memorial. Like many of his contemporaries he excelled in many disciplines. He was a scientist, a physician by profession, but he was also irresistibly attracted by literature, the social sciences, the art of conversation, and of course, politics. He was truly outstanding in all those areas by the depth of his convictions, and his natural ability to express himself. He was truly a gentleman not only with his friends but also with those who held opposite views from his, whether they were political adversaries or dissenting medical professionals.

Dr. Antonio's career of public service was a brilliant and diverse one. In 1920 at the age of 25 he had already been graduated from medical school and was Puerto Rico's Assistant Commissioner of Health. He continued to champion the cause of public health through the next decade and a half.

Mr. Speaker, in the 1930's Antonio heeded the call of the future and together with Jesús Piñero, Andrés Grillaska, Father Rivera, and others formed the new Popular Democratic Party headed by Luis Muñoz Marin. In 1946, he was appointed Resident Commissioner of Puerto Rico here in Washington and served brilliantly until 1964 when he voluntarily stepped down. He returned to Puerto Rico where he was elected to its Senate until he retired from public life in 1968.

Mr. Speaker, my fondest and most deeply cherished memory of Dr. Antonio was of the many long and arduous months of work required to finally pass the necessary legislation to establish Puerto Rico as a Commonwealth. It was my great privilege and honor under appointment of the late Speaker Rayburn to have chaired the proceedings in this chamber in July 1952, that resulted in the passage of the bill providing commonwealth status for Puerto Rico.

Finally, Mr. Speaker, Dr. Fernós was an aristocrat of both verbal and written expression and the clarity of his reasoning had many an opponent scurrying for cover during debate. He was a respected gentleman and a diplomat in the true sense of these concepts. His achievements made him one of the true authentic leaders during the last half century of Puerto Rico's history.

INDIANA LEGISLATURE OPPOSES COURT'S ABORTION DECISION

HON. EARL F. LANDGREBE

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Thursday, January 31, 1974

Mr. LANDGREBE. Mr. Speaker, it is clear that, a full year after the Supreme Court's decision on abortion, the House Committee on the Judiciary has no intentions of even holding hearings on the proposed constitutional amendments which I and other Members of this House have introduced.

The public outcry against the Court's abortion decision has been overwhelming; and I must question exactly how "representative" this body is when an issue of such overriding importance is totally ignored by the majority for this intolerable length of time.

The people of my own State of Indiana, through their elected representatives, have clearly stated their strong disapproval to the Supreme Court decision in the form of Indiana Senate Joint Resolution No. 8 which was passed by both the house and senate in the first regular session of the 98th General Assembly. With this resolution, the State of Indiana goes on record as favoring a constitutional amendment to reverse the disastrous abortion policy promulgated by the Court last year.

The full text of the Indiana Senate joint resolution is printed below:

A joint resolution directing the United States Congress to call a constitutional convention for the purpose of proposing an amendment to the Constitution of the United States relative to the protection of the right to live

Whereas, the Declaration of Independence of the United States of America affirms that the right to life is an inalienable right given to all people by their Creator; and

Whereas, the Federal Constitution and those of the several states, as well as the laws and courts of both the Federal and State Governments have traditionally affirmed and reaffirmed this basic right up to the present time; and

Whereas, this basic tradition has been broken and was called into question by the unprecedented decision of the United States Supreme Court on January 22, 1973, in Roe v. Wade and Doe v. Bolton which sanctioned the abortion of an unborn child during the first three (3) months of pregnancy upon the decision of the mother and her physician alone, and up to the moment of birth under certain circumstances; and

Whereas, this erosion of the most basic principle, the right to life, on which this country was founded, portends untold conflicts in our society and endangers the very existence of our nation and the Judeo-Christian culture which supports it; and

Whereas, the Legislature of this state believes it to be for the best interest of the people of the United States that an amendment to the Constitution of the United States be adopted to protect the right to live; Therefore,

Be it resolved by the General Assemby of the State of Indiana:

Section 1. That the Congress of the United States be, and hereby is requested to call a constitutional convention for the purpose of proposing the following amendment to the Constitution of the United States:

Sec. 1. That each state shall have the right to determine whether to eliminate or regulate abortion.

Sec. 2. Neither the United States nor any State shall deprive any human being of life on account of age, illness or incapacity.

Sec. 3. Congress and the several States shall have power to enforce this article by appropriate legislation.

Section 2. If the Congress shall have proposed an amendment to the Constitution of the United States identical with that contained within this resolution prior to June 1, 1975, this application for a convention shall no longer be of any force or effect.

Section 3. The Secretary of the Senate is directed to transmit immediately copies of this resolution to the Secretary of the Senate of the United States and the Clerk of the House of Representatives of the United States and to each member of Congress from this state.

SENATE—*Friday, February 1, 1974*

The Senate met at 11 a.m. and was called to order by Hon. QUENTIN N. BURDICK, a Senator from the State of North Dakota.

PRAYER

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

Almighty God, our Creator, Preserver, Redeemer, and Judge, deliver us this moment from the pressure of daily duties, the tension of our times and the confusion of many voices that we may hear again the "still small voice" of Thy spirit—deep, clear, and unmistakable—speaking of that which is eternal, summoning us to profounder thoughts and higher endeavors.

Assure us of Thy presence, above us, beneath us, around us, and within us, granting us some fresh insight, some new grasp of the truth, some clear direction which will help us serve the Nation better and advance Thy kingdom on Earth. Keep the flame of devotion burning brightly on the altar of our hearts as day by day we show our love for Thee by service to our fellow man.

In Thy holy name we pray. 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 second assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., February 1, 1974.

To the Senate:

Being temporarily absent from the Senate on official duties, I appoint Hon. QUENTIN N. BURDICK, a Senator from the State of North Dakota, to perform the duties of the Chair during my absence.

JAMES O. EASTLAND,
President pro tempore.

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

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Thursday, January 31, 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 on the Executive Calendar 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 Coast Guard, 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 ask unanimous consent that the Senate resume the consideration of legislative business.

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

THE CALENDAR

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to consideration of Calendar Nos. 646 and 648.

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

MEDICAL DEVICE AMENDMENTS OF 1973

The Senate proceeded to consider the bill (S. 2368) to protect the public health by amending the Federal Food, Drug, and Cosmetic Act to assure the safety and effectiveness of medical devices, which had been reported from the Committee on Labor and Public Welfare with an amendment, to strike out all after the enacting clause and insert:

SHORT TITLE; REFERENCES TO ACT

SECTION 1. (a) This Act may be cited as the "Medical Device Amendments of 1973".

(b) Unless otherwise specified, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the section or other provision amended or repealed is a section of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321).

TITLE I—PRELIMINARY CLASSIFICATION OF MEDICAL DEVICES

SEC. 101. Chapter V of the Federal Food, Drug, and Cosmetic Act is amended by adding the following:

"PRELIMINARY CLASSIFICATION OF DEVICES

"SEC. 511. (a) Within sixty days after funds are first appropriated for the implementation of this section, the Secretary shall appoint and organize separate classification panels of experts, qualified by scientific training and experience, to review and classify devices intended for human use into appropriate categories based on the safety and effectiveness of such devices. Each panel shall review all devices intended for human use within its respective scientific field for purposes of appropriate classification and shall submit within one year of its appointment a report of its findings and conclusions to the Secretary. To the maximum extent practical the panel or panels shall provide an opportunity for any interested person to submit data and views on the classification of a device (or type or class of device). The Secretary may utilize any such panels which may have been formed for the purpose of such classification prior to enactment of this section and such panels may utilize information and findings developed prior to enactment of this section in making such reports. Such panels shall also serve as scientific review panels under section 514.

