home paychecks for the average worker.

I look forward to working with the Congress during the next few months not only to simplify our tax laws themselves, but also to simplify the tax forms that individuals fill out and to distribute the income tax burden more equitably.

Last April, the Secretary of the Treasury presented to the Congress a set of Administration proposals for major and fundamental tax reform. Included in these proposals were the establishment of a minimum taxable income so that no one could avoid paying a fair share of the tax burden, the establishment of new rules for taxing income from foreign sources, and also a limitation on artificial accounting losses to eliminate so-called "tax shelters." I urge the Congress to consider the Administration's tax reform proposals early in the year.

I have also been concerned about the excessive burdens imposed on our low income elderly families by State and local property taxes. To deal with this problem, I have proposed a refundable tax credit for those low income elderly persons whose property taxes exceed five

percent of their income. The proposal would also provide equivalent relief for the low income elderly individual who pays rent. I again urge the Congress to enact this very important proposal.

FINANCIAL REFORM

The health of our economy depends upon an efficient and flexible private financial system—commercial banks, thrift institutions, credit unions, and a host of other institutions and individuals that comprise the financial sector of our economy. The average family depends on these institutions, both to provide a fair and reliable return on its savings and to provide credit on reasonable terms when needed to buy homes, automobiles and other purchases. There have been occasions recently when this financial system has not worked as well as it should—occasions, for example, when mortgage lending has been very difficult to obtain. In large part these problems have been the result of legislation, regulations and institutional arrangements which were suited to an earlier time but which are now obsolete.

To remedy this problem I submitted draft legislation last year which reflected the results of careful study by a Presidential commission and Government experts. I again urge the Congress to act promptly on this matter so that American families, businessmen, and local governments can be served by a financial system suited to the economic conditions of the 1970s.

The Administration is also studying the competitive position of foreign banks within this country and of American banks abroad to make sure that discriminatory regulations do not prevent American banks and other financial institutions from doing business they are entitled to do. I will be following the results of this study with considerable interest and will submit to the Congress any proposals resulting from the study which seem desirable.

A HEALTHY AGRICULTURAL ECONOMY

Abundance is the primary goal of our farm policy—abundance that can guarantee lower food prices for every American and higher incomes for all American farmers.

Five years ago, agriculture was a troubled industry:

—Government controls were reducing incentives for production and costing the taxpayers over $3 billion a year in farm subsidies designed to hold down production.

—Farm income was low ($14.7 billion) and the long hours worked by farmers earned them an average income that was 26 percent below the nonfarm average. Farm families had been leaving the farm at an average rate of over 100,000 a year.

Today, that picture has been dramatically altered:

—Farm markets have expanded dramatically. Farm exports have set new records in each of the last four years, becoming the largest single factor in the Nation's balance of payments and strengthening the dollar in international money markets.

—Farm production has reached new record levels in each of the last three years, and a new record harvest should be forthcoming in 1974.

—The billions of tax dollars which used to go for farm price support payments for basic commodities every year will be reduced to nearly zero.

—Farm income has reached record levels. By 1973, the gap between farm income and nonfarm income had closed from 26 to 7 percent. Net farm income was up from $14.7 billion to $26.1 billion.

We are making this progress not through more Government regulation but less. One of the proudest achievements of this Administration was the enactment of the Agriculture and Consumer Protection Act of 1973, which places production decisions where they belong—with farmers, not with the Government.

A primary challenge for Federal agricutural policies now is to encourage greater production of agricultural goods—which will mean more income for the farmer, greater international trading benefits for the Nation, and reasonable food prices for the consumer. I am therefore asking the Congress to revamp the programs which still require restrictive Federal control over the production of some remaining farm commodities—especially rice, peanuts, tobacco, sugar, and extra long staple cotton.

To further enhance agricultural activity, the Administration will also:

—Promote longer-run soil and water conservation practices.

—Consolidate the locations of local offices of Federal agricultural agencies—specifically, the Agricultural Stabilization and Conservation Service, the Soil Conservation Service, the Farmers Home Administration, and the Federal Crop Insurance Corporation—creating one-stop agricultural service centers on the local level to make things easier for the farmer and less costly for the Government.

—Place high priority on directing agricultural research into those areas which will assure plentiful agricultural goods at reasonable prices, maintain our competitive advantage in world agricultural production, and protect the land.

At my direction, Secretary Kissinger recently proposed to the United Nations that it convene a World Food Conference, a concern made urgent by acute food shortages in many parts of the world. This conference, to be held in November of 1974, should prove of particular importance to the American farmer, whose extraordinary productivity has made this Nation the world's leading food exporter and whose own prosperity will continue to increase as we help to meet the needs of a hungry world.

Our farm policy must of course address not only the needs of the farmer but also those of the consumer. During 1973, we experienced a period of rapidly increasing food prices. Those prices level off in late 1973, but now we appear to be heading into a period of increasing food prices for at least the next few months. It is our intention to hold these increases to the smallest possible rate through executive actions such as lifting the quota on wheat imports, an action that I took last week, But the most significant force in the battle against higher food prices is higher production. This summer and fall, the large 1974 harvest should be coming on the market, serving as the best possible damper on higher prices.

ECONOMIC SECURITY

One of the most significant legislative achievements of 1973 was the enactment of the Comprehensive Employment and Training Act (CETA). A form of manpower revenue sharing, this bill transfers from the Federal Government to States and localities significant control over the design and operation of programs to improve the employability of the unemployed and the underemployed. CETA is a lankmark of the New Federalism. It is also a landmark on the way to better manpower programs.

Under this legislation, State and local governments will be able to use Federal funds to meet locally determined needs and to devote special attention to employment problems with particular local impact—as, for example, those that might arise in certain areas as a result of the present energy shortage. In my new budget, I am including an additional $250 million for CETA in the current fiscal year, and $350 million in the year beginning July 1, for distribution to areas with high unemployment. Overall, I am requesting more than $2 billion to fund our training and employment programs in the coming year.

Other proposals related to economic security that I made to the Congress last year, and on which I again urge action, include:

—The establishment of minimum vesting, funding and fiduciary standards for private pension programs, so that workers could have greater assurance of receiving the pensions they expect and deserve when they retire. I urge that we work together to resolve speedily the remaining disagreements and to enact responsible legislation which increases employee protection without burdening employers to such an extent that existing plans are jeopardized or new ones discouraged.

—Extension to State and local governments of the law forbiding employment discrimination against older workers.

—Improvement of the Federal-State unemployment insurance program in several ways: By increasing the State limits that keep some unemployed workers from receiving a reasonable proportion of their normal wage, by extending coverage to farmworkers, and by prohibiting payment of benefits to strikers while assuring benefits to non-participants unemployed as a result of a strike.

These general improvements in unemployment insurance should be augmented by a special extension of present bene-

fits for those specific areas of the country which experience particularly high levels of unemployment over the next 12 months. In addition, basic coverage should be provided for those in these areas who do not at present have any unemployment insurance. I will submit special legislation to achieve this purpose.

I also continue to support legislation to raise the minimum wage. Higher prices have eroded the purchasing power of workers receiving the current minimum wage. But we must be careful to guard against enacting a bill which includes sharp increases or coverage extensions that would keep low income workers from being employed or a bill with a minimum wage for youths so high that we unwittingly deny them jobs.

Finally, we must attack one of the most troublesome problems faced by both rural and urban areas; the existence of persistent and often severe unemployment or low incomes in areas whose character has been altered by changes in our economy and technology. Within the next several weeks, I will propose an Economic Adjustment Assistance program to help States and communities in overcoming problems caused by structrual changes in their economies. This program would replace the present Economic Development Administration and the Regional Action Planning Commissions after a period of orderly transition.

INCOME SECURITY

One measure of a nation's character is the respect it accords to its elderly. Another is the way it helps those in need. We can be proud of the efforts we have made, but it is time to reassess where we are and what direction we should take in the future.

We can take pride in the fact that:

—Cash benefits under social security have risen from $26 billion in fiscal year 1969 to $63 billion in fiscal year 1975, primarily as the result of five benefit increases totaling almost 70 percent and reaching 29 million persons.

—A program of Supplemental Security Income has been initiated and will soon be providing benefits to more than 5 million of the low-income aged, blind, and disabled, on a uniform, nationwide basis in a way that respects their dignity.

But our income security programs need more than improved benefits.

Over the past thirty-five years, a multitude of federally funded programs has grown up whose primary purpose is income security for those in need. Each of these efforts reflects a humane attempt to respond to a worthy goal. However, as cash, in-kind and service programs have rapidly expanded in the past few years, two things have become painfully clear:

—First, the result is an extremely costly set of generally unrelated, uncoordinated programs with many unintended and undesirable consequences; and

—Second, these efforts neither efficiently nor equitably accomplish the overall objective of assisting lower income families and individuals to achieve greater economic independence.

The fact that a third of the new Federal budget—$100 billion—will be spent on income security programs in fiscal year 1975, compared to the $38 billion, or one-fifth of the budget, which they received just five years ago, highlights the need to rationalize and integrate our income assistance programs.

As long ago as 1969, I called for a complete overhaul of our discredited welfare programs. I said then that "whether measured by the anguish of the poor themselves, or by the drastically mounting burden on the taxpayer, the present welfare system has to be judged a colossal failure."

At that time, I proposed the Family Assistance Plan. Neither the Congress nor the country accepted that proposal. I do not intend to resubmit a new version of the Family Assistance Plan.

Since then, we have made a concerted effort to improve the administration of the existing programs. In 1973, for the first time in recent years, because of vigorous new Federal and State initiatives to enforce the rules more strictly, growth in the Aid to Families With Dependent Children case load was halted. But, in their overall impact, the welfare programs remain a failure and an outrage.

As an example of the failure, recent studies have shown that fully 40 percent of the AFDC benefits being paid are either going to ineligible persons or are incorrect in amount. This performance is not just the result of fraud, although there is some of that. It is primarily and overwhelmingly the result of a system which is so complex and so riddled with obscure, obsolete and incomprehensible regulations that it defies fair and efficient administration.

I plan to make a major new effort to replace the current maze of welfare programs with a system that works. This task will be difficult, but we have no other alternative, save further waste—both of lives and dollars. I welcome the evidence that thoughtful Members of the Congress, after careful study, have reached the same conclusion.

While this effort goes forward, I will make every possible effort to improve the operation of the existing programs through administrative reforms, recognizing that a replacement system cannot be developed, enacted, and put into operation overnight. But, unless we move urgently to the development of a new system, efforts to improve the administration of the present programs will eventually be undermined by their basic structural flaws.

In the development of my proposal, I will be guided by five principles:

(1) All Americans who are able to work should find it more rewarding to work than to go on welfare. Americans would strongly prefer to have good jobs rather than a Federal handout. While we should provide cash assistance to those in need, we must always encourage complete self-support for those who are capable of it.

(2) Cash assistance is what low-income people need most from the Federal Government. The people themselves, not the Federal Government, know their own needs best.

(3) We need to focus Federal help on those who need it most. People in need should receive equal treatment from the Federal Government regardless of their place of residence.

(4) The new system should be as simple as possible to administer with rules that are clear and understandable. It should be based on objective criteria rather than the personal judgment of administering officials. And it should be sufficient.

(5) This new approach should not require an increased tax burden for any of us. Too much of the income of all of us now goes to support Government. We help no one—certainly not those in poverty—by weakening our free enterprise system by even higher taxation.

Starting from these basic principles, I believe we can develop a new system which would insure that those who can help themselves do help themselves, and which would allow those who cannot help themselves to live with dignity and self-respect.

IMPROVING OUR PEOPLE'S HEALTH

In February of 1971, I outlined to the Congress a new national health strategy to assure that no American would be denied access to high quality medical care because of an inability to pay. Much has already been accomplished toward meeting that objective.

A little over two years ago, I took special satisfaction in signing into law the National Cancer Act, which enabled us to launch an accelerated effort to conquer this dread disease. Considerable progress has been made in our attack on cancer and there is much hope that additional knowledge can be developed in the future. In the budget that I will submit to the Congress next Monday I plan to ask for an additional $100 million above last year's request of $500 million for the expanded attack on cancer. In addition, biomedical research in other areas, including heart disease, has been intensified—and the total 1975 budget for biomedical research will exceed $2 billion, more than double the total in fiscal year 1969.

We are also making headway toward increasing the Nation's supply of health manpower. During the last ten years, first year medical school enrollments have grown by more than 55 percent. The number of other health professionals also can be expected to grow dramatically. Just last month, I approved legislation along the lines I requested in 1971 to permit the Federal Government to support the demonstration of health maintenance organizations across the Nation. During both 1974 and 1975, $125 million will be provided through health maintenance organizations to demonstrate the benefits of prepaid health care to our citizens.

Federal programs to finance health services for the aged, for the disabled, and for low income persons have been greatly expanded. Since 1969, Medicare and Medicaid coverage has been extended to an additional 21 million aged, disabled, and low-income Americans.

The range of services covered under Medicare and Medicaid has also increased.

Consumer safety programs—to assure safe foods, drugs, cosmetics, and other consumer products—have received almost a fourfold increase in Federal funding since 1969.

Despite all these advances, however, too many Americans still fail to receive needed health care because of its costs. And too often the costs of health care threaten our citizens with bankruptcy while the services that can prevent or cure disease are not fully utilized.

As one of my major new initiatives for 1974, I shall soon submit to the Congress a comprehensive health insurance proposal which would:

—Make available health insurance protection to millions of Americans who currently cannot obtain or afford the private health insurance coverage they need.

—Provide all Americans with vastly improved protection against catastrophic illness.

—Place a new emphasis on preventive health care.

—Provide State and Federal subsidies for low-income families, and for those whose special health risks, would otherwise make them uninsurable or insurable only at exorbitant expense.

My comprehensive health insurance proposal will build upon the strengths of the existing health system, rather than destroying it. It will maintain the high quality of medical care without requiring higher taxes. It will be based on partnership, not on paternalism. And most importantly, it will require doctors to work for their patients, not for the Federal Government.

This plan would require that employers offer a comprehensive health insurance plan to all their full-time employees, with the employer paying a share of its costs. The role of private health insurance in financing health care would be expanded and the consumer's opportunity to choose between competing health insurance plans would be enhanced.

In addition to this plan, there are a number of other health-related measures that I urge the Congress to enact this year. These include:

—A Health Resources Planning Act, to help States and localities improve their planning and use of health resources;

—New and expanded national health service scholarship legislation, to increase the number of Federal scholarships available to students in health professions, and also to help ensure that the Federal Government can meet its needs for physicians; and,

—A general expansion of the guaranteed student loan program, to provide adequate financial assistance to all professional and graduate students, including health professionals.

IMPROVING EDUCATION

The Federal Government should provide strong leadership in assuring equal access to a high quality education for all Americans and in bringing about renewal and reform of all of our education programs.

Since 1969, we have raised Federal spending for education from $4.3 billion to $7.6 billion—an increase of 76 percent.

In special messages to the Congress on education in the past, I set forth five major proposals to improve American education. They were:

—A new program of student assistance to help to insure—for the first time in the Nation's history—that no qualified person is barred from attending college by lack of money.

—A National Institute of Education, to be the focal point for educational research and development aimed at increasing our knowledge of how to help students learn.

—A National Foundation for Higher Education, to encourage innovation in learning beyond high school.

—An Emergency School Aid Program to assist desegregating school districts.

—A thorough reform of the programs for Federal support of elementary and secondary education, consolidating the myriad separate categorical grant programs in order to transfer educational decisions back to the State and local levels where they belong.

The first four of these basic proposals have been enacted, in whole or in part, and a great deal has already been accomplished through them. As for the fifth, reform of Federal funding for elementary and secondary education, I believe that 1974 should be the year of its enactment.