"(b)(1) Panel members shall be qualified by training and experience to evaluate the safety and effectiveness of devices in the category or class of devices to be referred to such a panel and to the extent feasible shall possess skill in the use of or experience in the development, manufacture, perfection, or utilization of such devices. In addition to such experts, each panel shall include as nonvoting members a representative of consumer interests and a representative of industry interests. Panel members may be nominated by appropriate scientific, trade, and consumer organizations.

(2) The panels shall be organized according to the various fields of clinical medicine and the fundamental sciences which utilize medical devices, and shall consist of members with diversified expertise in such fields as clinical and administrative medicine, engineering, biological and physical sciences, or other related professions. The Secretary shall designate one of the members of each panel to serve as chairman thereof. Panel members shall, while attending meetings or conferences of the panel or otherwise engaged on its business, be compensated at per diem rates fixed by the Secretary but not in excess of the rate for grade GS-18 of the General Schedule at the time of such service, including traveltime, and while so serving away from their homes or regular places of business they may be allowed travel expenses (including per diem in lieu of subsistence) as authorized by title 5, United States Code, section 5703, for persons in the Government service employed intermittently. The Secretary shall furnish each panel with adequate clerical and other necessary assistance, and shall prescribe by regulation the procedures to be followed by each panel.

"(c) Panels appointed pursuant to subsection (a) shall submit (in the final report of the panel or such interim reports as may be appropriate) recommendations for the classification of devices for purposes of and in accordance with sections 513 and 514 into one of the three following classes and shall, to the extent practicable, assign priorities within such classes:

"(1) Those devices (A) for which insufficient information exists to—

"(i) assure effectiveness, or

"(ii) assure that exposure to such devices will not cause unreasonable risk of illness or injury, and

"(B) for which standards or other means may not be appropriate to reduce or eliminate such risk of illness or injury and which therefore should be subject to premarket scientific review pursuant to section 514. Such review, either initial or continuing, shall be required if the panels determine that such device purports or is represented to be for a use which is life sustaining or life supporting.

"(2) Those devices for which in order to assure effectiveness or to reduce or eliminate unreasonable risk of illness or injury it is appropriate to establish reasonable performance standards pursuant to section 513 relating to safety and effectiveness and for which other means may not be appropriate to reduce or eliminate such risk of illness or injury.

"(3) Those devices which are safe and effective when used in conjunction with instructions for usage and warnings of limitation, which are adequate for the persons by whom the device is represented or intended for use, which present a minimum risk, and which should be exempt from requirements for scientific review or performance standards.

"(d) As soon as possible after filing of the report required for compliance with subsection (a), the Secretary shall publish such report in the Federal Register and provide interested persons an opportunity to comment thereon. After reviewing such comments the Secretary shall by regulation provide for preliminary classification of such devices. The Secretary may establish priorities for implementing the action warranted by such classification under sections 513 and 514 and may defer such action for any device until an appropirate time, consistent with expeditious implementation of these provisions.

"(e) The Secretary, with the advice of the appropriate panel and after making a specific finding and publishing such finding in the Federal Register and providing interested persons an opportunity for comment thereon may by regulation change the preliminary classification of a device or group of devices from one category to another.

"(f) The preliminary classification of a device shall constitute public notice that, as expeditiously as is feasible, the Secretary will issue a final classification in the form of a determination of a need for a performance standard pursuant to section 513 or a determination of the need for scientific review pursuant to section 514. The preliminary classification shall not relieve the Secretary of any obligation to provide notice as required by sections 513 and 514. Any interested person will have an opportunity, pending such final classification, to undertake studies and other work appropriate to develop a performance standard or to demonstrate the safety and effectiveness of a device.

"(g) After the promulgation of regulations under subsection (d) of this section and commensurate with the effective date of section 501(f), a manufacturer of a medical device which has not been classified in accordance with this section shall file an application for the classification of the device and must receive from the Secretary notification of the classification of such device. The Secretary shall act on the application within sixty days unless the Secretary and the manufacturer agree to an additional period of time. The Secretary shall classify the devices in accordance with the criteria and procedures listed in 511, 513, and 514 including the requirement for consultation with the appropriate panel or panels. The appeal provisions of sections 513 and 514 shall apply."

TITLE II—AUTHORITY TO ESTABLISH PERFORMANCE STANDARDS

SEC. 201. Chapter V of the Federal Food, Drug, and Cosmetic Act (21 U.S.C., ch. 9, subch. VI) is amended by adding at the end thereof the following new section:

"PERFORMANCE STANDARDS FOR MEDICAL DEVICES

"Authority To Set Standards

"SEC. 513. (a)(1) Whenever in the judgment of the Secretary such action is appropriate to assure effectiveness or to reduce or

eliminate unreasonable risk of illness or injury associated with exposure to or use of a device (including the need for uniformity and compatibility with systems or environments in which it is intended to be used) and for which other means may not be appropriate to reduce or eliminate such risk of illness or injury he shall by order issued in accordance with subsection (c) of this section promulgate for any device, or type or class of device, for which a performance standard has been determined to be appropriate pursuant to section 511(d), a performance standard relating to safety and effectiveness (including effectiveness over time), and including where necessary: the composition, the construction, the compatibility with power systems and connections, and the properties, and including where appropriate the uniform identification of such device. Such performance standard shall where appropriate include provisions for the testing of the device and the measurement of its characteristics (including individual lot testing by or at the direction of the Secretary where necessary to assure the accuracy and reliability of results when it is determined that no other more practicable means to assure accuracy and reliability are available to the Secretary) and shall where appropriate require the use and prescribe the form and content of instructions or warnings necessary for the proper installation, maintenance, operation, and use of the device.

"(2) A performance standard may require that the device or any component thereof be marked, tagged, or accompanied by clear and adequate warnings or instructions reasonably necessary for the protection of health or safety.

"(3) The Secretary shall provide for a periodic evaluation of the adequacy of all performance standards promulgated under this section in order to reflect changes in the state of the art of the development of devices and in applicable medical, scientific, and other technological data.

"(4) For the purposes of this section, when a device is intended for use by a physician, surgeon, or other person licensed or otherwise specially qualified therefor, its safety and effectiveness shall be determined with regard to such intended use.

"Consultation With Other Federal Agencies and Interested Group; Use of Other Federal Agencies

"(b)(1) Prior to (A) initiating a proceeding under subsection (c) to promulgate a performance standard under this section, (B) initiating the development of a proposed performance standard under subsection (f) of this section, or (C) the taking of any action under subsection (g) of this section, the Secretary shall to the maximum practicable extent consult with, and give appropriate weight to relevant standards published by, other Federal agencies concerned with standard setting and other nationally or internationally recognized standard-setting agencies or organizations. In considering proposals for the development of performance standards, the Secretary shall to the maximum extent practicable invite appropriate participation, through joint or other conferences, workshops, or other means, by informed persons representative of scientific, professional, industry, and consumer organizations which in his judgment can make a significant contribution to such development.

"(2) In carrying out his duties under this section, the Secretary shall utilize to the maximum practicable extent the personnel, facilities, and other technical support available to other Federal agencies.

"Initiation of Proceeding for Performance Standards—Development by Interested Parties

"(c) (1) A proceeding to promulgate a performance standard under this section shall be initiated by the Secretary by publication of notice in the Federal Register. Such notice shall advise of the opportunity for comment on the need to initiate such proceeding and shall include—

"(A) a description or other designation of the device (or type or class of device) to which the proceeding relates;

"(B) the nature of the risk or risk intended to be controlled;

"(C) a summary of the data on which the Secretary has found a need for initiation of the proceeding;

"(D) identification of any existing performance standard (if known to the Secretary) which may be relevant to the proceeding; and

"(E) on invitation to any person, including any Federal agency, which has developed or is willing to develop a proposed performance standard to submit to the Secretary, within sixty days after the date of such notice (i) such a performance standard; or (ii) an offer to develop a proposal performance standard in accordance with procedures prescribed by regulations of the Secretary. Such invitation shall specify a period of time, during which the performance standard is to be developed, which shall be a period ending one hundred and eighty days after the publication of the notice, unless the Secretary for good cause finds (and includes such finding in a notice published in the Federal Register) that a different period is appropriate.

"(2) Prior to his issuance of an order to promulgate a performance standard, the Secretary shall consider—

"(A) the degree of risk of illness or injury associated with those aspects of the devices subject to the order;

"(B) the approximate number of devices, or types or classes thereof, subject to the order;

"(C) the benefit to the public from the devices subject to the order, and the probable effect of the order upon the utility, cost, or availability of the devices to meet that need;

"(D) means of achieving the objective of the order with a minimal disruption or dislocation of competition and of reasonable manufacturing and other commercial practices consistent with the public health and safety; and

"(E) data and comments submitted pursuant to subsection (c) relevant to such order.

"(3) Before taking action pursuant to subsection (d), (e), and (f) concerning the use of an existing performance standard or the designation of a person or governmental body to formulate a proposed performance standard, or simultaneous with such action, the Secretary shall publish a notice in the Federal Register containing his findings pursuant to paragraph (2) on the need to establish a standard. Such findings shall be made only after consideration of the report, comments, and regulation provided for in section 511(d) and the comments received under the notice described in subsection (a)(1), and may be appealed to the courts pursuant to subsection (g)(5) within thirty days after publication in the Federal Register.

"Use of Existing Performance Standards

"(d) If the Secretary (1) finds that there exists a standard which has been published by any Federal agency or other qualified agency, organization, or institution, (2) has made reference to such standard (unless it is a standard submitted under subsection (c)(1)(E)) in his notice pursuant to subsection (c)(1)(D), and (3) determines that such performance standard may be substantially acceptable to him as a device standard, then he may, in lieu of accepting an offer under this section, publish such performance standard as a proposed device performance standard in accordance with subsection (g).

"Acceptance of Offers To Develop Performance Standards

"(e)(1) Except as otherwise provided by subsection (d), the Secretary may accept one or more offers to develop a proposed performance standard pursuant to the invitation prescribed by subsection (c)(1)(E) if he determines that (A) the offeror is technically competent to undertake and complete the development of an appropriate performance standard within the period specified in the invitation under subsection (c)(1)(E) and (B) the offeror has the capacity to comply with procedures prescribed by regulations of the Secretary under paragraph (4) of this subsection. Where more than one offer is received and the Secretary determines that the requirements of subparagraphs (A) and (B) have been met, the Secretary shall, wherever practicable, give priority to offerors who have no proprietary interest in the device for which the standard is to be developed. The Secretary shall require, by regulation, that in making an offer, each offeror and appropriate individual directors, officers, consultants, and employees of each offeror company, disclose the following information:

"(i) all current industrial or commercial affiliations;

"(ii) sources of research support other than the offeror;

"(iii) companies in which offerors have financial interests;

"(iv) such additional information as the Secretary deems pertinent to reveal potential conflicts of interest with regard to the offer.

The information received by the Secretary from an offeror whose offer has been accepted shall be made public by the Secretary at the time that an offer is accepted.

"(2) The Secretary shall publish in the Federal Register the name and address of each person whose offer is accepted, and summary of the terms of such offer as accepted.

"(3) When an offer is accepted under this subsection the Secretary may agree to contribute to the offeror's cost in developing a proposed performance standard, if the Secretary determines that such contribution is likely to result in a more satisfactory performance standard than would be developed without such contribution and that the offeror is financially responsible. Regulations of the Secertary shall set forth the items of cost in which he may participate, except that such items may not include construction (except minor remodeling) or the acquisition of land or buildings.

"(4) The Secretary shall prescribe regulations governing the development of proposed performance standards under this subsection and subsection (f). Such regulations shall include requirements—

"(A) that performance standards recommended for promulgation be supported by test data or such other documents or materials as the Secretary may reasonably require to be developed, and be suitable for promulgation under subsection (g);

"(B) that performance standards recommended for promulgation contain such test methods as may be appropriate for measurement of compliance with such performance standards;

"(C) for notice and opportunity by interested persons, including representatives of consumers or consumer organizations, to participate in the development of such performance standards;

"(D) for the maintenance of such records as the Secretary prescribes in such regulations to disclose the course of the development of performance standards recommended for promulgation, the comments and other

information submitted by any person in connection with such development, including comments and information with respect to the need for such recommended performance standards, and such other matters as may be relevant to the evaluation of such recommended performance standards; and

"(E) that the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, have access for the purpose of audit and examination to any books, documents, papers, and records, relevant to the expenditure of any contribution of the Secretary, under paragraph (3).

"Development of Performance Standards by the Secretary

"(f) If the Secretary has published a notice as provided by subsection (c), and—

"(1) no person accepts the invitation prescribed by subsection (c)(1)(E);

"(2) the Secretary has accepted neither an existing performance standard pursuant to subsection (d) nor an offer to develop a proposed performance standard pursuant to subsection (e); or

"(3) the Secretary has accepted an offer pursuant to subsection (e) but determines that the offeror is unwilling or unable to continue the development of the performance standard which was the subject of the offer or the performance standard which has been developed is not satisfactory;

then the Secretary shall proceed to develop a proposed performance standard pursuant to procedures prescribed by subsection (g).

"Procedure for Promulgation, Amendment, or Revocation of Performance Standards

"(g)(1)(A) Within one year after expiration of the period provided for persons to submit a proposed performance standard or offer to develop a proposed performance standard (which time may be extended by the Secretary by a notice published in the Federal Register stating the good cause therefor) and after review of any proposal submitted under subsection (e), the Secretary shall publish in the Federal Register either a proposal to promulgate a performance standard applicable to the device (or type or class of device) subject to the proceeding, or a notice that the proceeding is terminated. The proposal to promulgate a performance standard shall set forth the performance standard, the manner in which interested persons may examine data and other information on which the performance standard is based, and the period within which interested persons may present their comments on the standard (including the need therefor) orally or in writing. Such period for comment shall be at least sixty days, but not to exceed ninety days which time may be extended by the Secretary by a notice published in the Federal Register stating the cause therefor.

"(B) Within ninety days after the expiration of the period for comments pursuant to paragraph (A), the Secretary shall, by order published in the Federal Register, act upon the proposed performance standard or terminate the proceeding. The order shall set forth the performance standard, if any, the reasons for the Secretary's action, and the date or dates upon which the performance standard, or portions thereof, will become effective. Such date or dates shall be established so as to minimize, consistent with the public health and safety, economic loss to, and disruption or dislocation of, domestic and international trade. If any performance standard set forth in the order is substantially different from that set forth in the proposal an additional period of thirty days shall be permitted for comment on such performance standard:

"(C) The Secretary may include in the order promulgating a performance standard such findings in addition to those made pursuant to subsection (c)(3) as he may determine to be necessary to support the judgment required by subsection (a)(1).