COLLEGE STUDENT ASSISTANCE

The Basic Educational Opportunity Grant Program is the primary vehicle in my effort to ensure that no qualified student be denied a college education because of lack of funds. In my new budget, I am asking Congressional approval to strengthen this program by providing grants of up to $1,400 a year for needy students. Altogether, when combined with other student funding efforts, the Federal Government in the coming fiscal year would provide an estimated $2.2 billion of financial aid to post-secondary students, an increase of over $900 million from the level of five years ago.

Since the present student assistance programs are targeted to help the neediest, and because the costs of higher education have risen dramatically, many middle income students are now finding it increasingly difficult to make ends meet. I therefore also recommend that the limit on total borrowing be increased so that professional and other graduate students will be able to find adequate student loans.

EDUCATIONAL RESEARCH AND DEVELOPMENT

When I originally proposed the creation of a National Institute of Education, I suggested that providing equal opportunity for quality education means, in part, increasing our knowledge about the ways that students learn and then changing the way we teach them. For too long we have followed the belief that bigger educational programs are necessarily better educational programs and that money alone can solve our educational problems. But now we are beginning to see that the quality of our thinking about education can be as important as the size of our educational budget.

The National Institute of Education can help us to marshal our educational resources in ways which will produce the best results. It has already begun to provide the kind of leadership in educational research and development which I have long believed was needed.

EDUCATIONAL INNOVATION BEYOND HIGH SCHOOL

While the National Foundation for Higher Education which I proposed in 1970 has not been established, the Fund for the Improvement of Post-Secondary Education was set up by the Congress. The fund is now providing support for the development and demonstration of more effective approaches to college level education. Our initial assessment leads me to believe that the fund will, in the years to come, become the primary focal point for innovation in higher education.

ASSISTING SCHOOL DESEGREGATION

Under the Emergency School Aid Act of 1972, an estimated $467 million in Federal funds will have been provided to local school districts by the end of 1975 to assist in the process of elementary and secondary school desegregation, to encourage voluntary programs to overcome minority group isolation, and to assist in meeting the educational needs of children who, because of racial isolation, have not had an equal educational opportunity.

By the 1975–1976 school year, the bulk of the problems incident to "de jure" segregation should have passed. However, to provide assistance to those other school districts which may still be required to take special desegregation measures as the result of court rulings, I have budgeted an additional $75 million for fiscal year 1975. In addition, the Federal Government will continue to provide civil rights education advisory activities to local districts to assist them in meeting any remaining problems.

BUSING

I have often expressed my opposition to the use of forced busing for purposes of achieving racial balance. I have also proposed legislation which would dictate reasonable limits on the use of forced busing, and I have opposed the consolidation of school districts in an effort to achieve racial balance in the larger district. Such consolidation plants have only led to more busing and the eventual disappearance of the neighborhood school. The end result of an excessive reliance on forced busing and the imposition of arbitrary ratios has frequently been an increasing concentration of the poor and minorities in our central cities and the serious weakening of the very school systems which must serve them. In some cases, the education of minority children has actually suffered, not benefited from such plans.

I shall continue to support the passage of legislation which makes busing only a last resort—tightly circumscribed even then. I will also continue to work

with the Congress to revise my proposals in light of unfolding events in this area.

FUNDING ELEMENTARY AND SECONDARY EDUCATION

I am encouraged by the interest the Congress has continued to show in legislation which follows the concepts put forward in my proposed Better Schools Act. I believe that meaningful compromise is now possible, and that we can at last reform and consolidate Federal grants for elementary and secondary education, vocational programs and adult education.

I hope that the Congress will include four basic elements in this reform:

—Consolidateion of existing categorical grant programs.

—Granting greater decision-making authority to State and local educational agencies.

—Greater equity in the distribution of Federal funds to the States for the education of disadvantaged children.

—Reform of the impact aid program to concentrate support in those districts where the Federal presence has substantially decreased the tax base, rather than those in which it has increased the tax base.

Upon enactment of legislative authorities that accomplish these goals for elementary and secondary education, vocational programs and adult education, I will propose special supplemental apprograpations to provide funding for the 1974–1975 school year. This funding would place most elementary and secondary education grant programs on a "forward funded" basis, letting State and local agencies know how much they will receive while plans for the next school year are being made. "Forward funding" is an important concept in the financing of education, and it merits the full support of the Federal Government.

As I noted in my message sent to the Congress on education policy last week, I also recommend additional support for several other educational programs—some old and some new. These include:

—An additional increase in aid to black colleges and other developing institutions during fiscal year 1975, thus quadrupling Federal funds for these important educational institutions since I took office.

—Continuation and extension of the Head Start program, our single largest child development program. In 1975, Head Start will reach 282,000 disadvantaged youths year-round, as well as some 78,000 pre-schoolers during the summer—and it will extend its activities to include handicapped youth.

—The consolidation of eight separate authorities for education of the handicapped into four broader and more flexible programs.

NON-PUBLIC SCHOOLS

I remain firmly committed to the principle of educational diversity. The continued health of the Nation's non-public schools is essential to this concept. Although governmental efforts aimed at supporting these schools have encountered difficulty in the courts, I believe we must continue our efforts to find ways to keep these schools open.

For that reason, I continue to support legislation which permits tax credits for parents who pay to send their children to non-public schools.

HELPING OUR VETERANS

Twenty-nine million Americans living today have given military service to their country. As a group, veterans are among our most productive citizens. Studies show that they generally have higher incomes, more education, and better health than non-veterans of the same age.

We can be proud of the veterans' contributions, but we must also be concerned for those veterans and veterans' families who remain in need.

The assistance provided to veterans and their families in recent years has been substantial:

—Total compensation payments for veterans disabled or killed in military service have been increased from $2.7 billion in 1969 to $3.9 billion in the coming fiscal year.

—Medical care in VA hospitals and clinics has been greatly improved and expanded, with ten new or replacement hospitals now in service and five more in preparation.

—Educational benefits per trainee have more than doubled since 1969.

—Last year two key measures—one expanding health care and the other improving the national cemetery system for veterans—were passed and signed into law.

—Of vital importance, the unemployment rate for Vietnam era veterans has been sliced from 11 percent in early 1971 to 4 percent by late 1973. As a result, Vietnam era veterans have a higher employment rate than others of their same age, a significant achievement that is well deserved.

Earlier this week, in a special message to the Congress, I proposed additional legislation to help veterans in two crucial areas in 1974—pensions and education.

My pension proposals would benefit some 1 million veterans and 1.3 million veterans' survivors who are in economic need because of disability, age, or the loss of a breadwinner. VA pensions already go a long way toward meeting such needs, but the pension structure itself is fraught with inequities and anomalies that are technical in nature but tragic in consequence. My proposals would correct these deficiencies.

Veterans now in training require additional help if their GI bill allowances are to keep pace with rising costs. I shall therefore propose that GI bill benefits be raised by an average of 8 percent.

I have also set a 1974 goal for the Government of placing an additional 1.2 million veterans in jobs or job training. There remain sizable numbers of educationally disadvantaged veterans and service-disabled veterans who have never taken advantage of Federal training opportunities and are now unemployed. I have directed that, as a matter of high priority, the Federal Government's efforts to reach these veterans be intensified and that they be counselled and encouraged to use the available services.

EQUAL OPPORTUNITY FOR ALL AMERICANS

This Administration has made a determined effort to secure equal opportunity for those who have been previously denied such opportunity. I am personally very proud of the success those efforts have already achieved, and I am committed to building on that success in the future.

PROGRESS FOR MINORITY GROUPS

Members of racial minority groups have made considerable strides toward equal opportunity in recent years. The following are among the more notable benchmarks of this progress:

—Setting an example as an Equal Opportunity Employer in the past five years, the Federal Government has added more than 35,000 minority group members to its civilian employee roles.

—In the Armed Forces, more than 850 minority-group cadets are now enrolled in the military academies; and whereas prior to 1971 only four minority group members had ever achieved general or flag rank in the armed forces, now sixteen serve on active duty as generals and admirals.

—Federal aid to minority business enterprises—one of the cornerstones of the Administration's effort to open new economic horizons for minority group members—has nearly tripled since 1970.

—Civil rights enforcement activities have continued at a vigorous level, with their funding substantially increased.

—Since 1969, combined Federal expenditures on civil rights activities and minority economic development programs have grown from less than $1 billion to $3.5 billion.

—Five years ago 68 percent of all black children in the South were still attending all-black schools. Now that figure has been reduced to 8 percent, and the dual school system has been virtually eliminated.

—The Government has also sought to expand job opportunities through legal actions of its own against those who may be engaged in discriminatory practices. During 1972 and 1973 the Department of Justice initiated 34 pattern and practice lawsuits against approximately 207 defendants. These suits directly covered more than 248,803 employees. During the same period of time, approximately 37 cases were fully resolved by entry of decrees and an additional six were partially resolved by the entry of decrees. The decrees entered in those two years alone covered more than 217,000 employees and provide specific goals for the hiring of more than 21,800 minorities and women in traditionally white and male jobs. In addition, those decrees provide new transfer of seniority rights for approximately 12,700 minorities and women and provide for back pay awards which are estimated to amount to well over $6,000,000.

The real story lies not in these figures themselves, but in the facts and the attitudes they represent. They do not represent a flamboyant promise, but rather a quiet determination to work not only toward the symbols but also toward the substance of equal opportunity. They represent an effort to build foundations that will last—in particular, the foundation of economic independence, and of a basic faith in the equal dignity of mankind.

JUSTICE FOR AMERICAN INDIANS

For too many years the American Indians—the first Americans—have been the last Americans to receive the rights and opportunities to which they are entitled. This Administration has taken the initiative to change this picture.

For its part, the Federal Government must put behind it the role of autocratic manager of Indian reservations. We shall continue to encourage Indians and their tribal governments to play an increasing role in determining their own future. We are also particularly determined to defend the natural resources rights of Indian people.

The last five years have been historic steps in Federal Indian policy. In 1971, we worked closely with Indian leaders to achieve a settlement of Alaska Native claims, a settlement consistent with America's sense of fairness and also indispensable to the growth and development of all of Alaska.

We also returned lands taken away long ago from the Taos Pueblo at Blue Lake. We returned lands wrongfully taken from the Yakima people. Because the Menominee people have seen their tribal states involuntarily terminated but had nevertheless kept their land and their tribal structure together, the Congress enacted and I signed the bill which restored the Menominee tribe to trust status. In the courts, we are forcefully asserting Indian natural resources rights, as we have done in protecting Indian rights in Pyramid Lake.

One measure of our attempt to foster a better, more humane policy is the level of Federal funding benefitting American Indians—over twice what it was five years ago or about $1.6 billion.

I am especially encouraged by the fact that the rate of infant deaths, pneumonia, influenza, and tuberculosis is significantly lower among Indians than ever before. Although we have not yet achieved our full goals of health and educational services for the Indian people that are fully compatible with those of the general population, this progress demonstrates our continuing commitment.

The Congress has shared in these accomplishments in a spirit of bipartisan cooperation. I hope that I will soon have on my desk two more enactments on which Congressional action is progressing; measures to speed Indian economic development and to upgrade the position of the Commissioner of Indian Affairs to the Assistant Secretary level. Also still waiting Congressional action are four other proposals I have submitted previously: to permit turning over to Indian tribal governments the management and control of Indian programs; to create an Indian Trust Counsel with authority to safeguard Indian natural resources rights; to help ensure that funds for Indian education actually reach Indian children; and to provide greater local control over federally assisted reservation programs through a program of tribal grants.

Looking forward, I shall ask that the Bureau of Indian Affairs make specific plans to accelerate the transfer of significant portions of its programs to Indian tribal management, although I repeat my assurances that, while accelerated, these transfers will not be forced on Indian tribes not willing to accept them.

THE SPANISH-SPEAKING

The Spanish-speaking citizens of our Nation face special problems in obtaining equal opportunities because of language and cultural barriers. For that reason, my Administration has made a special effort to expand those opportunities.

Our progress on this front is reflected in many ways. Nearly 3,800 Spanish surnamed Americans have been employed by the Federal Government, despite an overall reduction in Federal jobs. The Small Business Administration has also increased its loans to Hispanic businessmen, reaching a total of $109 million in fiscal year 1973.

In 1969, the Cabinet Committee on Opportunities for the Spanish-speaking people was created. The Cabinet Committee has both made the Government more aware of the needs and the talents of Spanish-speaking citizens and helped to expand Federal employment of the Spanish-speaking. Since the authorization for this organization expires this year, I am asking the Congress to extend its life through June 30, 1975. The Cabinet Committee on Opportunities for the Spanish-speaking serves to focus the Administration's continuing efforts in this important area of concern.

THE RIGHTS OF WOMEN

Both men and women have become increasingly aware of the pattern of sometimes blatant but often subtle discrimination to which women are subjected. Some of this discrimination can be erased by existing law; some requires new law; some would be rectified by the Equal Rights Amendment, now nearing ratification by the required three-fourths of the States. It is my hope that the Equal Rights Amendment will be ratified speedily so that equal justice under our laws will become a reality for every American.

One of the primary goals of this Administration is to ensure full equal employment opportunity for women by striving to open to women jobs that previously were reserved for men, often simply by habit or custom. Specifically, we have moved vigorously both to enforce the law and to lead by example—by insisting on equal employment and promotion opportunities within the Federal services, by promoting more women into the professionally critical areas of middle management and by continuing our special recruiting drive to bring more women into the highest levels of Government.

To help advance these goals I have appointed the first woman Counsellor to the President, and she, in turn, has set up a new Office of Women's Programs within my executive office. We are particularly proud that this Administration is the first to have women as heads of three independent Federal agencies—the Atomic Energy Commission, the Federal Maritime Commission, and the United States Tariff Commission.

The effort to improve the economic status of women outside the Government is also continuing. The Equal Employment Opportunity Commission, which has been given enforcement power in the Federal Courts, has reported a marked increase in its activities to end sex discrimination in employment.

We will continue to pursue all these efforts with vigor. This emphasis is especially appropriate as we approach 1975, which has been declared International Women's Year by the United Nations.

One especially invidious form of sex discrimination in particular is ripe for correction now through new legislation: the discrimination that often denies women equal access to credit. In an economy that increasingly operates on credit, this is a particularly grievous practice.

The Congress already has before it a proposal to ensure that credit is extended to all persons on an equitable basis, without regard to their sex or marital status. This Administration strongly supports this proposal and is sending to the Congress amendments which we believe will strengthen it even further. I urge prompt consideration and passage of this vital legislation.

PROTECTION AGAINST CRIME AND INVASION OF PRIVACY

Over the past five years I have had no higher domestic priority than rolling back the tide of crime and violence which rose in the 1960s. I am therefore especially pleased with the progress we are making on this front:

—After 17 years of continuous and often dramatic increases, crime in 1972 registered its first overall decline. Although in 1973 it again registered a slight increase, it still held below the level of 1971. Now that the momentum of increase has been broken, I am confident that we can look forward to further reductions in crime rates in the years ahead.

—Serious crime in our largest cities was actually reduced by 13 percent between 1971 and 1973.

—In Washington, D.C., where the Federal Government has special law enforcement responsibilities, crime has been cut in half since 1969.

Indictments and convictions of organized crime racketeers have more than tripled since 1969, thanks in large measure to the 1970 Organized Crime Control Act and to expanded Federal interagency strike forces. In addition, of course, the riots, urban terrorism, and burnings of the 1960s have now become a thing of the past.