"(2) The Secretary may revoke any performance standard, in whole or in part, upon the ground that there no longer exists a need therefor or that such performance standard (or part thereof) is no longer in the public interest. Such revocation shall be published as a proposal in the Federal Register and shall set forth such performance standard or portion thereof to be revoked, a summary of the reasons for his determination that there may no longer be a need therefor or that such standard (or any part thereof) may no longer be in the public interest, the manner in which interested persons may examine data and other information relevant to the Secretary's determination, and the period within which any interested person may present his views, orally or in writing, with respect to such revocation. As soon as practicable thereafter, the Secretary shall by order act upon such proposal and shall publish such order in the Federal Register. The order shall include the reasons for the Secretary's action and the date or dates upon which such revocation shall become effective.

"(3) The Secretary may propose an amendment of a performance standard on his own initiative or on the petition of any interested person by publishnig such proposal in the Federal Register. Such proposal shall be subject to paragraphs (4) and (5) of this subsection and subsection (h).

"(4) To the extent not inconsistent with this section, the provisions of section 553 of title 5 of the United States Code, shall govern proceedings under this section to promulgate, amend, or revoke a performance standard.

"(5)(A) In a case of actual controversy as to the validity of any order promulgating, amending, or revoking a performance standard or findings that a standard is needed or a regulation banning a device, any person who will be adversely affected by such order if placed in effect may at any time prior to the thirtieth day after such order is issued file a petition with the United States Court of Appeals for the District of Columbia or for the circuit wherein such person resides or has his principal place of business, for a judicial review of such order. A copy of the petition shall be transmitted by the clerk of the court to the Secretary or other officer designated by him for that purpose. The Secretary thereupon shall file in the court the record of the proceedings on which the Secretary based his order, as provided in section 2112 of title 28, United States Code.

"(B) If the petitioner applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Secretary the court may order such additional evidence (and evidence in rebuttal thereof) to be presented to the Secretary. The Secretary may modify his findings as to the facts, or make new findings, by reason of the additional evidence, so taken, and he shall file such modified or new findings, and his recommendation, if any, for the modification or setting aside of his original order, with the return of such additional evidence.

"(C) Upon the filing of the petition referred to in subparagraph (A) of this paragraph, the court shall have jurisdiction to affirm the order, or to set it aside in whole or in part, temporarily or permanently. If the order of the Secretary refuses to issue, amend, or repeal a regulation and such order is not in accordance with law the court shall by its judgment order the Secretary to take action with respect to such regulation, in accordance with law. The findings of the Secretary as to the facts, if supported by substantial evidence, shall be conclusive.

"(D) The judgement of the court affirming or setting aside, in whole or in part, any such order of the Secretary shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended.

"(E) Any action instituted under this subsection shall survive notwithstanding any change in the person occupying the office of Secretary or any vacancy in such office.

"(F) A certified copy of the transcript of the record of the proceedings before the Secretary shall be furnished by the Secretary to any interested party at his request, and payment of the costs thereof, and shall be admissible in any criminal libel for condemnation, exclusive of imports, or other proceeding arising under or in respect of this Act, notwithstanding proceedings with respect to the order have been previously instituted or become final under this subsection.

"(6) The Secretary may by regulations prohibit a manufacturer of a device from stockpiling any device to which a performance standard applies, so as to prevent such manufacturer from circumventing the purpose of such performance standard. For purposes of this paragraph, the term 'stockpiling' means manufacturing or importing a device between the date of promulgation of such performance standard and its effective date at a rate which is significantly greater (as determined under the regulations under this paragraph) than the rate at which such device was produced or imported during a base period (prescribed in the regulations under this paragraph) ending before the date of promulgation of the performance standard.

"Referral to Independent Advisory Committee

"(h)(1) The Secretary may refer a proposal under subsection (g) to an advisory committee of experts for a report and recommendation with respect to any matter involved in such proposal which requires the exercise of scientific judgment. Such referral shall be prior to or after publication under such subsection, and shall be so referred upon a request, within the time for comment specified in the proposal, of any interested person (unless the Secretary finds the request to be without good cause). For the purpose of any such referral, the Secretary shall appoint an advisory committee (which may be a standing advisory scientific review panel established under section 514(b)) and shall refer to it, together with all the data before him, the matter so involved for study, and for a report and recommendation. The advisory committee shall, after independent study of the data furnished to it by the Secretary and other data before it, certify to the Secretary a report and recommendations, together with all underlying data and a statement of the reasons or bias for the recommendations. A copy of such report shall be promptly supplied by the Secretary to any person who has filed a petition, or who has requested such referral to the advisory committee. After giving consideration to all data then before him, including such report, recommendations, underlying data, and statement, and to any prior order issued by him in connection with such matter, the Secretary shall by order conform or modify any prior order, or, if no such prior order has been issued, shall by order act upon the proposal. Any interested person shall have the right to consult with such advisory committee, and such advisory com-

mittee is authorized to consult with any person, in connection with the matter referred to it.

"(2) The Secretary shall appoint as members of any such advisory committee persons qualified in the subject matter to be referred to the committee and of appropriately diversified professional background. Members of an advisory committee who are not in the regular full-time employ of the United States, while attending conferences or meetings of their committee or otherwise serving at the request of the Secretary, shall be entitled to receive compensation at rates to be fixed by the Secretary but not at rates exceeding the daily equivalent for grade GS–18 of the General Schedule for each day so engaged, including traveltime; and while so serving away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 of the United States Code for persons in the Government service employed intermittently. The Secretary shall furnish the committee with clerical and other assistance, and shall by regulation prescribe the procedures to be followed by the committee.

"Testing or Manufacture of Devices To Assure Compliance With Standards

"(i)(1) Every manufacturer of a device subject to a standard under this section shall assure the Secretary, at such times and in such form and manner as the Secretary shall by regulation prescribe, that testing methods prescribed by the performance standard show the device to comply therewith, or that the device has been manufactured under a program of quality control which is in accord with current good manufacturing practice (as may be determined by regulations of the Secretary) designed to assure such compliance.

"(2) To assure that devices conform to performance standards under this section, the Secretary shall review and evaluate on a continuing basis testing and other quality control programs carried out by manufacturers of devices subject to such performance standards.

"Exemption

"(j) This section shall not apply to any device (1) intended solely (A) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in animals other than man or (B) to affect the structure or any function of the body of such animals; or (2) subject to section 514 except for those characteristics of the device made subject to provisions of existing performance standards by an application approved pursuant to that section; or (3) any device of a particular manufacturer which the Secretary finds pursuant to regulations issued after an opportunity for a hearing may notwithstanding any standard promulgated under this section be marketed pursuant to an approval under section 514.

"Temporary Permits

"(k) The Secretary shall issue regulations permitting the interstate shipment of devices varying from an applicable performance standard for the purpose of investigation or other testing prior to amendment of the standard. Such regulations may include reasonable conditions related to the safety and effectiveness of the devices.

"Custom Devices

"(l) This section shall not apply to any custom device to the extent that it is ordered by a physician (or other specially qualified persons, authorized by regulations promulgated by the Secretary, after an opportunity for a hearing) to be made in a special way for individual patients. Any such device shall comply with all aspects of any applicable performance standard except those specifically ordered by a physician or such other authorized person to be changed. This subsection shall apply only to devices ordered for individual patients, and shall not otherwise exempt a device from subsection (k). Custom devices shall not be used as a course of conduct and shall not be generally available in finished form for purchase or for dispensing upon prescription, and whether in finished form or otherwise, shall not be made available through commercial channels by the maker or processor thereof.