These indications of success do not mean that we should slacken our anti-crime effort, but that we should intensify it. Key elements of our strategy to do so—most of which will require the assistance of the Congress—include:

—Comprehensive reform of the Federal Criminal Code. Last year I submited a proposal which was based upon the work of the Justic Department and a 51-year study completed by the National Commission on Reform of Federal Criminal Laws. The Federal Criminal Code has not been completely revised in a quarter century and the need for reform is urgent. I call upon the Congress to act expeditiously in reforming our criminal code, to make it both more workable and more responsive to the demands of our complex society.

—Restoration of the death penalty under the Federal Criminal Code for several especially heinous specific crimes which result in the death of innocent victims. Examples of such crimes are hijacking, kidnaping, or bombing.

—Increased Federal assistance to State and local law enforcement agencies. For the next fiscal year, I propose funding through the Law Enforcement Assistance Administration of $886 million—up from only $60 million in 1969.

—Increasing the resources available to the U.S. Attorneys' offices throughout the Nation—offices which have, in the last three years, increased the number of criminal convictions by 28 percent.

—Creation of additional Federal Judgeships to assure speedier disposition of criminal cases. Legislation to accomplish this goal is now before the Congress.

—Comprehensive improvement of Federal correctional programs. Already 15 additional correctional institutions have been built, acquired or begun. My 1975 budget request would represent a tripling of 1969's budget levels.

—A new effort to deal more effectively with employment problems caused by the increase in the number of illegal aliens entering this country. Legislation to achieve this objective is also before the Congress.

PROTECTING THE RIGHT OF PRIVACY

One of the basic rights we cherish most in America is the right of privacy. With the advance of technology, that right has been increasingly threatened. The problem is not simply on of setting effective curbs on invasions of privacy, but even more fundamentally one of limiting the uses to which essentially private information is put, and of recognizing the basic proprietary rights each individual has in information concerning himself.

Privacy, of course, is not absolute; it may conflict, for example, with the need to pursue justice. But where conflicts occur, an intelligent balance must be struck.

One part of the current problem is that as technology has increased the ability of government and private organizations to gather and disseminate information about individuals, the safeguards needed to protect the privacy of individuals and communications have not kept pace. Another part of the problem is that clear definitions and standards concerning the right of privacy have not been developed and agreed upon.

I have therefore ordered an extensive Cabinet-level review—which will be undertaken this year—of both government and industry practices as they relate to the right of privacy, of the conflicts that arise and the balances that must be struck between legitimate needs for information and the right of privacy, and of those measures—including appropriate legislation—that can be taken to ensure that these balances are properly struck.

ENDING DRUG ABUSE

During the decade of the '60s, increasing numbers of Americans—including a high percentage of young people—each year turned to heroin and other drugs in search of "new highs" and "synthetic solutions" to the problems of life. In this retreat from reality, the Nation's drug problem grew dramatically. Residents of our proudest cities were gripped by fear as addicts turned to crime to support their habits, and thousands of families suffered devastating personal tragedies.

I am pleased to be able to report that since then, Federal spending on drug treatment and enforcement have increased tenfold, and progress has been made. We have indeed turned the corner on hard drugs:

—Better drug law enforcement, at home and abroad, has caused an acute heroin shortage throughout much of the country.

—Enough treatment capacity has now been created so that virtually all addicts who want medical help and counseling can get it.

—Our drug abuse indicators all suggest that we have at last succeeded in reducing both the total number of heroin addicts and the number of new addicts.

Nevertheless, the drug battle is far from over.

For the sake of the next generation, I am determined to keep the pressure on—to ensure that the heartening progress made to date is translated into a lasting victory over heroin and other drugs.

As enforcement efforts meet with success in one area of the world, pressure increases on other trafficking routes. To meet these new threats, we will step up our support of joint drug enforcement programs. I have also directed that plans for increased vigilance at our own borders be put into effect.

In the treatment area, we are intensifying our efforts to encourage hard-core addicts to undergo treatment.

To provide added incentive for those not motivated to seek help on their own, I have directed Federal agencies to expand their support for local programs which direct addicts charged with crimes into treatment pending trial and sentencing.

Continued progress will also require help from the Congress:

—I will shortly recommend severe new penalties for both heroin traffickers and those engaged in illegal distribution of other illicit drugs. This legislation will supplement my proposals currently pending before the Congress.

—The Psychotropic Convention, a key international treaty regulating manufactured drugs worldwide, has—after 2½ years—still to be ratified. Affirmative action in this session is of the utmost importance.

I will continue to pursue a balanced approach to the drug problem in the next year by emphasizing both vigorous law enforcement, and treatment and rehabilitation programs to help speed the return of ex-addicts to productive lives in society.

ENHANCING THE ENVIRONMENT

Both our Nation and the world have made imposing strides during recent years in coping with the problems of our national environment. Building upon well-justified concerns, we have created institutions, developed policies and strategies, and deepened public understanding of the problems that face us.

Now we are entering the second phase of environmental action. It may prove to be a more difficult period.

In this second phase, we will be looking at our environmental problems in new ways which are more complex and far-reaching than those to which we have been accustomed. We must be concerned not only with clean air, clean water and wise land use but also with the interaction of these environmental efforts with our need to expand our energy supplies and to maintain general prosperity.

In facing up to these tough, new problems, we can draw strength from the progress we have already made and from the knowledge that there can be no turning back from our general commitment to preserve and enhance the environment in which we live.

Our record over these past five years includes the vigorous enforcement of air quality legislation and of strengthened water quality and pesticide control legislation, the enactment of new authorities to control noise and ocean dumping, regulations to prevent oil and other spills in our ports and waterways, and legislation establishing major new parks, recreation and wilderness areas.

We have also tried to reorganize the Federal structure in ways that are more responsive to environmental needs. The National Environmental Policy Act, passed in 1969, has provided a basis for reform in our Federal agencies and has given citizens a greater opportunity to contribute to environmental decisions. In 1970, I established the Environmental Protection Agency and National Oceanic and Atmospheric Administration to provide more coordinated and vigorous environmental management. Also in that year, I appointed the first Council on Environmental Quality.

PRODUCING RESULTS

The results of our vigorous anti-pollution efforts are now being seen and felt.

In our major cities, levels of dangerous

sulfur oxides and particulates have declined, and pollutants from automobiles have been reduced. Water pollution is being conquered, assisted by a massive Federal commitment of over $14 billion in municipal treatment plants during this Administration. Major misuses of pesticides are now under control, and major sources of noise are being regulated for the first time.

During these five years Federal agencies have acquired over 800,000 additional acres for preservation for future generations, many of them near our heavily-populated urban centers such as New York and San Francisco. In addition, the Legacy of Parks program, which I initiated in 1971, has made massive strides in bringing parks to the people. To date, 400 separate parcels covering almost 60,000 acres of under-utilized Federal lands in all 50 States have been turned over to State and local governments for park and recreational use. Many of them are near congested urban areas. We will continue to expedite transfer of additional surplus properties to State and local governments for park and recreation use.

IMPROVING THE WORLD ENVIRONMENT

On our small planet, pollution knows no boundaries. World concern for the environment is as necessary as it is encouraging. Many significant international actions have been taken in recent years, and the United States can be proud of its leadership.

These actions have included the signing of international conventions to protect endangered species of wildlife, to regulate ocean dumping, to extend the national park concept to the world, and to control marine pollution.

A United Nations Environment Program was established last year. With it, the UN Environment Program Fund came into being, fulfilling a proposal I had made in 1972.

Under the US-USSR Environment Agreement, which I signed in Moscow in May, 1972, Soviet and American scientists and environmentalists have been actively working together on serious environmental problems.

THE CHALLENGE AHEAD

As part of this Administration's continuing effort to conserve outdoor recreation areas, my new budget will propose full funding of the Land and Water Conservation Fund for 1975. Nearly two-thirds will aid State and local governments in acquiring their own recreation lands and facilities. Coupled with the change I have proposed in the formula for allocating funds to the States, this measure would encourage the development of more recreation sites closer to the places where people live and work.

This year we have the unique opportunity and responsibility to determine the future use of enormous land areas in America's last great frontier—Alaska. Last month, in accordance with the Alaska Native Claims Settlement Act, I transmitted to the Congress recommendations that would add 83.47 million acres in Alaska to the National Park, National Forest, Wildlife Refuge and Wild and Scenic Rivers Systems. If the Alaska frontier is thoughtlessly developed, it will be gone forever. But we now have the opportunity to make considered judgments as to the appropriate uses of these outstanding Alaskan lands for the American people of all future generations.

This session of the Congress has before it 17 major natural resources and environment proposals that I have previously submitted, and on which I again recommend action. These include:

—*Department of Energy and Natural Resources:* While I discuss this new department elsewhere in this message, I want to reemphasize that I consider it of cardinal importance in ensuring that complex, interrelated environmental and nautral resource issues receive an appropriately wide policy overview and administrative coordination.

—*National Land Use Policy:* Adoption of the National Land Use Policy Act, first proposed in 1971, remains a high priority of my Administration. This legislation would reaffirm that the basic responsibility for land use decisions rests with States and localities—and would provide funds to encourage them to meet their responsibility. I am pleased that the Senate has passed legislation incorporating some of the policies that I proposed. I urge the Congress to pass legislation which would assist States and localities, but which does not inject the Federal Government into their specific land use decisions.

—*Coastal Wetlands:* These environmentally vital wetlands are increasingly threatened by development. My proposed Environmental Protection Tax Act would amend Federal tax laws to discourage the unwise use of these areas, and to enhance our opportunities for sound land use planning within the coastal zone.

—*Wilderness:* Traditionally, we have looked westward for our wilderness areas. Last year, however, I proposed that 16 Eastern areas be designated as "wilderness" and that 37 others be studied for possible wilderness designation.

—*Historic Preservation:* Because we have an irreplaceable historic and architectural heritage, I have proposed an Environmental Protection Tax Act to discourage the demolition of historic structures and to encourage their rehabilitation.

—*Big Thicket National Biological Reserve:* The Big Thicket area of east Texas is a biological crossroads unique in the United States. I am gratified that the House has acted and I urge the Senate promptly to consider my proposal to preserve key segments of the Thicket in a Big Thicket National Biological Reserve.

—*Big Cypress National Fresh Water Reserve:* Protection of the Big Cypress Swamp in Florida is essential to the preservation of the water supply in the Everglades National Park. I have recommended legislation which would authorize the acquisition of over 500,000 acres, enabling us to protect this vital water supply.

—*Public Land Management:* The Secretary of the Interior needs additional authority to protect the environmental values of our public domain lands. I again urge that he be given that authority.

—*Controlling Pollution:* Three of my legislative proposals aimed at controlling pollution have not yet received final Congressional action:

—*Toxic Substances:* New chemicals with unknown environmental effects come into use each year. Authority to test these substances and to restrict their use in the event of danger, while still permitting the orderly marketing of needed chemicals in a timely fashion, is highly desirable.

—*Hazardous Wastes:* Disposal of wastes on land is increasing due to advances in industry and technology and because of our stringent controls on air and water pollution. These wastes can be hazardous to human health and other forms of life. My proposal provides for national standards for treatment and disposal of hazardous waste with primary regulatory responsibility resting with State governments.

—*Safe Drinking Water:* The water we use in our homes should not endanger our health. Under my proposal on safe drinking water, Federal standards would provide health protection by requiring strict limitation of any contaminants in drinking water, but primary enforcement responsibilities would be left to the States. Alternative legislation is now being seriously considered by the Congress which would require unnecessary Federal standards on operating treatment plants, generate a domineering Federal enforcement role, and create several new categorical subsidy programs.

COMMUNITY DEVELOPMENT

Although American communities share many of the challenges of our age, the relative intensity and the particular nature of these challenges vary sharply from one community to another.

The current way of providing most Federal aid to our communities—with each dollar tied to a string pulled and manipulated by a Federal planner—is wrong. Much of the money that pays the Federal planners could better be spent in the local community; the decisions made by the planners could better be made by the people who live on the scene.

In these past few years, we have sought to change the old system. We have recognized that the Federal policy that will work best is one that helps the people of a particular community define their own needs and meet those needs in the way which they consider best. While in this Administration we have tried to be generous, we have also tried to grant communities greater freedom to set their own priorities. Since 1969, we have:

—Spent twice as much money on community development programs as the Federal Government had spent for this purpose in the entire previous history of the Nation.

—Reduced the red tape and arbitrary restrictions on local action that were so much a part of these programs in the past.
—Moved authority for administering community development programs from Washington to the field, where administrators are more accessible to local officials, and where they can become more familiar with local problems.
—Stepped up Federal support for State and local planning and management, again spending more for this purpose than had been spent in all previous years combined.

As a result, not only have cities received *more* Federal dollars, but they have been able to accomplish *more* with each dollar than before.

Despite this progress, we need a much more sweeping reform than has been possible under existing laws. Therefore, I once again urge passage of *The Better Communities Act,* a $2.3 billion bill which would give local officials new flexibility and provide greater effectiveness in the expenditure of Federal community development funds. This legislation would consolidate seven categorical grant programs into a single program. Funds would be distributed on the basis of need, and then local communities could decide for themselves what projects should come first. Thus we could eliminate a mountainous volume of red tape and allow local government to play a larger role in determining their own destinies.

Two Congresses have now addressed community development legislation. Both of them have agreed, for the most part, with the basic principles and approaches that the Better Communities Act represents. But we have still had no action. Cities and towns that have counted on having this legislation in effect in the next fiscal year now fact an uncertain future. I urge the Congress to move ahead as quickly as possible with the Better Communities Act—and I pledge every effort to work out our remaining differences so that our cities and towns can benefit from this program as soon as possible.

I also urge the 93d Congress to pass the *Responsive Government Act* that I submitted last year. This measure would enable State and local officials to improve their planning, decision-making and managerial capabilities through broad-based, flexible grants.

RURAL DEVELOPMENT

Over $12 billion has been invested in rural development through Agriculture Department programs alone during the five years of this Administration. Annual Federal funding for these rural development programs has been tripled during that time. These funds have been spent for:

—Rural housing, where more than $6.4 billion has been provided through 487,000 housing loans.
—Electrification and telephone systems, where over $3 billion has been spent to bring service to 177,000 new rural consumers.
—Water and waste disposal, where some 8,500 loans and grants totaling $1.4 billion have been provided to rural communities for water and waste disposal systems.
—Loans to farmers, who received more than 489,000 loans totaling over $4.2 billion.

In addition to these efforts under Department of Agriculture programs, almost 200 other Federal programs have had a significant impact on rural areas. As a result, rural residents receive as much Federal support per capita as residents of urban areas.

During the past year we have markedly increased our activity on behalf of the Nation's rural residents:

—During 1973, the Rural Development Act was funded for the first time to provide over $750 million in loans and grants to States under procedures which give them a new flexibility in promoting rural industrialization and in improving the quality of rural life.
—An interim rural housing policy was developed, placing greater emphasis on more effectively utilizing existing housing and making Farmers Home Administration programs more responsive to those with the greatest housing needs.
—To ensure continuing Government attention to rural development needs, this Administration has also created both a special Cabinet-level Rural Development Committee and the new post of Assistant Secretary of Agriculture for Rural Development.

As we look to the future patterns of national growth, we must never forget that the prosperity, the vitality and the character of rural America are essential cornerstones of our Nation's balanced growth. It is essential that rural America receive its proper share of our attention—and I am determined that this shall be the case.

HELPING DISASTER VICTIMS

Seldom is swift and effective Government action needed so urgently as when a natural disaster strikes.

Since taking office, I have had to declare over 160 major disasters in 42 States and in 3 territories. In recent years, the amount of Federal assistance given to disaster victims has been greatly expanded, and we have also pressed an intensive effort to provide this aid more equitably and expeditiously.

Since more than 90 percent of all property damage resulting from natural disasters is caused by floods, I was especially pleased by the Congress' approval last year of our proposed Flood Disaster Protection Act, which significantly expands and improves the national flood insurance program.

More remains to be done, however, if we are to meet our basic humanitarian responsibility to those who fall helpless and innocent victims to nature on the rampage. Therefore, I have also proposed a Disaster Preparedness and Assistance Act, which places new emphasis on the essential element of preparedness, while also increasing the role of State and local officials in allocating Federal disaster funds and cutting the tangle of red tape. It also provides for the automatic use of Federal resources when major disasters strike, and it includes generous grant features for those individual disaster victims unable to repay Government loans, as well as for communities faced with the task of restoring damaged public facilities.

That natural disasters will continue to strike is certain; the only uncertainty is how well prepared we will be. As a generous and compassionate Nation, we should be prepared to give the victims of these disasters the prompt and effective help they so desperately need.

BETTER HOUSING FOR ALL

As I have stated many times, this Administration will not waver from the Federal commitment first outlined in the Housing Act of 1949: "a decent home and a suitable living environment for every American family."

The state of America's housing will continue to depend on the state of America's economy more than on any other factor. The forces of the marketplace are the forces that count the most—families with sufficient real income and sufficient confidence to create an effective demand for better housing on the one hand, and builders and credit institutions able to respond to that demand on the other.

The Federal Government must play a major supporting role through its actions in the mortgage credit market and its help for low income families who need assistance in obtaining adequate housing.

Last September, as credit for housing was becoming increasingly scarce, the Administration acted to make more credit available to home buyers. Recently, mortgage market conditions have begun to improve. However, to assure continuing improvement, I recently authorized a reduction in the maximum allowable interest rate for mortgages insured by the FHA, the Farmer's Home Administration and VA—a more than $6 billion mortgage insurance program that will assist in financing the construction of up to 200,000 housing units.

These actions should have a favorable impact on housing production. If the anticipated results are not fully achieved I will recommend further action to ensure a reasonable level of production.

In the last 5 years a substantial effort has been made to address the country's housing problems:

—Largely because of a general upswing in the economy, housing production has occurred at record levels.
—FHA mortgage insurance has enabled nearly 3½ million families to purchase homes.
—Over two million units of subsidized housing for low and moderate income families have been approved, more than during the previous 33 years of federally subsidized housing programs.
—Over $1.4 billion has been committed to improving and modernizing existing public housing.
—Subsidies to local housing authorities have grown from $33 million in 1969 to $350 million in 1974.

Even as good housing has become a reality for most Americans, it is clear

that important problems still exist. Two are especially significant. First, our credit institutions often encounter problems in providing adequate housing credit. Second, too many low income families are unable to obtain adequate housing—even as good housing sits vacant in their community. We must help them to meet their needs.

In order to increase the availability of housing for all families, I urge passage during this session of two key measures I have already proposed:

—The Financial Institutions Act to enable savings and loan associations to compete more effectively for funds during periods of tight money, as well as to encourage increased investment in housing through a tax credit on income earned from residential mortgages.

—The Administration's proposed Housing Act which would ease the present tight mortgage credit situation and make homeownership easier in the long term by:

—Authorizing increases in the permissible mortgage amounts eligible for FHA insurance.

—Permitting home buyers to pay market interest rates on FHA and VA insured mortgages, and reducing the cost of buying a home by doing away with the present system of charging points on mortgage loans.

—Authorizing on an experimental basis more flexible repayment plans on FHA insured mortgages.

—Authorizing more flexible interest rates, longer repayment terms and higher amounts for mobile homes and home improvement loans.

This legislation would extend authority for extensive experiments with a new approach—direct cash assistance—for addressing the housing problem of low income American families. Despite the commitment of over $66 billion, evidence has clearly shown that the subsidized housing programs for low income families have not worked well. Instead of programs to treat symptoms, I will continue to press for a longer term solution—which goes to the root of the problem—lack of sufficient income—and which permits the private housing market to work in as efficient a way as possible. Additionally, this legislation would improve the operation of our existing public housing projects, by helping them move to a more effective, efficient and self-sufficient basis of operation.

IMPROVING TRANSPORTATION

The energy crisis has made urgent what once seemed only necessary: the building of a transportation system that permits all Americans to travel efficiently and at reasonable cost.

While some elements of our transportation system—such as the Federal highway network—have been dramatically improved or expanded in the past decade, others—notably the railroads—have fallen into serious difficulties. It is also apparent that our public transit system must be greatly improved within our urban centers. The measures already taken and others which I shall propose this session are particularly important in helping to deal with the energy crisis by encouraging a more sensible utilization of our transportation resources.

During the past four years, several key measures have helped lay the basis for a greatly improved transportation system.

Under the Urban Mass Transportation Act of 1970, we increased annual Federal aid to urban public transportation to $1 billion by 1973—8 times the level of 1968—and in 1973 another $3 billion was made available for the years immediately ahead. For the first time since World War II the downward trend in transit ridership has been reversed, and is now moving upwards. And for the first time, under the provisions of the Federal-Aid Highway Act of 1973, States and localities can now use a portion of their Federal highway funds for public transit purposes.

There has also been improvement of rail passenger service under AMTRAK, a public corporation created by the Rail Passenger Service Act of 1970. After years of steady decline in rail passenger service, the past year saw a 14 percent increase in the number of passengers carried on AMTRAK.

Just this past year, we also went to work to avoid a major rail crisis through passage of the Regional Rail Reorganization Act of 1973, which provides for the restructuring of the bankrupt railroads of the Northeast and Midwest region into a streamlined system. By 1976, we hope that the affected railroads will be able to operate profitably and can survive as producers, not consumers, of tax revenues.

Significant new initiatives have also been taken in airport and airway development, making vitally needed improvements in the merchant marine, and in promoting transportation safety, especially on our Nation's highways.

Clearly, however, there is still much to be done. It is my hope that 1974 will be the year when we make major advances by enacting two critical transportation bills.

One of these proposals, which I will send to the Congress in the near future, would give our communities not only more money but also more freedom to balance their own transportation needs—and it will mark the largest Federal commitment ever to the improvement of public transportation. This bill would increase Federal assistance for metropolitan areas by nearly 50 percent over the level of fiscal year 1974. More than two-thirds of those funds would be allocated by formula to State and local governments and those governments could better determine their own transportation priorities, choosing between construction of highways or public transit systems, or the purchase of buses or rail cars. Additional transit aid would also be made available to rural communities for the first time.

Under this bill resources would also be available for the first time to augment the operating funds for public transportation systems in both urban and rural areas. By permitting Federal resources to be used for operating purposes, this proposal should make it unnecessary to establish a new categorical grant program for transit operating subsidies as is now contemplated in bills before the Congress.

As a second major transportation initiative this year, I shall propose that we modernize the regulatory system governing railroad operations. This legislation would make it easier for railroads to consolidate service on a sustainable basis. It would make changes in the system of rate regulation to allow rail carriers to compete more effectively with one another and with alternative modes of freight transportation. Discriminatory State and local taxation of interstate carriers would be barred. It would also provide $2 billion in Federal loan guarantee authority to finance improvements in rights-of-way, terminal and rail plant facilities, and rolling stock, where necessary, which would be a major step in our effort to improve the Nation's railroad system.

Additional transportation measures I shall soon propose will include:

—Improvements in highway safety through the earmarking of approximately $250 million of the 1975 Federal highway program for the elimination of death traps from the highways—by, for example, improving high-hazard intersections and replacing dangerous bridges. New bonus grants to the States will also be initiated to encourage the adoption of improved safety legislation and to reward States for outstanding safety accomplishments.

—A restructuring of the airport and airway financing system to allocate costs more equitably among the users of our airways and to provide more flexibility in the use of funds.

DISTRICT OF COLUMBIA

Last Christmas Eve, when I signed the new home rule bill into law, the Nation's Capital reached a significant milestone. If the voters of the District accept the proposal in the forthcoming referendum, the city will soon have its first elected mayor and city council in 100 years. In addition to giving the citizens of our Nation's Capital the right to elect their own officials and a greater role in decisions affecting local affairs, the act also transfers to the District functions now carried out in Federal agencies which should rightfuly be under local control.

In order to accomplish this transfer of responsibilities to the local government, much work will have to be done. This Administration will make every effort to assist in the transfer and to ensure that it is both timely and effective.

While our attention to the affairs of the District of Columbia has been captured by the transition to home rule, we must not ignore another important task before us. As the city moves into a new era of self-government, it must also prepare for the Nation's celebration of the Bicentennial.

A Federal Bicentennial Task Force has been working to ensure that the Federal Government meets its financial and program commitments in the Nation's Capital. Under the leadership of the Bicentennial Coordination Center, which I established over two years ago, a number of projects are moving forward. The National Visitors' Center, Constitution

Gardens, the Eisenhower Civic Center, the Fort Circle Parks, the National Air and Space Museum and other projects will contribute enormously to the celebration which takes place here in 1976. In addition, the Pennsylvania Avenue Development Corporation will soon present its plan to restore and improve this central, historically important thoroughfare.

During the coming year, I also urge the Congress to take action on pending legislation to create a District of Columbia Development Bank, which would do much to broaden the economic base of the District.

THE BICENTENNIAL

As we near the celebration of America's Bicentennial, which officially begins in March of 1975, the tempo of preparations has picked up. A sound organizational framework has now been established, with the approval by the Congress last year of a new American Revolution Bicentennial Administration. Each of the 50 States, the District of Columbia and the four territories has also established its own Bicentennial Commission to plan and coordinate local Bicentennial projects. Some 370 counties, cities, towns, villages and tribal units have been recognized as Bicentennial Communities, and some 600 applications for this designation are currently being reviewed.

On the Federal level, I have created the Domestic Council Committee on the Bicentennial. This Cabinet-level Committee has approved the goals for Federal participation in the Bicentennial, established an Interagency Bicentennial Task Force, and approved over 200 Bicentennial projects of the Departments and agencies.

The Department of the Interior will complete the development of historically significant National Park sites; the National Foundation on the Arts and the Humanities will support cultural activities relating to the Bicentennial; and many of our other national institutions, such as the Smithsonian Institution, will present special exhibitions across the Nation.

Other nations are actively responding to the "Invitation to the World" that I issued on July 4, 1972 to participate with us in this celebration which is not ours alone, but one which draws on the heritage of every nation from which people have come to our shores.

In celebrating America's Bicentennial, we shall, of course, commemorate our national achievements. We shall honor our celebrated leaders even as we remember those whose contributions were less well known. We shall take stock of our shortcomings and resolve to overcome them.

What we will celebrate most of all in 1976 will be the vitality of the American people. We have tried to ensure that Federal Bicentennial activities reflect the diversity which is ours alone, and which is appearing in community Bicentennial planning across the country.

CULTURE AND COMMUNICATIONS

When I took office in 1969, I was determined to give support to the goal of substantially strengthening the arts and humanities in the United States. The result has been the rapid growth of the National Endowment for the Arts and the National Endowment for the Humanities—which had existed before but at a very low level of activity.

In the current year, the National Endowment for the Arts will spend $60.8 million on a large scale of programs intended to enrich America's cultural present and future. A broad range of individuals as well as institutions, both public and private, are being assisted. And special support is being given to projects which will add to the celebration of our Bicentennial.

The Congress has in the past given strong bipartisan support to the Arts Endownment. That same support will be needed in the future. Increased Federal funds, eliciting greater financial support from the private sector and State and local governments, will ensure the flourishing of American arts in the years ahead.

The National Endowment for the Humanities has likewise made outstanding contributions to the stimulation of our intellectual and cultural life. One measure of the growing importance of its activities is the fact that the Humanities Endowment has a program today which is ten times as large as it was five years ago.

The Humanities Endowment will also play a major role in promoting the Bicentennial and will emphasize activities which reach large numbers of people, such as film and television productions and traveling exhibitions.

In America, television is by far the best means of communicating with the widest audience. To assure the American audience a greater range of television programming of a type not financially feasible for commercial television, we have dramatically increased our support for public television in the last five years.

Public Broadcasting matured during the past year. Both the television and radio licensees reorganized themselves in a way which encouraged a more rational relationship between them and the Corporation for Public Broadcasting, and increased the ability of each local station to provide programs uniquely tailored to their local communities.

Another aspect of electronic media that has recently become a public policy issue is cable television, a development that could lead to a vast expansion of the Nation's communications capabilities. In June of 1971, I established a Cabinet Committee to develop proposals for a comprehensive national policy on cable communications. I have recently received and am now reviewing the report which is the product of that committee. I have also asked the Director of Telecommunications Policy to prepare legislation to move toward the adoption and implementation of a national cable television policy and I expect to submit such legislation to the Congress in the near future. I encourage the Congress to review carefully the issues prescribed by cable television and I especially encourage a widespread national debate on this subject which could play such a major role in all of our lives during the future.

SCIENCE AND TECHNOLOGY

One of the great strengths of this Nation has been its preeminence in science and technology. In times of national peril we have turned to the men and women in the laboratories in universities, Government, and private industry to apply their knowledge to new challenges.

Once again, in the current energy crisis, we are calling upon them to respond. I have outlined, in my recent energy message to the Congress, the first step in a five-year, $10 billion research and development effort in energy: $1.8 billion for direct energy R&D for the coming fiscal year and an additional $216 million for supporting research—a total increase of 80 percent over this year.

A look at the broad scope of this energy effort tells a great deal about our confidence in the capabilities of the Nation's scientists and engineers. We are calling on them to accelerate the development of nuclear power systems, to determine how we can use our abundant supplies of coal in ways that are environmentally acceptable and to improve technology for harnessing natural energy sources such as the sun and the heat of the earth. At the same time, we are asking them to explore new ways of conserving the energy that we already use for everyday conveniences such as our automobiles.

This Administration recognizes that the need for progress in every major area of American life requires technological input. We are therefore committed to giving all our major programs a broad scientific underpinning. The new budget will call for an increase of over 20 percent in civilion research and development expenditures.

In addition to a major increase for energy, research and development funds will be spread across a large number of programs for enhancing the prosperity, well-being, and health of Americans. Science will continue to be vital to our efforts to fight drug abuse, to prevent infant mortality, to combat venereal disease, and to aid in treating mental illness.

We will call upon the services of our scientists and engineers to design better forms of transportation, and to make safer the transportation we already have. We will examine ways of making our vast agricultural establishment yield more food at lower prices, and try to lessen agriculturally-related pollution. We will attempt to develop methods of mining that will not only yield greater mineral wealth but also give the miner greater safety and the landscape greater protection. We will study ways to protect our wildlife from natural and man-made attack, and we will attempt to learn how to protect ourselves from the violence of nature in the form of floods, landslides, earthquakes, tornadoes and other natural calamities.

This Administration recognizes the vital role which the social sciences must play in America's growth. Money will be made available for studying the social effects of various Government income distribution and redistribution plans, such as social security, welfare benefits, health insurance, and varied and experimental educational forms.

In every great area of national endeavor, the Administration will see that

adequate funds for making scientific progress are spent.

That also means we will continue our important efforts in space. The exploration of space is today making a key contribution to man's understanding of his universe and to our abilities to manage our resources on earth wisely. As our Skylab astronauts have proven, space is now an acceptable working environment for man.

While we explore our planetary system, the stars, and the galaxies, we are also using space technology to monitor the earth's environment. The Earth Resources Technology Satellite is allowing us to search for scarce resources from high above the earth. Already, many of our intercontinental communications are by satellite. This year new commercial satellites will aso be used for domestic telephone, telegraph, and television services. Satellite weather forecasting is now common place as a result of our space efforts.

Space exploration in the future should become more economical as we develop the Space Shuttle, a reusable vehicle for space transportation. A cooperative international aspect of the space program will come with the European developed Spacelab as an integral part of the Shuttle program. In addition, we are now moving full speed ahead with our plans for a joint space venture with the Soviets in 1975.