"Banned Device

"(m)(1) Whenever the Secretary finds after consultation with the appropriate panel or panels established under section 514(b) and after affording all interested persons an opportunity for an informal hearing, that—

"(A) a device presents an unreasonable risk of illness or injury or deception; and

"(B) no feasible performance standard or approved application under section 514 would adequately protect the public from the unreasonable risk of illness or injury or deception associated with such device,

he may propose and, in accordance with subsection (g), promulgate a regulation declaring such product a banned device.

"(2) The Secretary may declare a proposed regulation banning a device to be effective on an interim basis after publication in the Federal Register, pending completion of the procedures established in subsection (g)(3), if he determines, after affording all interested persons an opportunity for an informal hearing, that such banning will expeditiously reduce or eliminate a hazard to the public health or safety, fraud, or gross deception associated with such device.

"Expedited Amendment

"(n) The Secretary may declare a proposed amendment of a performance standard to be effective on an interim basis after publication in the Federal Register, pending completion of the procedures established in subsection (g)(3), if he determines, after affording all interested persons an opportunity for an informal hearing, that such amendment will permit rapid implementation of desirable changes or will expeditiously reduce or eliminate a hazard to the public health or safety without prohibiting devices permitted by the existing performance standard and that to do so is in the public interest."

CONFORMING AMENDMENTS

SEC. 202. (a) Section 501 of such Act (21 U.S.C. 351) is amended by adding at the end thereof the following new paragraph:

"(e)(1) If it is, or purports to be or is represented as, a device with respect to which, or with respect to any component, part, or accessory of which there has been promulgated a performance standard under section 513, unless such device, or such component, part, or accessory, is in all respects in conformity with such performance standard; or

"(2) if it is a banned device."

(b) Section 502 of such Act (21 U.S.C. 352) is amended by adding at the end thereof the following new paragraph:

"(q) If it is a device subject to a performance standard promulgated under section 513, unless (1) its labeling bears such instructions and warnings as may be prescribed in such performance standard; and (2) it complies with the requirements of section 513(1)(1)."

TITLE III—SCIENTIFIC REVIEW OF CERTAIN MEDICAL DEVICES

SEC. 301. (a) Section 501 of such Act, as amended by section 202(a) of this Act, is further amended by adding at the end thereof the following new paragraph:

"(f) If (1) is a device, and (2) such device, or any component, part, or accessory thereof, is deemed unsafe or ineffective within the meaning of section 514 with respect to its use or intended use."

(b) Chapter V of such Act, as amended by this Act, is further amended by adding at the end thereof the following new section:

"SCIENTIFIC REVIEW OF CERTAIN MEDICAL DEVICES

"When Scientific Review Is Required

"SEC. 514. (a)(1) The Secretary may declare that a device (or type or class of device) for which scientific review has been determined to be appropriate pursuant to section 511(d) shall be subject to scientific review under this section with respect to any particular use or intended use thereof if, after consultation with the appropriate panel or panels specified in subsection (b), he finds that (A) such review is appropriate to assure effectiveness or is appropriate to reduce or eliminate unreasonable risk of illness or injury associated with exposure to or use of a device and (B) other means available to the Secretary may not be appropriate to reduce or eliminate such risk of illness or injury. (2) The Secretary may declare that a device (or type or class of device) shall be subject to scientific review under this section with respect to any particular use or intended use thereof if he (A) determines that scientific review for any device is appropriate to protect the public health and safety and (B) finds that other means available to the Secretary may not be appropriate to reduce or eliminate such risk of illness or injury. To the maximum extent practicable the panel or panels shall provide an opportunity for any interested person to submit data and views on the appropriateness of applying scientific review to a device (or type of class or device) or any particular use of a device. The declaration shall be by regulation (which may be rescinded by the Secretary) which shall set forth and be based upon the report, comments, and regulations provided for in section 511(d), the findings prescribed in this subsection, and findings as described in section 513(c)(2). The promulgation of such regulation may be appealed to the courts pursuant to the provisions of section 513(g)(5) within thirty days after publication in the Federal Register. A device (or type or class of device) declared to be subject to scientific review shall be deemed unsafe or ineffective for the purpose of the application of section 501(f) unless either—

"(i) there is in effect an approval of an application with respect to such device under this section,

"(ii) such device is exempted by or pursuant to subsections (k), (l), or (m) of this section, or

"(iii) such device is intended solely (I) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in animals other than man, or (II) to affect the structure or any function of the body of such animals.

"Standing Advisory Scientific Review Panels

"(b) For the purpose of reviewing applications filed under subsection (c), and of reviewing plans and protocols submitted under subsection (k)(4), and of reviewing product development protocol under subsection (m)(2), the Secretary shall utilize the standing advisory panels established under section 511. The selection, payment, and administration of these panels shall be governed by section 511.

"Application for Scientific Review

"(c)(1) Scientific review of a device (or type or class of device) which has been declared subject to such review in accordance with subsection (a) may be obtained by submitting to the Secretary an application for his determination of the safety and effective-

ness of the device. The application shall contain (A) full reports of all information, published or known to or which should reasonably be known to the applicant, concerning investigations which have been made to show whether or not such device is safe and effective for use; (B) a full statement of the composition, properties, and construction, and of the principle or principles of operation, of such device; (C) a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and, when relevant, packing and installation of such device; (D) an identifying reference to any performance standard, applicable to such device, or component of such device, which is in effect pursuant to section 513, and either adequate information to show that such device fully meets such performance standard or adequate information to justify any deviation from such standard; (E) such samples of such device and of the articles used as components thereof as the Secretary may require; (F) specimens of the labeling proposed to be used for such device; and (G) such other information, relevant to the subject matter of the application, as the Secretary, upon advice of the appropriate panel or panels established pursuant to subsection (b), may require.

"(2) Upon receipt of an application meeting the requirements set forth in paragraph (1), the Secretary shall refer such application to the appropriate panel or panels (established pursuant to subsection (b)) for study and for submission (within such period, if any, as he may establish) of a report and recommendations, together with all underlying data and the reasons or basis for the recommendations. The provisions of section 706(d)(2) shall apply with respect to the material so submitted.

"Consideration of an Initial Action on Application

"(d) As promptly as possible, but in no event later than one hundred and twenty days after the receipt of an application under subsection (c), unless an additional period is agreed upon by the Secretary and the applicant, the Secretary, after considering the report and recommendations referred to in paragraph (2) of such subsection, shall—

"(1) approve the application if he finds that none of the grounds for denying approval specified in subsection (e) applies.

"(2) advise the applicant that the application is not in approvable form; and inform the applicant, insofar as the Secretary determines to be practicable, of the measures required to place such application in approvable form (which measures may include further research by the applicant in accordance with one or more protocols, prescribed by the Secretary); or

"(3) deny approval of the application if he finds (and sets forth the basis of such findings as part of or accompanying such denial) that one or more grounds for denial specified in subsection (e) applies.

"Bases for Approval or Disapproval; Opportunity for Review

"(e)(1) If, upon the basis of the information submitted to the Secretary as part of the application and any other information before him with respect to such device the Secretary finds, after opportunity to the applicant for the review prescribed by paragraph (4), that—

"(A) such device is not shown to be safe for use under the conditions prescribed, recommended, or suggested in the proposed labeling thereof;

"(B) the methods used in, and the facilities and controls used for, the manufacture, processing, and packing and installation of such device do not conform to the requirements of section 501(g);

"(C) there is a lack of adequate scientific evidence that the device will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the proposed labeling thereof;

"(D) based on a fair evaluation of all material facts, such labeling is false or misleading in any particular; or

"(E) such device is not shown to conform in all applicable respects to a currently effective performance standard promulgated under section 513;

he shall issue an order denying approval of the application and stating the findings upon which the order is based. In determining if a device is shown to be safe for purposes of this paragraph, the Secretary shall weigh any benefit to the public health probably resulting from the use of the device against any hazard to the public health probably resulting from such use.