THE NEW FEDERALISM

Just as rapidly changing and increasing demands placed upon Government have made it necessary to reorganize the Federal structure, they have made it even more inperative to make State and local government stronger and more effective.

During the last four decades, almost every major attempt by the Government to meet a major social need has resulted in a new national program administered in Washington by a new bureaucracy. Forty years ago there were more than 600,000 Federal employees; today there are more than 2.7 million. In the last decade, this probem has grown acute. In 1960 there were some 200 Federal grant-in-aid programs with outlays of $8 billion, but by 1970 there were nearly 1,000 and the total outlays had risen to $22 billion. And in the next fiscal year we expect outlays for grant-in-aid programs to reach $52 billion, even after our substantial efforts to cut their number. This growth in size, power and complexity has made the Federal Government increasingly inaccessible to the individual citizen it seeks to help.

Many of our new national social programs have actually impeded the development of effective local government. By creating a Federal categorical grant system of staggering compexity and diversity we have fostered at the State and local level:

—Overlapping and wasteful programs;
—Distorted budgets and priorities;
—Additional administrative expense;
—Delay and uncertainty; and
—A diminution in the authority and responsibilities of State and local elected officials, as Federal grants have become the special province of competing bureaucracies.

In one of the basic new directions of my Administration, I proposed in 1969 that we create a new and fundamentally different relationship between State and local government, on the one hand, and the Federal Government on the other. This new relationship has come to be known as the New Federalism. As I said in 1969, its purposes are:

—To restore to the States proper rights and roles in the Federal system with a new emphasis on local responsiveness;
—To provide both the encouragement and necessary resources for local and State officials to exercise leadership in solving their own problems;
—To narrow the distance between people and the Government agencies dealing with their problems;
—To restore strength and vigor to State and local governments where elected officials know best the needs and priorities of their own constituents; and
—To shift the balance of political power away from Washington and back to the country and the people.

With the help of both the Congress and the Administration, this new relationship among local, State, and Federal governments has begun to take shape:

—In 1972, the Congress enacted our General Revenue Sharing program, and already more than $11 billion of new money has been put to work in over 38,000 units of State and local government.
—Funding through the Law Enforcement Assistance program has demonstrated the flexibility of the New Federalism in leaving to State and local authorities the decisions on how best to combat crime in their jurisdictions. This program has helped to make America's streets safer for our citizens.
—The Comprehensive Employment and Training Act which I signed into law in 1973 is a landmark example of the New Federalism's broad and more flexible forms of assistance—and it represents a leading example of what can be achieved when the Executive and the Congress team up to enact solid legislation.
—New authorities under the Rural Development Act are being exercised this year in a way which is supportive of State and local development plans and priorities.
—In addition, within the limits of law, we have moved administratively to strengthen the role of State and local governments by simplifying and streamlining Federal grant systems—including procedures for State and local review of project proposals affecting their jurisdictions, opportunities for grant integration and joint funding, and the decentralization of many Federal activities to 10 Federal regional councils.

In the remaining 3 years of this term I shall continue to take every sound administrative action within the authorities available to me to support and strengthen State and local government, but we must have the support of the Congress to maintain the progress which has begun. Proposals for furthering the New Federalism now before this body and for which I urge your support include:

—Federal education reforms to consolidate support for elementary and secondary schools as well as vocational and adult programs, and to promote better planning on the local level through advance funding.
—The Better Communities Act, to replace several ineffective and restrictive urban programs with a flexible approach that would allow local officials to make essential decisions on the way community development funds would be spent.
—The Responsive Governments Act, to provide needed Federal assistance for improving State and local planning, decisionmaking and management capabilities. This would help to strengthen the capacity of State and local governments to assume greater responsibility for the administration of their own programs, whether federally assisted or not.
—The Disaster Preparedness Act, to increase the role of State and local officials in allocating Federal disaster funds and to cut the tangle of Federal red tape.

In addition to these proposals now pending, a number of the new initiatives that I describe elsewhere in this message also reflect the principles of New Federalism. These include:

—A new public transportation initiative that would permit States and localities—both urban and rural—to allocate highway and mass transit funds in accordance with local conditions and priorities.
—An economic adjustment assistance program, that would help States and communities to create employment opportunities where they have been affected by structural changes in their economies which brought about persistent unemployment or depressed incomes.
—In the field of health, a comprehensive health insurance plan which would bring protection against medical expenses within the reach of all our citizens.

MAKING GOVERNMENT WORK BETTER

On taking office five years ago, one of the first needs I sought to address was the organization of the executive branch of Government—for the plain fact is that the only way Government gets anything done is through its organizational structure, and how well it can perform depends in large measure on how well it is organized.

Because the needs of the Nation continue to change, and because the activities of Government must respond to those changes, the patterns of Government organization that might have been fine in the 1930s or even in the 1960s, may be hopelessly out of date in the 1970s. Therefore, early in my first term I established an expert commission to survey the organization of the executive branch and to recommend improvements to meet present-day needs. The reports

of this commission contributed significantly to the reorganizations that I ordered and that I recommended, including the proposal I put forward three years ago for a sweeping reorganization of the executive branch, consolidating seven of the present Cabinet departments into four new units.

Although this basic restructuring has not been enacted by the Congress, other progress of a substantial nature has been made in modernizing the Government. For example, we have established:

—The United States Postal Service, taking the post office out of politics;

—The Office of Management and Budget, providing a strong management arm to assist in coordinating the functions of the executive branch;

—A restructured National Security Council;

—The Domestic Council to cordinate domestic policy formulation;

—The Council on Environmental Quality, the Environmental Protection Agency, and the National Oceanic and Atmospheric Administration, all to provide leadership in meeting our vital environmental needs;

—The Special Action Office for Drug Abuse Prevention and the Drug Enforcement Administration;

—The Council on Economic Policy, to facilitate the formation and execution of overall economic policy;

—The Council on International Economic Policy, to focus on an area increasingly important both to our foreign relations and to our domestic economy;

—ACTION, to provide stronger coordination and incentives for volunteer activities;

—The Cost of Living Council, to help stabilize prices; and,

—The Federal Disaster Assistance Administration, to help individuals and communities struck by natural disasters.

Each of these reorganization steps was designed to meet a specific need more effectively, or to respond to newly urgent needs. Several were accomplished under the reorganization plan authority which has been available to every President in the last 25 years, but which expired last March. This authority—which is utilized only with the concurrence of the Congress—continues to be necessary in order to keep abreast of changing needs, and I urge that it be reinstituted.

Of special concern today is the reorganization of the Government to meet the energy crisis. I have by Executive Order already established the Federal Energy Office to serve as a focal point for energy actions taken by the Government.

But that office lacks a statutory base and does not have sufficient authority to do the full job. That is why I have asked the Congress to establish the Federal Energy Administration and I once again urge it to act on this matter. Recognizing that this country should no longer remain dependent upon foreign energy sources, I have also urged the creation of an Energy Research and Development Administration to devlop the necessary technology to tap new domestic sources of energy and a separate Nuclear Energy Commission to carry on the regulatory activities presently assigned to the Atomic Energy Commission.

While these organizational initiatives are needed now, the best organization to knit together the future energy and natural resource programs of the Federal Government would be a comprehensive Department of Energy and Natural Resources. This concept is consistent with the major Federal departmental reform I submitted to the Congress in 1971. Today, I again urge swift, favorable action by the Congress on this proposal so that we will have the broad organizational base that will ultimately be needed to meet many of our energy needs in the most effective manner and to balance energy and natural resources considerations in the future.

That same consolidation and reorganization of the executive branch that I proposed in 1971 would also have created new departments for community development, human resources and economic affairs. The basic problems of fractionated, sometimes overlapping and often conflicting organizations that prompted these original proposals remain acute today. I therefore urge the Congress to join with me in a serious effort to achieve an effective reorganization in these areas.

In view of the close relationship between food assistance programs and other income security programs, I will also propose new legislation to transfer the food stamp and related programs from the Department of Agriculture to the Department of Health, Education and Welfare.

Another important organizational proposal still awaiting Congressional action is the creation of an independent Legal Service Corporation. My Administration will work closely with the Congress in the weeks ahead to obtain final passage of our proposal which would provide the poor with quality legal representation, would create an organization free from political pressures, and would include safeguards to ensure its responsible operation. Legal services legislation has already passed the House. I am hopeful that reasonable legal services legislation will now be passed by the Senate.

A major new opportunity for better Federal management has been initiated at my direction by the Office of Management and Budget. Frequently termed "management by objective," it involves the identification of specific, high-priority objectives for each year for each of the departments and agencies. During the year, progress in reaching these objectives can be closely measured and reported to agency heads and to me. In the years ahead I expect this technique will help make the Government both more responsive and more accountable.

Nothing is more important to improving the efficiency of our Government than the recruiting of top flight personnel for Federal jobs—including positions in the career civil service. We will be working in the months ahead to ensure that executive compensation, career development and training all attract and hold the best possible personnel in the public service.

The compensation we provide our top officials is integral to these efforts to recruit and retain the best men and women for Government service. Salaries of Federal judges, Members of the Congress, and heads and assistant heads of executive agencies have not been adjusted for 5 years, during which time comparable pay rates in the private sector increased 30 percent and pay for other Federal employees has increased significantly. The report of the Commission on Executive, Legislative and Judicial Salaries notes that this lag in compensation also produces serious salary compression among the top ranks of career employees. I am therefore recommending a three-stage increase in executive, legislative and judicial salaries in the budget, at the rate of 7½ percent annually for each of the next three years. This will make salaries within the top levels of the Federal Government more competitive with industry. And it will help us to make Government work better.

CAMPAIGN REFORM

For several years it has been clear that reforms were needed in the way we elect public officials. The intense public focus placed on the campaign abuses of 1972 has now generated sufficient support for this issue that we now have an opportunity to make a genuine breakthrough.

In a national radio address on May 16 of last year, I announced my proposal for a non-partisan commission on campaign reform. This commission would have reexamined the entire Federal election process to come up with a comprehensive set of legislative recommendations. The Commission would have filed a public report no later than December 1, 1973.

Eight months have now passed since that proposal was submitted to the Congress and the Commission is not even close to being created. If it had been created expeditiously, we would now have its report recommending meaningful reforms for Federal campaigns and as I had originally hoped, those reforms might be in place prior to the 1974 elections.

In light of the delay, I have now decided to submit a comprehensive set of Administration proposals on campaign reform for consideration by the Congress during this session. While I do not believe mine will be the only workable proposals, I do hope they will lead to meaningful debate and reform in this critical area. To that end, I look forward to working with the Congress in a long-overdue effort to clean up the Federal election process.

AMERICA AND THE WORLD

When this Administration took office, it was apparent that the world had changed in fundamental ways, and that America's foreign policy had to change in equally fundamental ways.

We needed to end our military involvement in the Vietnam war in a manner consistent with our responsibilities and commitments as a major world power.

We need to adjust to the changes in the strategic situation between the Soviet Union and the United States which presented a unique opportunity to

build a solid foundation for peace but which also threatened our own security if that foundation could not be built.

We needed to end a quarter century of hostile isolation which had kept one-fourth of the world's population outside the framework of international cooperation. The world could not afford another generation of hostility between the United States and the People's Republic of China.

We needed to adjust our partnerships with Western Europe and Japan, recognizing their increasing political and economic strength and self-reliance, and emphasizing our important common goals.

We needed to alter the world monetary system to reflect the new realities of the international economic system and America's place in it.

During the past five years we have made striking progress in meeting each of these needs.

CONTINUING RESPONSIBILITY IN VIETNAM

The United States is at peace for the first time in more than a decade. But peace must be something more than the absence of the active engagement of American forces in conflict.

We must guard against the tendency to express relief at our military extrication for Southeast Asia by "washing our hands" of the whole affair. Men and women are still dying there. We still have a responsibility there. We must provide those ravaged lands with the economic assistance needed to stabilize the structures of their societies and make future peace more likely. We must provide, as well, the continued military aid grants required to maintain strong, self-reliant defense forces. And we will continue to insist on full compliance with the terms of the agreements reached in Paris, including a full accounting of all of our men missing in Southeast Asia.

BUILDING NEW RELATIONSHIPS

As we work through détente to reduce conflict in areas of the world where both we and the Soviet Union have important interests, we must also continue to work to reduce the potential causes of conflict between us.

We must persevere in our negotiations with the Soviet Union to place further limits on strategic arms competition and in our talks with the Warsaw Pact nations to reduce forces in Europe in a way that will increase security and stability for all.

We will pursue our relations with the Soviet Union in the climate of détente established two years ago in Moscow and reaffirmed by General Secretary Brezhnev's visit to Washington last year. During the fateful weeks of the Middle East war last October, the strength of our detente was severely tested. Since then, American diplomatic leadership and initiative have played a central role in the search for a final settlement in the long-troubled Middle East. This began with the ceasefire of October 22, worked out with the Soviet Union's assistance, and was later strengthened by the Six-Point Agreement in November to consolidate the ceasefire, then by the Geneva Peace Conference—under the co-sponsorship of the United States and the Soviet Union—and most recently by the agreement on the disengagement of Egyptian and Israeli military forces, which is being implemented in cooperation with the United Nations Emergency Force. These steps are but the beginning of broadened efforts to find a lasting settlement of the area's problems.

The process of building a normal relationship with the People's Republic of China continues. Liaison offices have been established in our respective capitals and there continues to be fruitful contact between our governments at very high levels.

STRENGTHENING OUR FREE WORLD PARTNERSHIPS

As our relationships with old adversaries are changing, so are our relationships with old friends. Western Europe and Japan have put behind them the post-war struggle to rebuild their economies, re-order their societies and re-establish their political force. Their success in these endeavors is something we helped to foster and in which we can take pride. But now times have changed and our past role in their success cannot be the sole basis for a continuing relationship. We must instead adjust our relationships to recognize their new economic capacities and their international political objectives. We must accommodate all of these within the framework of the friendship and goodwill of our allies and our whole past history of cooperation in the pursuit of our common goals. This is a cornerstone of the structure of peace we are seeking to build.

With our closest neighbors, here in the Western Hemisphere, we shall continue to seek additional ways of working cooperatively to solve the problems which face the Americas. Secretary of State Kissinger will be meeting in a few weeks with the foreign ministers of Latin America to begin a new and constructive dialogue in the family of American states.

INTERNATIONAL TRADE AND COMMERCE

As we turn from an era of confrontation to one of cooperation, trade and commerce become more important. We have moved from a position of virtual economic hegemony in the world to a new role in a more interdependent world economy. We must create an equitable and efficient system of integrating our own economy with that of the rest of the world.

Much has already been accomplished on this front. The markets of the USSR and China are now accessible, thereby providing jobs for American workers. Our major trading partners in Western Europe and Japan share our interest in further reducing international trade barriers and increasing world trade. The rigid and outmoded international monetary system which over-valued the dollar and impeded our foreign trade has been decisively altered. After two years of trade deficits, America achieved a trade surplus in 1973.

But we must persevere in our international monetary, investment and trade negotiations. The greatest tasks still lie ahead and the stakes are high. Avoiding the economic and political disruptions associated with international monetary turmoil and restrictive trade and investment practices increases in importance as international interdependence grows.

As I noted earlier in this message, prompt passage of the pending Trade Reform Act is essential to achieving the goal of a less restrictive and more equitable international economic system. In addition, we must move forward with the current negotiations to reform the international payments system under the auspices of the International Monetary Fund, reforms which will markedly increase the opportunities for nations to trade and invest profitably.

We must also strengthen our resolve as the world's most prosperous nation to help less fortunate countries. In the world of today, no nation will be fully secure or prosperous until all nations are. As in the past, we will take pride in our efforts to work with developing nations which aspire to greater economic and social well-being. The United States has called for the World Food Conference which will be held in November under the auspices of the United Nations. We will also actively observe 1974 as World Population Year, as proclaimed by the United Nations.