"(2) As used in this subsection and subsection (f), the term 'adequate scientific evidence' means evidence consisting of sufficient well-controlled investigations, including clinical investigations where appropriate, by experts qualified by scientific training and experience to evaluate the effectiveness of the device involved, on the basis of which it could fairly and responsibly be concluded by such experts that the device will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling or proposed labeling thereof, unless the Secretary determines that other valid scientific evidence is sufficient to establish the effectiveness of the device.

"(3) For the purposes of this section, when a device is intended for use by a physician, surgeon, or other person licensed or otherwise specially qualified therefor, its safety and effectiveness shall be determined in the light of such intended use.

"(4)(A) An applicant whose application has been denied approval may, by petition filed on or before the thirtieth day after the date upon which he receives notice of such denial, obtain review thereof in accordance with subsection (i). The Secretary shall consider and give appropriate weight to the report and recommendations received from the advisory committee conducting such review under such subsection.

"(B) In lieu of the review provided by subparagraph (A), such applicant may petition to obtain a hearing in accordance with section 554 of title 5 of the United States Code.

"Withdrawal of Approval

"(f)(1) The Secretary may, upon obtaining where appropriate, advice on scientific matters from a panel or panels established pursuant to subsection (b), and after due notice and opportunity for hearing to the applicant, issue an order withdrawing approval of an application with respect to a device under this section if the Secretary finds—

"(A)(i) that clinical or other experience, tests, or other scientific data show that such device is unsafe for use under the conditions of use for which the application was approved; or (ii) on the basis of evidence of clinical experience, not included in or accompanying such application and not available to the Secretary until after the application was approved, or of tests by new methods or by methods not reasonably applicable when the application was approved, evaluated together with the evidence available to the Secretary when the application was approved, that such device is not shown to be safe for use under the conditions of use on the basis of which the application was approved;

"(B) on the basis of new information before him with respect to such device, evaluated together with the evidence available to him when the application was approved, that there is a lack of adequate scientific evidence that the device will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling thereof;

"(C) that the application filed pursuant to subsection (c) contains or was accompanied by an untrue statement of a material fact;

"(D) that the applicant has failed to establish a system for maintaining records, or has repeatedly or deliberately failed to maintain records or to make reports, required by an applicable regulation or order under subsection (a) of section 516, or that the applicant has refused to permit access to, or copying or verification of such records as required by paragraph (2) of such subsection;

"(E) on the basis of new information before him, evaluated together with the evidence before him when the application was approved, that the methods used in, or the facilities and controls used for, the manufacture, processing, packing, or installation of such device do not conform to the requirements of section 501(g) and were not brought into conformity with such requirements within a reasonable time after receipt of written notice from the Secretary; or

"(F) on the basis of new information before him, evaluated together with the evidence before him when the application was approved, that the labeling of such device, based on a fair evaluation of all material facts, is false or misleading in any particular and was not corrected within a reasonable time after receipt of written notice from the Secretary; or

"(G) on the basis of new information before him, evaluated together with the evidence before him when the application was approved, that such device is not shown to conform in all respects to an applicable performance standard promulgated pursuant to section 513.

"(2) If the Secretary (or in his absence the officer acting as Secretary) finds that an imminent health or safety hazard is involved, he may by order suspend the approval of such application immediately and give the applicant prompt notice of his action and afford the applicant an opportunity for an expedited hearing under this subsection. Such authority to suspend the approval of an application may not be delegated.

"(3) Any order under this subsection shall state the findings upon which it is based.

"Authority To Revoke Adverse Orders

"(g) Whenever the Secretary finds that the facts so require, he shall revoke an order under subsection (e) or (f) denying, withdrawing, or suspending approval of an application and shall approve such application or reinstate such approval, as may be appropriate.

"Service of Secretary's Orders

"(h) Orders of the Secretary under this section shall be served (1) in person by any officer or employee of the Department designated by the Secretary or (2) by mailing the order by registered mail or certified mail addressed to the applicant at his last known address in the records of the Secretary.

"Referral to Independent Advisory Committee

"(i)(1) A person who has filed an application under subsection (c) may petition the Secretary, in accordance with subparagraph (A) of subsection (e)(4), to refer such application, or the Secretary's action thereon, to an advisory committee of experts for a report and recommendations with respect to any question therein involved which requires the exercise of scientific judgment. Upon such petition, or if the Secretary on his own

initiative deems such a referral necessary, the Secretary shall appoint an advisory committee and shall refer to it, together with all the data before him, the question so involved for study thereof and a report and recommendations thereon. The committee shall, after independent study of the data furnished to it by the Secretary and other data before it, certify to the Secretary a report and recommendations, together with all underlying data and a statement of the reasons or basis for the recommendations. A copy of the foregoing shall be promptly supplied by the Secretary to any person who has filed a petition, or who has requested such referral to the advisory committee. After giving consideration to all data then before him, including such report, recommendations, underlying data, and statement, and to any prior order issued by him in connection with such matter, the Secretary shall by order conform or modify any prior order or, if no such prior order has been issued, shall by order act upon the application. The applicant, as well as representatives of the Secretary, shall have the right to consult with such advisory committee, and such advisory committee is authorized to consult with any person in connection with the question referred to it.

"(2) Section 513(h)(2) shall apply to the appointment, compensation, staffing, and procedure of any such advisory committee.

"Judicial Review

"(j) The applicant may, by appeal taken in accordance with section 505(h), obtain judicial review of a final order of the Secretary denying or withdrawing approval of an application filed under subsection (c) of this section or a final order under subsection (m) revoking an exemption in effect under that subsection. Judicial review of such final order shall not be denied upon the ground that the petitioner has failed to avail himself of the review or hearing provided by subsection (e)(4) or the hearing provided by subsection (m).

"Exemption for Investigational Use

"(k)(1) It is the purpose of this subsection to encourage, to the maximum extent consistent with the protection of the public health and safety and with professional ethics, the discovery and development of useful devices and to that end to maintain optimum freedom for individual scientific investigators in their pursuit of that objective. All information required under this section to be submitted to the Secretary or to an institutional review committee shall be concise and no more burdensome than is necessary to permit adequate review.

"(2) Subject to the succeeding paragraphs of this subsection, there shall be exempt from the requirement of approval of an application under the foregoing provisions of this section any device which is intended solely for investigational use (in an appropriate scientific environment) by an expert or experts qualified by scientific training and experience to investigate the safety and effectiveness of such device.

"(3) The Secretary shall promulgate regulations after an opportunity for a hearing, relating to the application of the exemption referred to in paragraph (2) to any device which is intended for use in the clinical testing thereof upon humans, in developing data required to support an application under subsection (c).