MAINTAINING A STRONG DEFENSE FORCE

But as we work for peace, we must be conscious that the opportunity to build a structure of peace came because our arms have served as a deterrent to war. We must maintain that deterrent.

In the last five years, outlays for the Department of Defense have been reduced by about ⅓—measured in constant dollars—and military personnel have been cut from 3.5 million to 2.2 million.

This year, I will recommend a substantial increase in the 1975 budget for the Department of Defense. These increases are necessary to improve the readiness of our armed forces, to build up levels of essential equipment and supplies and to preserve present force levels in the face of rising costs.

CONCLUSION

Throughout these five years, I have had one overriding aim: to establish a structure of peace in the world that can free future generations from the scourge of war. Others may have different priorities; this has been and will remain my first priority, the chief legacy that I hope to leave from the eight years of my Presidency.

As we strengthen the peace, we must also continue each year a steady strengthening of our society here at home. Our conscience requires it. Our interests require it. We must insist on it.

As we create more jobs, as we build a better health care system, and improve education; as we develop new sources of energy, as we provide more abundantly for the elderly and the poor, as we strengthen the system of private enterprise that produces our prosperity—as we do all this and more, we solidify those essential bonds that hold us together as a nation. Even more importantly, we advance what in the final analysis government in America is all about: more freedom, more security, a better life, for each

one of the 211 million individual persons who are America.

We cannot afford to neglect progress at home while pursuing peace abroad. But neither can ge afford to neglect peace abroad while pursuing progress at home.

With a stable peace, all is possible; without peace, nothing is possible.

Earlier in this message, I comment that "one of the continuing challenges facing us in the legislative process is that of the timing and pacing of our initiatives . . . selecting each year among many worthy projects those that are ripe for action at that time."

What is true in terms of our domestic initiatives is true also in the world. This period we now are in—these few years—presents a juncture of historic forces unique in this century, which provide an opportunity we may never have again to create a structure of peace solid enough to last a lifetime and more—not just peace in our time but peace in our children's time as well. It is on the way we respond to this opportunity, more than anything else, that history will judge whether we in America have met our responsibility.

I have full confidence that we will meet that responsibility.

RICHARD NIXON.

THE WHITE HOUSE, *January 30, 1974.*

ORDER FOR REFERRAL OF A BILL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that S. 2908, a bill to establish a mass transportation trust fund and to amend the Urban Transportation Act of 1964 in order to assure adequate local transportation service, which is now in the Committee on Banking, Housing, and Urban Affairs, be referred to the Committee on Finance, if and when it should be reported by the former.

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

ORDER FOR THE ADJOURNMENT UNTIL 11 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 11 a.m. tomorrow.

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

ORDER FOR ADJOURNMENT FROM TOMORROW UNTIL MONDAY, FEBRUARY 4, 1974

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business tomorrow, it stand in adjournment until 12 noon on Monday next.

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 assistant legislative clerk proceeded to call the roll.

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

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

INDEFINITE POSTPONEMENT OF S. 2686

Mr. CRANSTON. Mr. President, I ask unanimous consent that S. 2686 be indefinitely postponed.

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

RECOGNITION OF THE MAJORITY LEADER AND THE MINORITY LEADER TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on tomorrow, after the two leaders or their designees have been recognized under the standing order, the distinguished majority leader and the distinguished minority leader each be recognized for not to exceed 15 minutes and in the order stated.

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

Mr. ROBERT C. BYRD subsequently said: Mr. President, I ask unanimous consent that my previous request for the recognition of the distinguished majority leader and the distinguished minority leader on tomorrow, each for not to exceed 15 minutes, be vitiated.

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

ORDER FOR TRANSACTION OF ROUTINE MORNING BUSINESS TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that after the two orders previously entered for the recognition of the distinguished leaders on tomorrow, there be a period for the transaction of routine morning business for not to exceed 30 minutes, with statements therein limited to 3 minutes.

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

ORDER FOR CONSIDERATION OF THE GENOCIDE CONVENTION TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that upon the conclusion of the transaction of routine morning business tomorrow, the Senate go into executive session to resume consideration of the Genocide Convention.

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

ORDERS FOR RECOGNITION OF SENATOR GRIFFIN AND SENATOR ROBERT C. BYRD ON MONDAY, AND FOR THE TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on Monday next, after the two leaders or their designees have been recognized under the standing order, the assistant Republican leader and the assistant Democratic leader be recognized, each for not to exceed 15 minutes, in that order; and that following their recognition, there be a period for the transaction of routine morning business of not to exceed 30 minutes, with statements therein limited to 3 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. 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 5-MINUTE LIMITATION ON STATEMENTS DURING TRANSACTION OF ROUTINE MORNING BUSINESS TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that statements made tomorrow during the period for the transaction of routine morning business be limited to 5 minutes each rather than 3 minutes each.

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

ORDER FOR ASSISTANT LEADERS TO BE RECOGNIZED ON MONDAY AFTER THE RECOGNITION OF SENATOR CLARK

Mr. ROBERT C. BYRD. Mr. President, I inadvertently overlooked the fact that an order had been previously entered for the recognition of the distinguished junior Senator from Iowa (Mr. CLARK) on Monday.

Therefore, I ask unanimous consent that the order for the recognition of the distinguished assistant Republican leader and the junior Senator from West Virginia on Monday follow the completion of the order previously entered for the recognition of Mr. CLARK.

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

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, on tomorrow, the Senate will convene at the hour of 11 a.m. After the two leaders or their designees have been recognized under the standing order there will be a period for the transaction of routine morning business for not to exceed 30 minutes, with statements limited therein to 5 minutes each. At the conclusion of routine morning business the Senate will go into executive session to consider the Genocide Convention. I assume there will be no rollcall votes tomorrow; none are anticipated, barring the unexpected, such as, for example, a motion to table could occur at any time, but as I have indicated no such motion is anticipated.

As for next week, it is difficult to say with certainty when and what may occur. However, the following should be considered. A vote could occur on a motion to invoke cloture on the Genocide Convention; a vote could occur on a mo-

tion to table the Genocide Convention. Inasmuch as a two-thirds vote is required to either invoke cloture or adopt cloture it may be that a vote up or down on the convention could occur. Votes on reservations may occur and such votes would require a majority rather than a two-thirds majority.

Indications are also that the conference report on the Energy Emergency Act may come to the floor on any day beginning with Tuesday. If this occurs yea and nay votes can be expected.

In summary, yea-and-nay votes will undoubtedly occur next week.

ADJOURNMENT TO 11 A.M.

Mr. ROBERT C. BYRD. Mr. President, unless the distinguished assistant Republican leader has something further, I move, in accordance with the previous order, that the Senate stand in adjournment till the hour of 11 a.m. tomorrow.

The motion was agreed to; and at 7:25 p.m., the Senate adjourned until tomorrow, Friday, February 1, 1974, at 11 a.m.

NOMINATIONS

Executive nominations received by the Senate January 31, 1974:

SECURITIES AND EXCHANGE COMMISSION

Irving M. Pollack, of Maryland, to be a member of the Securities and Exchange Commission for the remainder of the term expiring June 5, 1975, vice Hugh F. Owens, resigned.

THE JUDICIARY

Richard P. Matsch, of Colorado, to be U.S. district judge for the district of Colorado vice Olin H. Chilson, retired.

Joseph L. McGlynn, Jr., of Pennsylvania, to be U.S. district judge for the eastern district of Pennsylvania vice Thomas A. Masterson, resigned.

Thomas C. Platt, Jr., of New York, to be U.S. district judge for the eastern district of New York vice George Rosling, deceased.

IN THE NAVY

The following-named captains of the Navy for temporary promotion to the grade of rear admiral in the staff corps indicated subject to qualification therefor as provided by law:

MEDICAL CORPS

Henry A. Sparks.
Dudley E. Brown, Jr.

SUPPLY CORPS

James E. McKenna.
James R. Ahern.

CIVIL ENGINEER CORPS

Robert F. Jortberg.

DENTAL CORPS

George A. Besbekos.

The following named captains of the line of the Navy for temporary promotion to the grade of rear admiral, subject to qualification therefor as provided by law:

James W. Montgomery
Lee W. Fisher
Earl B. Fowler, Jr.
Kent J. Carroll
Claude P. Ekas, Jr.
Robert B. McClinton
Murray C. Cook
John C. Dixon, Jr.
James B. Linder
Richard E. Nicholson
Roy D. Snyder, Jr.
Sylvester R. Foley, Jr.
Edward W. Carter III
Bobby R. Inman
Steven A. White
"M" Staser Holcomb
John A. Walsh
Thomas J. Hughes, Jr.
Frederick F. Palmer
William D. Robertson,
Normal K. Green
Albert J. Monger
John H. Alvis
Donald P. Hall
Lucien Capone, Jr.
Arthur K. Knoizen
Paul H. Speer
William P. Lawrence
Gerald E. Thomas
Hugh A. Benton
Robert W. Chewning

IN THE MARINE CORPS

The following-named officers of the Marine Corps for temporary appointment to the grade of captain:

Gary W. Barnes
John L. Borst
Robert J. Boyd, Jr.
Bruce A. Cripe
Ronald J. Cruz
Charles Demello
Donald V. Demikis
Robert W. Dyar, Jr.
David C. Eberhart, Jr.
Robert G. Essink
Kenneth R. Falasco
Arnold Fields
Paul R. Fields
Lloyd D. Fitzpatrick
Eugene Frazier
John D. Frew
Ernest D. Gill
Wilson C. Grier
Robert L. Gruber
James L. Hayes
Askold T. Haywas
Allen T. Head, Jr.
Roger D. Herring
Frank W. Hicks
Richard F. Holihan
Stephen D. Hopkins
Richard A. Houston, Jr.
Thomas P. Hudson, Jr.
Jan C. Huly
Jerry D. Humble
Robin S. Jackson
David C. Johnson
John M. Kelleher
Paul M. Lee, Jr.
Timothy B. Levan
Charles V. Long III
Michael E. Maher
Roger J. Mauer
John B. Middleton, Jr.
Stephen A. Miller
Alex G. Mitkevich
Michael F. Monigan
Thomas B. Moore
Rollin G. Napier
James M. Naylor
John J. Niemyer
Thomas F. Oreilly
Michael C. Osajda
Frederick D. Parker
Ronald B. Pevey
William T. Pettit
Andrew N. Pratt
William T. Ramsey IV
Garrett V. Randel, Jr.
Robert W. Rathbun
James L. Reid
Louis A. Rehberger III
Raymond W. Schellinger
Alan A. Schultz
James R. Schwenk
Michael J. Shaw
James E. Smith
Terry A. Smith
Joe R. Stewart
John D. Stokes
James P. Sureau
Lewis A. Taylor, III
John L. Thompson
John A. Vansteenberg
Roger C. Wahls
Charles N. Wells
Paul A. Whitham
Norris E. Williams
Richard T. Willard
Fredrick H. Wolfrom
John P. Wright
Frank Yohannan
Brian M. Youngs

The following named officers of the Marine Corps for temporary appointment to the grade of chief warrant officer, W–4:

James M. Barnes
Timothy C. Bell
Delmar G. Booze
Norman D. Braden
Shella R. Bray, Jr.
Lionel H. Bridges
Edwin J. Brown
William L. Buck, III
Kenneth F. Burris
Donald R. Cameron
James J. Castonguay
Roger J. Combs
Wiliam J. Clancy, Jr.
Jack N. Clow
Allen D. Crosier
Ralph W. Deaver
Charles F. Denison, Jr.
Roland A. Desjarlais
James H. Divis
Peter Dobson, Jr.
Paul J. Donley
John Doyle
William E. Duke
Roger A. Essi
Thomas E. Evans
Gerald D. Fabricius
James P. Fleming
Harry A. Florence, Jr.
Bernard C. Glinka
Donald W. Gregory
Glenn R. Hammond
Robert H. Hanevik
Charles H. J. Henderson
Jack R. Hoy
Henderson B. Jones
William Kasten
Robert E. Katz
Ronald R. Kendall
James J. Knocke
Donald C. Lanson
William P. Lepore, Jr.
Willard R. Lewis
Carl K. Lunn
Harry B. Malnicof
Edmund J. Mazzei
Roger A. McIntosh
John L. Meyers
Jacques L. Miller
Robert J. Mocny
Richard C. Moran
Charles L. Morrow
Richard A. Nallor
Monte V. Nelson
Donald D. Nimmow
Billy W. Owens
Porter G. Pallett
Charles D. Parker
Leonard J. Patchin
Dean C. Pedlar
George A. Pelletier
Billy E. Perry
Robert G. Pontillas
Richard L. Porter
Joseph C. Raymond
Donald D. Redmond
Carroll J. Riley
Robert D. Rogers
Frederick W. Schroeder
Arthur I. Swanson, Jr.
Gary R. Thompson
Charles G. True
Morton Vaserberg
Alan E. Wickens
Jack A. Wilder
Sydney M. Wire
Robert H. Yoder
David A. Zefferjohn
James H. Zimmerman

The following named officers of the Marine Corps for temporary appointment to the grade of chief warrant officer, W–3:

Charles W. Adams
James L. Anderson
Ferdinand J. Appl, Jr.
Ronald H. Asmus
James E. Bailey
Charles M. Banks
John E. Baughman
James A. Belfiore
Kenneth C. Bickley
Gary W. Bisplinghoff
Roy H. Baxler
Gilbert H. Bolton
Donald R. Book
Clyde P. Boudreaux
Lawrence C. Brinkmar
James J. Brisson
William C. Brown, Jr.
Walter J. Bruderer
Joseph A. Bryant
Gerald S. Bucklin
Dudley L. Burgess
Allen F. Burton
Donald N. Bush
Christopher P. Butler
Everett J. Campbell, Jr.
Gary G. Carley
James T. Chaffee
Marion L. Cotten
Patrick C. G. Coulter
Frederick M. Cunningham
Charles A. Dankmyer Jr.
Raymond L. Dedual
Oscar Delagarza, Jr.
Acie N. Derossett
Armand H. Desjardin
Joe H. Driver
Donnie L. Fauver
Orlando Fernandez
Franklin A. W. Field
Donald H. Finley
Carl J. Fisher
Clyde L. Fisher
Joseph R. Fitzgerald
Richard F. Fleming, Jr.
Jack W. Flynn
Robert W. Forsberg
Rose J. Franco
John A. Frank
Edgar Franklin, Jr.
Eugene T. Franklin
John B. Funk
Carl H. Gassoway
Louis P. Glassburner
James A. Grebas
Johann Haferkamp
David L. Harris
Franklin R. Hester
Ernie W. Howe
Michael P. Hudson
Donald W. James
William J. Janning
James R. Jennings
Ernest E. Johnson
Richard C. Jonely
Charles J. Julian
John S. Keene
John J. Keenan, Jr.
Floyd M. Kennedy
Albert Lane, Jr.
Enrique Lariosa, Jr.
Ronald J. Lauzon
Thomas C. Lish
Redmond J. Loftus, Jr.
Bernard L. Lee
Gary A. Lucus
John G. Lyle, Jr.
William S. Maire
Michael T. Mallick
Thomas H. Marino
Larry A. Martin
Jack L. Matlack
Raymond M. Matthias
Charles A. McCartney
Jerome M. McGuire
Thomas J. McIntyre
Benjamin H. McNutt
Kenneth H. Medeiros
John M. Miller
George A. Miller
James R. Milner
Jimmy Miranda
Kenneth L. Mitchell
Patrick J. Mongoven
William R. Moody
David D. Moore
Jim B. Morgan
John V. Morris
James E. Mulloy, Jr.
Louis N. Panchy
Roger L. Peterson
Eugene L. Polderdyke
Carl W. Polk
Raymond G. Prefontaine
Ivan D. Puett
James S. Rayburn
Merle W. Reese
Robert L. Richendrfer
Wade A. Robinson, Jr.
Alfred R. Rocheleau
Gerald L. Rodden
Mack I. Rogers
Tommie D. Rose
William H. Rosser
Efrain F. Sanchez
Stephen A. Sandwich
Ray H. Scott
Arthur W. Seabury, Jr.
Coburn L. Sergent
John R. Shultz, Jr.
Henry L. Singer
Billy W. Smith
Charles L. Staigle
John A. Steward, Jr.
Donald R. Syring
Richard A. Teeter
Leonard J. Tevebaugh
Raymond D. Tevis
William T. Troutner
John E. Upah, Jr.
Bruce W. Vance
Cullen R. Vinson
William J. Walker
Frederick M. Waller, Jr.
Napoleon K. Weaver
Willis D. White
John Whitley, Jr.
Dennis Wilczewski
Nathaniel C. Wilson
Francis O. Williams
Larry L. Wine
James W. Wofford, Jr.
Rudolph E. Woltner, Jr.
Billy E. Wright

The following named officers of the Marine Corps for temporary appointment to the grade of chief warrant officer, W–2:

Homer L. Allen
Clarence T. Anthony, Jr.
Paul T. Ashe
Jewel F. Bain
James V. Branum
Harold M. Brown, Jr.
Nearlin Carter, Jr.
James D. Churchman
Wayne R. Cote
George F. Deckert III
Donald F. Deline
Thomas W. Dolman
Fritz G. Franz
Michael L. Furgal
Joseph F. Gomes, Jr.
Michael B. Graddy
Robert I. Hall

William Hohnhorst, Jr.	John B. Samples
Charles A. Johnson	Roger A. Sherman
Lorenzo G. Jordan	Lloyd D. Songne
Carl M. Jozaitis	Robert Skyles, Jr.
Ernestine A. Koch	William L. Steigner
Paul J. Labarge	David W. Streagle
Jerry L. Lamerson	John M. Sweeney, Jr.
Jerome F. Lawson	Gary O. Thompson
Jack D. Mathis	Donald R. Troutt
Ellory M. Medor	Marcelo J. Tyler
Gerald B. Moore	Daniel Vallee
Roland N. Pannell, Jr.	Paul R. Weigley, Jr.
Jack C. Parker	Jerrold A. Wohlfarth
Kenneth D. Roebuck	John D. Yarbrough
James E. Russell	

DEPARTMENT OF STATE

Thomas R. Pickering, of New Jersey, a Foreign Service Officer of class 1, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Hashemite Kingdom of Jordan.

DEPARTMENT OF JUSTICE

Laurence H. Silberman, of Maryland, to be Deputy Attorney General vice William D. Ruckelshaus, resigned.

IN THE ARMY

The following-named officers for promotion in the Army of the United States under the provisions of Public Law 92–129:

ARMY PROMOTION LIST

To be colonel

Ackerman, Albert A., xxx-xx-xxxx
Adams, John E., xxx-xx-xxxx
Adams, Robert B., xxx-xx-xxxx
Adamson, George W., xxx-xx-xxxx
Agnew, James B., xxx-xx-xxxx
Ainslie, Robert E., xxx-xx-xxxx
Albritton, Herbert, xxx-xx-xxxx
Allen, Charles B., xxx-xx-xxxx
Alvey, Everett L., xxx-xx-xxxx
Ames, William I., Jr., xxx-xx-xxxx
Anderson, Benjamin, xxx-xx-xxxx
Anderson, James L., xxx-xx-xxxx
Anoffsinger, Gordon, xxx-xx-xxxx
Bachman, Clayton J., xxx-xx-xxxx
Bacon, Robert C., xxx-xx-xxxx
Baggett, Ronald L., xxx-xx-xxxx
Bailey, Kenneth R., xxx-xx-xxxx
Bain, John R., xxx-xx-xxxx
Baker, Frank H., xxx-xx-xxxx
Baldwin, Jessie E., xxx-xx-xxxx
Balzhiser, Robert M., xxx-xx-xxxx
Bambery, James R., xxx-xx-xxxx
Barrett, Otrie B., Sr., xxx-xx-xxxx
Barton, Robert E., xxx-xx-xxxx
Bass, Richard H., xxx-xx-xxxx
Bauer, Daniel H., xxx-xx-xxxx
Bauerband, Edward H., xxx-xx-xxxx
Bayer, William S., xxx-xx-xxxx
Beckwith, Charlie A., xxx-xx-xxxx
Beelman, Dale C., xxx-xx-xxxx
Bell, Dale M., xxx-xx-xxxx
Bell, Frederick D., xxx-xx-xxxx
Bennett, Joseph D., xxx-xx-xxxx
Bennett, Willard M., xxx-xx-xxxx
Berry, William W., xxx-xx-xxxx
Bieri, Leon D., xxx-xx-xxxx
Biggerstaff, Allan, xxx-xx-xxxx
Bilderback, Gerald, xxx-xx-xxxx
Bindrup, Lavere W., xxx-xx-xxxx
Bingham, Ellis D., xxx-xx-xxxx
Blackledge, David W., xxx-xx-xxxx
Blakely, William R., xxx-xx-xxxx
Blalock, Charlie L., xxx-xx-xxxx
Blanche, John G., III, xxx-xx-xxxx
Blasingame, Josiah, xxx-xx-xxxx
Blastos, Constantin, xxx-xx-xxxx
Blum, Robert W., xxx-xx-xxxx
Bole, Albert C., xxx-xx-xxxx
Boling, Douglas L., xxx-xx-xxxx
Boon, Ivan G., xxx-xx-xxxx
Bort, Edward H., xxx-xx-xxxx
Boucher, Leo P., Jr., xxx-xx-xxxx
Bowling, Frederick, xxx-xx-xxxx
Bradbury, Donald K., xxx-xx-xxxx
Bradford, Zeb B., xxx-xx-xxxx
Bramlett, James T., xxx-xx-xxxx
Brandt, Leo M., xxx-xx-xxxx
Brannen, Barney L., xxx-xx-xxxx
Breckenridge, R., xxx-xx-xxxx
Briggs, Charles F., xxx-xx-xxxx
Brookshire, Grail L., xxx-xx-xxxx
Brosious, George D., xxx-xx-xxxx
Brown, Charles W., xxx-xx-xxxx
Brown, John M., xxx-xx-xxxx
Brown, Ollie, xxx-xx-xxxx
Browne, Robert T., Jr., xxx-xx-xxxx
Brownlee, Emory W., xxx-xx-xxxx
Bukoski, James R., xxx-xx-xxxx
Bullock, Charles A., xxx-xx-xxxx
Burnett, Clark A., xxx-xx-xxxx
Burr, Richard A., xxx-xx-xxxx
Butler, Alman I., xxx-xx-xxxx
Butler, Robert E., xxx-xx-xxxx
Byrne, Thomas D., xxx-xx-xxxx
Caldwell, James K., xxx-xx-xxxx
Callahan, Bernard L., xxx-xx-xxxx
Canonico, John N., xxx-xx-xxxx
Cantrell, Jack R., xxx-xx-xxxx
Cantrell, Waniford, xxx-xx-xxxx
Carpenter, Thomas E., xxx-xx-xxxx
Carr, Eldon, D., xxx-xx-xxxx
Carrasco, Valentine, xxx-xx-xxxx
Carter, John B., xxx-xx-xxxx
Caruso, John P., xxx...
Carvell, Richard F., xxx-xx-xxxx
Caudle, Lester C., Jr., xxx-xx-xxxx
Chaney, Otto P., Jr., xxx-xx-xxxx
Ching, Harry L., xxx-xx-xxxx
Ching, John Y., xxx-xx-xxxx
Craver, Roger H., xxx-xx-xxxx
Christman, Daniel P., xxx-xx-xxxx
Churchill, Ralph T., xxx-xx-xxxx
Churchman, Robert E., xxx-xx-xxxx
Clark, Donald O., xxx-xx-xxxx
Coder, John D., xxx-xx-xxxx
Cole, William A., xxx-xx-xxxx
Collier, Alvis W., xxx-xx-xxxx
Collins, Ashby F., xxx-xx-xxxx
Collins, Franklin W., xxx-xx-xxxx
Connell, Charles R., xxx-xx-xxxx
Connell, Thomas E., xxx-xx-xxxx
Conrad, Michael J., xxx-xx-xxxx
Cook, Larry L., xxx-xx-xxxx
Cook, Richard R., xxx-xx-xxxx
Cooley, Andrew L., Jr., xxx-xx-xxxx
Cooper, Robert G., xxx-xx-xxxx
Corliss, Reginald H., xxx-xx-xxxx
Cosby, Lloyd N., xxx-xx-xxxx
Costello, John L., Jr., xxx-xx-xxxx
Cottingham, John B., xxx-xx-xxxx
Coverdale, Craig G., xxx-xx-xxxx
Craig, Robert B., xxx-xx-xxxx
Crain, Leonard B., xxx-xx-xxxx
Cranford, Charles R., xxx-xx-xxxx
Crim, William T., xxx-xx-xxxx
Crosmun, Clifford A., xxx-xx-xxxx
Cross, George M., xxx-xx-xxxx
Crowell, William B., xxx-xx-xxxx
Curl, Richard L., xxx-xx-xxxx
Daggett, Robert W., xxx-xx-xxxx
Daniels, Walter C., xxx-xx-xxxx
Daoulas, Arthur, xxx-xx-xxxx
Darden, Fred A., xxx-xx-xxxx
Daschle, Charles L., xxx-xx-xxxx
Davies, Joseph F., xxx-xx-xxxx
Davis, Harold M., Jr., xxx-xx-xxxx
Davis, Jack C., xxx-xx-xxxx
Davis, Jethro J., xxx-xx-xxxx
Davis, Thomas H., xxx-xx-xxxx
Davis, Willys E., xxx-xx-xxxx
Davisson, Henry L., xxx-xx-xxxx
Defrance Rudolph B., xxx-xx-xxxx
Dejarnette Larry N., xxx-xx-xxxx
Delamain, Frederick, xxx-... xxx-xx-x...
Delsanto, Michael J., xxx-xx-xxxx
Derouen, Milton, Jr., xxx-xx-...
Derrick, George E., xxx-xx-xxxx
Dewald, Arthur B., xxx-xx-xxxx
Dillard, William H., xxx-xx-xxxx
Diller, Richard W., xxx-xx-xxxx
Dobson, Dale E., xxx-xx-xxxx
Doctor, Henry, Jr., xxx-xx-xxxx
Dolfi, Eugene, xxx-xx-xxxx
Drenz, Charles F., xxx-xx-xxxx
Duffy, James P., Jr., xxx-xx-xxxx
Dukkony, Stephen J., xxx-xx-xxxx
Dyson, William E., xxx-xx-xxxx
Eberle, John S., xxx-xx-xxxx
Echols, Herald V., xxx-xx-xxxx
Edgar, Charles E., II, xxx-xx-xxxx
Edmiston, Charles H., xxx-xx-xxxx
Edmonds, Maurice O., xxx-xx-xxxx
Elder, Robert L., xxx-xx-xxxx
Elliott, Richard L., xxx-xx-xxxx
Engle, Phillip D., xxx-xx-xxxx
Evans, Herbert C., xxx-xx-xxxx
Fair, Cecil G., Jr., xxx-xx-xxxx
Farr, Robert A., xxx-xx-xxxx
Farrell, Joseph G., xxx-xx-xxxx
Farris, Jack B., Jr., xxx-xx-xxxx
Farris, John T., xxx-xx-xxxx
Feeley, Robert F., xxx-xx-xxxx
Feist, Robert J., xxx-xx-xxxx
Fernandez, Robert N., xxx-xx-xxxx
Ferullo, Generoso J., xxx-xx-xxxx
Fifer, William A., xxx-xx-xxxx
Fischer, Arthur F., xxx-xx-xxxx
Fischer, Richard F., xxx-xx-xxxx
Fisher, George E., Jr., xxx-xx-xxxx
Fitzsimmons, Eugene, xxx-xx-xxxx
Flanagan, Eugene P., xxx-xx-xxxx
Flint, Robert W., xxx-xx-xxxx
Foley, William R., xxx-xx-xxxx
Foradori, Harry L., xxx-xx-xxxx
Ford, Allan T., xxx-xx-xxxx
Fountain, Charles D., xxx-xx-xxxx
Fowlre, Thomas R., xxx-xx-xxxx
Fox, Lothar, xxx-xx-xxxx
Francois, Frank, xxx-xx-...
Freeman, Clinton A., xxx-xx-xxxx
Friedersdorff L., xxx-xx-xxxx
Galvin, John R., xxx-xx-xxxx
Garcia, John L., xxx-xx-xxxx
Gardner, Morris L., xxx-xx-xxxx
Garvais, Donald F., xxx-xx-xxxx
Gay, Forrest T., III, xxx-xx-xxxx
Gilbert, Wendell H., xxx-xx-xxxx
Giles, George R., xxx-xx-xxxx
Gillespie, John W., xxx-xx-xxxx
Glover, Rupert F., xxx-xx-xxxx
Godwin, William C., xxx-xx-xxxx
Goldstein, Jack, xxx-xx-xxxx
Goode, Franklin C., xxx-xx-xxxx
Goodman, William G., xxx-xx-xxxx
Goodwin, Clifton R., xxx-xx-xxxx
Goodyear, Clyde E., xxx-xx-xxxx
Green, William T., xxx-xx-xxxx
Greene, Dereef A., xxx-xx-xxxx
Gregerson, William, xxx-xx-xxxx
Grier, Reginald C., xxx-xx-xxxx
Guenther, Leo A., xxx-xx-xxxx
Guffey, Howard R., xxx-xx-xxxx
Guidroz, Evans J., xxx-xx-xxxx
Guyton, James S., Jr., xxx-xx-xxxx
Hains, Peter C., xxx-xx-xxxx
Hall, Harry T., xxx-xx-xxxx
Hammill, William C., xxx-xx-xxxx
Hammond, Robert D., xxx-xx-xxxx
Hampton, Wade, xxx-xx-xxxx
Hannum, David B., xxx-xx-xxxx
Harrover, James D., xxx-xx-xxxx
Hart, Franklin A., xxx-xx-xxxx
Hayes, Alva W., xxx-xx-xxxx
Hayes, Jack O., xxx-xx-xxxx
Hayes, Walter P., xxx-xx-xxxx
Heinicke, Martin W., xxx-xx-xxxx
Heiter, James A., xxx-xx-xxxx
Henry, Cecil M., xxx-xx-xxxx
Henry, Frank L., xxx-xx-...
Heyward, James O., xxx-xx-xxxx
Hicks, William W., xxx-xx-xxxx
Hight, Adolph A., xxx-xx-xxxx
Hobbs, Richard W., xxx-xx-xxxx
Holihen, Joseph M., xxx-xx-xxxx
Holley, James P., xxx-xx-xxxx
Hornish, William E., xxx-xx-xxxx
Hubbard, Norman F., xxx-xx-xxxx
Hungerford, Franklin, xxx-xx-xxxx
Hurd, Philip S., xxx-xx-xxxx
Hutchinson, Cary B., xxx-xx-xxxx
Hyatt, Frederic D., xxx-xx-xxxx