"(4) Such regulations may provide for conditioning the exemption, in the case of a device intended for such clinical use, upon—

"(A) the submission, by the manufacturer of the device or the sponsor of the investigation, of an outline of the plan of initial clinical testing—

"(i) to a local institutional review committee which has been established to supervise clinical testing in the facility where the initial clinical testing is to be conducted, the composition and procedures of which comply with regulations of the Secretary, for review as being adequate to justify the commencement of such testing, or

"(ii) if no such committee exists or if the Secretary finds that the process of review by such committee is inadequate or that protection of health and safety so requires (whether or not the plan has been approved by such committee), to the Secretary for review by the appropriate panel or panels established pursuant to subsection (b) as being adequate to justify the commencement of such testing;

"(B) prompt notification to the Secretary by such manufacturer or sponsor (under such circumstances and in such manner as the Secretary prescribes) of approval of any plan, pursuant to clause (A)(i);

"(C) the submission, by the manufacturer of the device or the sponsor of the investigation, of an adequate protocol for clinical testing to be conducted by separate groups of investigators under essentially the same protocol, together with a report of prior investigations of the device (including, where appropriate, tests on animals) adequate to justify the proposed testing, either (i) to a local institutional review committee for review in accordance with the provisions of clauses (A)(i) and (B), or (ii) to the Secretary for review in accordance with the provisions of clause (A)(ii) if such testing involves facilities in which no such committee exists, or facilities served by more than one local institutional review committee if such committees are unable to agree on the adequacy of the submission;

"(D) the obtaining, by the manufacturer, of the device or the sponsor of the investigation, if the device is to be distributed to investigators for testing, of a signed agreement from each of such investigators that humans upon whom the device is to be used will be under such investigator's personal supervision or under the supervision of investigators responsible to him;

"(E) the establishment and maintenance of such records, and the making of such reports to the Secretary, by the manufacturer of the device or the sponsor of the investigation, of data (including but not limited to analytical reports by investigators) obtained as a result of such investigational use of the device, as the Secretary finds will enable him to evaluate the safety and effectiveness of the device in the event of the filing of an application pursuant to subsection (c) and

"(F) such other conditions relating to the protection of the public health and safety as the Secretary may determine to be necessary.

Nothing in this subsection shall be construed to require any clinical investigator to submit directly to the Secretary reports on the investigational use of devices. The Secretary shall within thirty days of the receipt of a notification or submission pursuant to this paragraph, determine whether the proposed investigation conforms to the requirements of this section. An investigation shall not begin until the sponsor receives notice from the Secretary that the proposed investigation conforms with the requirements of this section. The Secretary may not delay the beginning of an investigation pursuant to this paragraph until he finds that the investigation does not conform to the requirements of this section and he has notified the sponsor of such findings. The Secretary may exempt investigations from part or all the requirements of this subsection when he determines that to do so is in the public interest.

"(5) Such regulations shall assure that the rights and welfare of the subjects involved are adequately protected, that the risks to an individual are outweighed by the potential benefits to him or by the importance of the knowledge to be gained and that informed consent is to be attained by methods that are adequate. Such informed consent shall be obtained in all but exceptional cases.

"(A) For the purposes of this section only, the term 'informed consent' shall mean the consent of a person, or his legal representative, so situated as to be able to exercise free power of choice without the intervention of any element of force, fraud, deceit, duress, or other form of constraint or coercion. Such consent shall be evidenced by an agreement signed by such person, or his legal representative. The information to be given to the subject in such written agreement shall include the following basic elements:

"(i) a fair explanation of the procedures to be followed, including an identification of any which are experimental;

"(2) a description of any attendant discomforts and risks reasonably to be expected;

"(3) a fair explanation of the likely results should the experimental procedure fail;

"(4) a description of any benefits reasonably to be expected;

"(5) a disclosure of any appropriate alternative procedures that might be advantageous for the subject;

"(6) an offer to answer any inquiries concerning the procedures; and

"(7) an instruction that the subject is free to either decline entrance into a project or to withdraw his consent and to discontinue participation in the project or activity at any time without prejudicing his future care. In addition, the agreement entered into by such person or his legal representative, shall include no exculpatory language through which the subject is made to waive, or to appear to waive, any of his legal rights, or to release the institution or its agents from liability for negligence. Any organization which initiates, directs, or engages in programs of research, development, or demonstration which require informed consent shall keep a permanent record of such consent and the information provided the subject and develop appropriate documentation and reporting procedures as an essential administrative function.

"(B) The term 'exceptional cases' as used in paragraph (5) shall be strictly construed; shall permit the waiver only of those elements of consent listed in subparagraph (A) as may be justified by the circumstances of each case; and shall require the written concurrence in the acting physician's decision by at least two other licensed physicians not involved in the research project, unless in a life threatening situation, it is not feasible to obtain such concurrence.

"(6) Whenever the Secretary determines that a device is being or has been shipped or delivered for shipment in interstate commerce for investigational testing upon humans, and that such device is subject to the proceeding subsections of this section and fails to meet the conditions for exemption therefrom for investigational use, he shall notify the sponsor of his determination and the reasons therefor, and the exemption will not thereafter apply with respect to such investigational use until such failure is corrected.

"(7) In determining whether this subsection is applicable to any device and, if so, whether there has been compliance with the conditions of exemption, or upon application for reconsideration of any such determination, the Secretary shall, if so requested by the sponsor of the investigation, or may

on his own initiative, obtain the advice of an appropriate expert or experts who are not otherwise, except as consultants, engaged in the carrying out of this Act.

"Custom Devices

"(l) This section shall not apply for any custom device to the extent that it is ordered by a physician (or other specially qualified persons authorized by regulations promulgated by the Secretary after an opportunity for a hearing) to be made in a special way for individual patients. Any such device shall comply with all aspects of any applicable performance standard except those specifically ordered by a physician or such other authorized person to be changed. This subsection shall apply only to devices ordered for individual patients, and shall not otherwise exempt a device from subsection (k). Custom devices shall not be used as a course of conduct and shall not be generally available in finished form for purchase or for dispensing upon prescription, and, whether in finished form or otherwise, shall not be made available through commercial channels by the maker or processor thereof.

"Product Development Protocol

"(m)(1) Any device (or type or class of device), manufactured or distributed by a particular person, which has been made subject to this section by a regulation promulgated by the Secretary, may be exempted by the Secretary from the requirement of approval of an application under the foregoing provisions of this section if—

"(A) the nature of the device (or type or class of device) is such that it is likely that it will be subject to frequent modification or rapid obsolescence or will not be produced in substantial volume; and

"(B) it is intended solely for use by or under the direction or supervision of a practitioner licensed by law to use or to prescribe the use thereof; and

"(C) it is, or will be, investigated in accordance with an approved product development protocol established pursuant to paragraph (2) of this subsection, or it is subject to an effective notice of completion of the requirements of such protocol.

"(2) Any person may submit a petition to the Secretary to establish a product development protocol with respect to a particular device (or type or class of device) meeting the requirements set forth in subparagraphs (A) and (B) of paragraph (1) of this subsection. Such petition shall include supporting data and a proposed protocol. The Secretary shall, within thirty days, refer any such petition to the appropriate panel of experts appointed pursuant to subsection (b) of this section. Such panel may, within sixty days, or such other time as may be agreed upon by the panel and the petitioner, approve with or without modification the proposal protocol. The protocol, if approved, shall provide—

"(A) the investigational and testing procedures required prior to the commencement of clinical trials of such device and subsequent significant modifications thereto;

"(B) a requirement that an institutional review committee similar to that described in clause (1) of subparagraph (A) of paragraph (4) of subsection (k) of this section shall make a written finding that the predicted risk-to-benefit ratio applicable to the use of the device justifies clinical trials and that one or more such committees will continually monitor and make periodic written records on all clinical trials conducted in connection with the institution in which such committee operates;

"(C) the type and quantity of clinical trials and findings therefrom required prior to the filing of a notice of completion of a product development protocol;

"(D) a requirement for complete records of the investigation to be maintained which are adequate to show compliance with the product development protocol;

"(E) a requirement that consent, as described in paragraph (5) of subsection (k) of this section, be obtained from all subjects of the investigation; and

"(F) a requirement that copies of all records which are to be maintained pursuant to this paragraph be made available to the Secretary upon request.