Ianni, Francis A., xxx-xx-xxxx
Imhoff, Maximilian, xxx-xx-xxxx
Iverson, Harold E., xxx-xx-xxxx
Jackson, James L., xxx-xx-xxxx
Jackson, Wilfred A., xxx-x...
Jackson, William S., xxx-x...
Jacobsen, Richard L., xxx-...
Janairo, Maximiano, xxx-xx-xxxx
Jennings, Gerald R., xxx-xx-xxxx
Johnson, David L., xxx-xx-xxxx
Johnson, Edward K., xxx-xx-xxxx
Jolemore, Kenneth A., xxx-xx-xx...
Jones, Charles L., xxx-...
Jones, Gordon D., xxx-xx-xxxx
Jones, Isaac R., xxx-xx-xxxx
Jorns, Russell L., xxx-xx-xxxx
Katt, Beaufort C., xxx-xx-xxxx
Keaton, Jack L., xxx-xx-xxxx
Keener, Robert E., xxx-...
Kelman, Manfred, xxx-xx-xxxx
Kenyon, Peter B., xxx-xx-xxxx
Kenyon, Richard D., xxx-xx-xxxx
Kesterson, William, xxx-xx-xxxx
Kicklighter, Claude, xxx-xx-xxxx
Kinne, Milton J., Jr., xxx-xx-xxxx
Kirkwood, Clifford, xxx-xx-xxxx
Klingenfus, Emil J., xxx-x...
Klugh, James R., xxx-xx-xxxx
Kobata, Katsuji, xxx-xx-xxxx
Koehler, William F., xxx-xx-xxxx
Koos, Frank S., xxx-xx-xxxx
Kourakos, George St., xxx-xx-xxxx
Kros, William J., xxx-xx-xxxx
Krueger, William H., xxx-xx-xxxx
Kupau, Richard A., xxx-xx-xxxx
Lacquement, Hubert, xxx-xx-xxxx
Lafever, Morris, xxx-xx-xxxx
Lambert, Richard T., xxx-xx-xxxx
Lamphere, Robert F., xxx-xx-xxxx
Lampkin, George W., xxx-xx-xxxx
Land, Joe E., Jr., xxx-xx-x...
Lander, Robert B., xxx-xx-xxxx
Lanier, Albert B., Jr., xxx-xx-xxxx
Lax, Joseph O., Jr., xxx-xx-xxxx
Layne, Leslie A., xxx-xx-xxxx
Ledford, William V., xxx-xx-xxxx
Ledwidge, Augustine, xxx-xx-xxxx
Lees, Robert E., xxx-xx-xxxx
Leger, Jean C., xxx-xx-xxxx
Leiser, Maurice H., xxx-xx-xxxx
Leszczynski, Joseph, xxx-xx-xxxx
Leuer, Kenneth C., xxx-xx-xxxx
Levine, Edwin R., xxx-xx-xxxx
Levitt, David M., xxx-xx-xxxx
Lewi, Kenneth E., xxx-xx-xxxx
Liles, Donald E., xxx-xx-xxxx
Linka, James E., xxx-xx-xxxx
Loeffke, Bernardo, xxx-xx-xxxx
Logan, Jack R., xxx-xx-xxxx
Long, James L., xxx-xx-xxxx
Lowman, Charles J., xxx-xx-xxxx
Luepnitz, Carl A., xxx-xx-xxxx
Lutsch, John W., xxx-xx-...
Lynn, Charles T., Jr., xxx-xx-xxxx
Lynn, Robert G., xxx-xx-xxxx
Madigan, John J., III, xxx-xx-xxxx
Mahlberg, Donald S., xxx-xx-xxxx
Mallonee, John B., xxx-xx-xxxx
Malone, Dandridge M., xxx-xx-xxxx
Marcrum, Robert H., xxx-xx-xxxx
Marini, James L., xxx-xx-xxxx
Marshall, James L., xxx-xx-xxxx
Marshall, Milford L., xxx-xx-xxxx
Martin, Paul E., xxx-xx-xxxx
Martin, Quinton T., xxx-xx-xxxx
Massengale, Eugene, xxx-xx-xxxx
Masters, Barrie P., xxx-xx-xxxx
Mathias, Robert E., xxx-xx-xxxx
Matthews, Lloyd J., xxx-xx-xxxx
Maus, William C., xxx-xx-xxxx
Mayhew, John W., xxx-xx-xxxx
McClelland, Thomas, xxx-xx-xxxx
McConnell, Lewis J., xxx-xx-xxxx
McCrea, J. Hollis, V., xxx-...
McGinn, Harry L., xxx-xx-xxxx
McGraw, Russell M., xxx-xx-xxxx
McGregor, Thomas, xxx-xx-xxxx
McIntyre, Graham W., xxx-xx-xxxx
McIver, James C., xxx-xx-xxxx
McKay, William L., xxx-xx-xxxx
McKnight, Don A., xxx-xx-xxxx
McLeod, John S., xxx-xx-x...
McLeod, Purdy B., Jr., xxx-xx-xxxx
McMurrer, James E., xxx-xx-x...
McNutt, Donald L., xxx-xx-xxxx
McRill, Billy I., xxx-xx-xxxx
Meador, Marion F., xxx-xx-x...
Meekison, Malcom V., xxx-xx-xxxx
Menzies, Neil A., xxx-xx-xxxx
Merritt, Allen S., xxx-xx-xxxx
Meyer, Richard M., xxx-xx-xxxx
Mihas, Leo B., xxx-xx-xxxx
Mikle, Franklin O., xxx-xx-xxxx
Miller, Harold L., xxx-xx-x...
Miller, Harry W., II, xxx-xx-xxxx
Miller, John T., xxx-xx-xxxx
Miller, Kenneth M., xxx-xx-xxxx
Miller, Thomas A., Jr., xxx-xx-xxxx
Miller, William D., xxx-xx-xxxx
Mills, Robert W., xxx-xx-xxxx
Minix, Thomas E., xxx-xx-xxxx
Mitchell, Aubrey, Jr., xxx-xx-xxxx
Mitchell, Frederick, xxx-xx-xxxx
Mitchell, William L., xxx-xx-xxxx
Moffett, Norman A., xxx-xx-xxxx
Monclova, Irving, xxx-xx-xxxx
Mooneyhan, Jack L., xxx-xx-xxxx
Moore, Gordon E., xxx-xx-xxxx
Moore, Patrick J., xxx-xx-xxxx
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CHAPLAIN CORPS

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Blom, John O., xxx-xx-xxxx
Causey, Calvin G., xxx-xx-xxxx
Christoph, Edward J., xxx-xx-xxxx
Dinkel, Emil L., xxx-xx-xxxx
Ford, Francis C., xxx-x...
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Lamm, Harold C., xxx-xx-xxxx
Lent, Peter S., xxx-xx-xxxx
McCullough, Mark M., xxx-xx-xxxx
Mueller, Edward M., xxx-xx-xxxx
O'Connor, Francis X., xxx-xx-xxxx
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Smith, Benjamin E., xxx-xx-xxxx
Wetzel, William I., xxx-xx-xxxx
Willers, Ralph K., xxx-xx-xxxx
Weathers, Clifford, xxx-xx-xxxx

WOMEN'S ARMY CORPS

To be colonel

Fisher, Audrey A., xxx-xx-xxxx
Hopfenspirger, Nancy, xxx-xx-xxxx
Macmichael, Kitt M., xxx-xx-xxxx
Russell, Marilyn J., xxx-xx-xxxx

MEDICAL SERVICE CORPS

To be colonel

Albertson, John N., xxx-x...
Axtens, Frank W., xxx-xx-xxxx
Beltran, Gilbert, xxx-xx-xxxx
Bentley, William R., xxx-xx-xxxx
Bullard, John W., xxx-xx-xxxx
Burke, James C., xxx-xx-xxxx
Cabell, Ben M., xxx-xx-xxxx
Harder, Richard Cha., xxx-xx-xxxx
Herwig, Lee C., Jr., xxx-xx-xxxx
Johnson, Marion P., xxx-xx-xxxx
Jordan, France F., xxx-xx-xxxx
Killo, William S., xxx-xx-xxxx
Lewis, John P., xxx-xx-x...
Maillet, Edward L., xxx-xx-xxxx
Mateer, Charles A., xxx-xx-xxxx
Randolph, George B., xxx-xx-xxxx
Rocke, Donald C., xxx-xx-xxxx
Rose, Gerald S., xxx-xx-xxxx
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Willis, David B., xxx-xx-xxxx
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To be colonel

Barr, Virginia M., xxx-xx-xxxx

VETERINARY CORPS

To be colonel

Anderson, William, xxx-xx-xxxx
Oakes, Richard G., xxx-xx-xxxx

ARMY NURSE CORPS

To be colonel

Bloxham, Carolyn, An, xxx-xx-xxxx
Brantley, Ruth S., xxx-xx-xxxx
Costello, Barbara R., xxx-xx-xxxx
Delaney, Ramona E., xxx-xx-xxxx
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Quinn, Mary C., xxx-xx-xxxx
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DENTAL CORPS

To be colonel

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Beckelheimer, Robert, xxx-xx-xxxx
Berube, Joseph D., xxx-xx-xxxx
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To be colonel

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Pauling, Fred W., III, [redacted]
Reister, Henry C., [redacted]
Sakakini, Joseph, Jr., [redacted]
Scavarda, Angelo, [redacted]
Schamber, Dean T., [redacted]
Soriano, Franklin M., [redacted]
Stansifer, Philip D., [redacted]
Strader, Lorenzo D., [redacted]
Stuart, Richard B., [redacted]
Szymonski, Zdzislaw, [redacted]
Top, Franklin H., Jr., [redacted]
Ulisnik, Wayne R., [redacted]
Vilabalzac, Gilber, [redacted]
Virtue, Clarence M., [redacted]
Williamson, Harold, [redacted]
Winter, Phillip E., [redacted]

Yhap, Edgar D., [redacted]

The following-named officers for promotion in the Regular Army of the United States under the provisions of title 10, United States Code, sectons 3284 and 3298:

ARMY PROMOTION LIST

To be first lieutenant

Adams, Mitchell K., [redacted]
Clark, Freeman C., [redacted]
Hunt, Kenneth D., [redacted]
Jones, Louis G., [redacted]
McGilvray, David H., [redacted]
Moore, Bidwell D., [redacted]
Muir, David N., [redacted]
Pearson, Charles D., [redacted]
Peckitt, Fred D., [redacted]
Wells, Brian F., [redacted]

CONFIRMATIONS

Executive nominations confirmed by the Senate January 31, 1974:

IN THE PUBLIC HEALTH SERVICE

Public Health Service nominations beginning John C. Ballar III, to be a senior surgeon, and ending Jon P. Yeagley, to be an assistant health services officer, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on January 22, 1974.

EXTENSIONS OF REMARKS

THE DECLINING ROLE OF FATHERS

HON. STROM THURMOND

OF SOUTH CAROLINA

IN THE SENATE OF THE UNITED STATES

Thursday, January 31, 1974

Mr. THURMOND. Mr. President, as important as the women's rights movement may be, there is still a need for increased emphasis to be given to the role of the father in the home as well as throughout our system.

As a consistent advocate of full rights for American women, which I have expressed in many positive ways, it nevertheless concerns me when I view the eroding of the traditional role of the father as the strong masculine center of the family. A decisive masculine personality is also important in our economic as well as our family life.

An interesting article on this subject has been written by the Rev. W. Lee Truman, which appeared in the January 22 issue of the Aiken Standard newspaper in Aiken, S.C. Mr. President, I ask unanimous consent that this article be published in the Extensions of Remarks.

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

FATHER'S ROLE IS DECLINING

(By Rev. W. Lee Truman)

Father's dominion is under attack.

Mothers are becoming liberated and children are rebelling against authority, but Dad's job keeps him away from the home at least eight hours a day, and many more hours if he drives to the inner-city. Like never before, old Dad needs to understand the pressures that are on him if he is helping to raise a modern family.

What kind of a man is it that makes a good father? That is a question that no one asks. It once was that a man married, he worked hard, and he got his promotions. The children came, and he was the breadwinner and undisputed head of the family. If he wanted some help he either talked to the pastor if he was a church goer, or checked with his pals at the poker club or the local pub if he wasn't.

In truth, the man is no longer king of his castle, and in case you haven't caught on, there is a court revolution going on. Father has been dethroned and his new position seems to be the court jester, according to most American humor.

Dr. Egbert writes that the "eroding of the power and glory of the American father" began during the depths of the depression when the father was no longer the major or certain breadwinner. The doctor sees the embattled father now struggling to maintain his self-esteem in the face of an aggressive wife-mother and powerful adolescent peer group.

The main means of entertainment, television, is no help to the father because there is a large segment of TV programming in which the women and children consistently outwit the father. This is sanctioned by the advertisers who seek the dollars that the women are spending.

Certainly Dad is no longer as powerful a figure as he once was. Part of the cause is that he is no longer as available as he once was. Dad has to be out of the home to earn a living, and if he is to achieve a better living for his family, he can be absent 12 or more hours each day.

A second factor beyond the half-absent father, is the wholly absent father. One out of eight children lives in a single-parent family, and in ghetto areas 85 per cent of the homes have no live-in father. This is all changing the effect that the fatherhood role has on children.

In the studies on delinquency and crime, it is found that the presence of father is vital to the mental health of youngsters. It maintains a crucial part of the socialization of children in that they learn to accept restraints on their behavior, and it is the father that is most likely to impose those restraints.

In early years, male and female children tend to develop dependency on mother. Later, the father is better qualified than the mother to pry them loose from this dependency, which allows them to grow up, and prepares them to leave the nest and accept responsibility as adults.

If a son is to accept his normal masculine personality, he must become firmly fixed in his masculine identity in his early years. One has to read little in literature dealing with juvenile delinquency to find the constant factor of broken marriages and absent fathers as predominant.

Dr. Merriweather, of Drew University, has pointed out in his studies that in both black and white male children, parental absence has been found to be associated with strong preference for immediate gratification, lack of social responsibility, inaccurate time perception, a variety of intellectual deficits, differences in interpreting relationships, highly aggressive behavior, a lack of trust in adult males as well as other antisocial behavior problems. The professor's conclusion is that in divorce cases when circumstances are balanced, sons should stay with their fathers.

The role of father is in so much difficulty, that this may be one area for sociological help in reestablishing a role and identity for the American male parent, and a major responsibility of the mass media to recast Dads in some other role than the in-resident clown.

TAIWAN'S ECONOMIC PROGRESS

HON. BENJAMIN A. GILMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, January 31, 1974

Mr. GILMAN. Mr. Speaker, I appreciate this opportunity for calling attention to the economic development and progress of the Republic of China.

During my recent visit to Taiwan I met and spoke with officials and representatives of the Republic of China, learning first hand of the remarkable economic growth of that small, independent nation.

Despite successive setbacks, including its exclusion from the United Nations and the severing of diplomatic relations by many countries, this industrious nation has made substantial progress in solving internal problems, emerging as a serious contender in the world trade market.

It is remarkable to note that the gross national product of Taiwan, with its 15 million population, increased four times between 1952 and 1970, and even more interesting to learn that the distribution of these increases have been shared by the poorest 20 percent of the population.

While we can readily appreciate growth in developing countries as a natural occurrence, the manner in which the people of Taiwan have effectively dealt with this growth is even more impressive. In one decade, Taiwan has moved from an agricultural to a predominantly industrial economy.

As the third largest economic trader on the Pacific Ocean, Taiwan has set an outstanding example for developing countries not only because of its marked economic progress, but even more importantly because of the enterprising attitude of its government in addressing itself to its critical problems of poverty, unemployment, education and health care. The industrious, diligent Taiwanese have produced dramatic results, setting an example we can all admire.

Following its inception in 1949, Taiwan was assisted by the United States in the strengthening of its economy. By 1965, the hard work of the Island's population had changed its role from aid recipient to aid donor, with Taiwan funding highly successful agricultural programs in Africa, Asia and Latin America.

While I laud the initiatives by our