"(3) If the panel to which such petition has been referred does not approve the proposed protocol within sixty days (or within such other time as may be agreed upon), the Secretary may consider and approve with or without modification the proposed protocol within sixty days after the date he is notified that the panel has concluded not to approve a protocol. If neither the panel nor the Secretary approves a proposed protocol, the Secretary shall issue a final order denying the petition and stating the grounds therefor.

"(4) At any time after a product development protocol for a particular device (or type or class of device) has been approved pursuant to this section, the petitioner may submit a notice of completion stating that the requirements of the protocol have been fulfilled and that, to the best of his knowledge, there is no reason bearing on safety, effectiveness, or other public health considerations why the device should not be marketed. Such notice shall contain all the data and information from which the petitioner made this determination. The Secretary shall approve or disapprove the notice of completion within ninety days after receipt of such notice.

"(5) The Secretary may, after providing the petitioner an opportunity for an informal hearing, at any time prior to approving a notice of completion, issue a final order to revoke a product development protocol or disapprove a notice of completion if he finds that—

"(A) the petitioner has failed substantially to comply with the requirements of the protocol; or

"(B) the results of the clinical trials conducted differ so substantially from the results required in the protocol that further trials cannot be justified; or

"(C) such device is not shown to be safe for use under the conditions prescribed, recommended, or suggested in the labeling thereof; or

"(D) there is a lack of adequate scientific evidence that the device will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling thereof. A final order issued under this paragraph shall be in writing and shall contain the reasons to support the conclusions thereof.

"(6) The Secretary (or in his absence the officer acting as Secretary) may at any time, by an order in writing stating the findings on which it is based, immediately revoke an exemption from the requirement of approval of an application under the foregoing provisions of this section, if he finds that there is an imminent hazard to the public health or safety caused by the existence of the exemption. In taking such action the Secretary shall give prompt notice to the person following the protocol of having filed the notice of completion, and afford such person an opportunity for an expedited hearing under this paragraph.

"(7) At any time after a notice of completion has been approved, the Secretary may issue an order revoking an exemption of the device (or type or class of device) from the requirement of approval of an application under the foregoing provisions of this section if he finds that any of the grounds listed in subparagraphs (A) through (F) of paragraph (1) of subsection (f) of this section apply. The provisions of paragraphs (1) and (3) of subsection (f) and subsections (g) through (j) of this section shall apply.

"(8) Whenever the Secretary finds that the facts so justify, he may reconsider an order under this subsection revoking the exemption granted by this subsection and reinstate the exemption.

"Transitional Provisions

"(n)(1) If, on the day immediately prior to the date upon which a device is declared to be subject to scientific review under this section, the device was in use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man, or for the purpose of affecting the structure or any function of the body of man, section 501(f) shall become effective with respect to such preexisting use or uses of such device on the closing date (as defined in paragraph (2) of this subsection) or, if sooner, with respect to any person who has filed an application, on the effective date of an order of the Secretary approving or denying approval of such application with respect to such use of the device under this section.

"(2) For the purposes of this subsection, the term 'closing date' means, with respect to a device, the first day of the thirty-first calendar month which begins after the month in which the device is declared to be subject to scientific review under this section, except that, if in the opinion of the Secretary it would not involve any undue risk to the public health, he may on application or on his own initiative postpone such closing date with respect to any particular use or uses of a device until such later date (but not beyond the close of the sixtieth month after the month of such declaration) as he determines is necessary to permit completion, in good faith and as soon as practicable, of the scientific investigations necessary to establish the safety and effectiveness of such use or uses. The Secretary may terminate any such postponement at any time if he finds that such postponement should not have been granted or that, by reason of a change in circumstances, the basis for such postponement no longer exists or that there has been a failure to comply with a requirement of the Secretary for submission of progress reports or with other conditions attached by him to such postponement."

PROHIBITED ACTS

SEC. 302. (a) Paragraph (e) of section 301 of such Act is amended (1) by striking out "or" before "512(j), (l), or (m)" and (2) by inserting ", 514(k), or 516(a)" after "512(j), (l), or (m)".

(b) Paragraph (l) of such section 301 is amended (1) by inserting "or device" after the word "drug" each time it appears therein, and (2) by striking out "505," and inserting in lieu thereof "505 or 514, as the case may be,".

TITLE IV—NOTIFICATION OF DEFECTIVE DEVICES; REPAIR OR REPLACEMENT

SEC. 401. Chapter V of such Act, as amended by sections 201 and 301(b) of this Act, is further amended by adding at the end thereof the following new section:

"NOTIFICATION OF DEFECTS IN, AND REPAIR OR REPLACEMENT OF, DEVICES

"SEC. 515. (a)(1) Every person who acquires information which reasonably supports the conclusion that a device intended for human use, which has been produced, assembled, distributed, or imported by him (A) contains a defect which could create a substantial risk to the public health or safety, or (B) on or after the effective date of an applicable performance standard promul-

gated pursuant to section 513 fails to comply with such standard, shall immediately notify the Secretary of such defect or failure to comply if such device has left the control of the manufacturer. No information or statements exclusively derived from the notification required by this subsection (except for information contained in records required to be maintained under any provision of this Act) shall be used as evidence in any proceeding brought against a natural person pursuant to section 303 of this Act with respect to a violation of law occurring prior to or concurrently with the notification.

"(2) The notifications required by paragraph (1) of this subsection shall contain a clear description of such defect or failure to comply, an evaluation of the hazard related thereto, and a statement of the measures to be taken to correct such defect or failure or to effect protection against the hazard created by the defect or failure.

"(3) For purposes of this section, the term 'defect' means a deficiency in design, materials, or workmanship, and does not include any deficiency resulting from use of improper accessories or from improper installation, maintenance, repair, or use of the device or any deficiency resulting from normal use of the device after the lifetime represented by the manufacturer has expired.

"(b)(1) If the Secretary determines that a device intended for human use distributed in commerce presents a substantial hazard to the public health or safety and that notification is required in order adequately to protect the public from such hazard, he shall immediately make certain that adequate notification is provided in an appropriate form, by the persons and means best suited under the circumstances involved, to all persons (including manufacturers, distributors, retailers, health professionals, and users) who should properly receive such notification in order to reduce or eliminate the effects of such hazard.

"(2) Where the Secretary determines that users shall not be notified under paragraph (1), he shall provide those health professionals who receive notification an opportunity to comment on the advisability of notifying the general public of the hazard. Within 30 days after such notification the Secretary shall notify the general public of the hazard, if after reviewing such comments, he determines that such notification will not endanger the public health.

"(C) If the Secretary determines (after affording parties, including consumers and consumer organizations, an opportunity for a hearing in accordance with subsection (e)) that a device intended for human use distributed in commerce, presents a substantial hazard to the public health or safety and that action under this subsection is in the public interest, it may order the manufacturer or any distributor or retailer of such device to take whichever of the following actions the person to whom the order is directed elects to the extent that the consent of the purchaser and, where appropriate, his physician, is obtained;

"(1) bring such device into conformity with the requirements of the applicable performance standard or repair the defect in such device;

"(2) replace such device with a like or equivalent device which complies with the applicable performance standard or which does not contain the defect; or

"(3) refund the purchase price of such device (less a reasonable allowance for use) if such device has been in the possession of a user for one year or more (A) at the time of public notice under subsection (c), (B) at the time the user receives actual notice of the defect or noncompliance, whichever first occurs.

An order under this subsection may also require the person to whom it applies to submit a plan, satisfactory to the Secretary for taking action under whichever of the preceding paragraphs of this subsection such person has elected to act. The Secretary shall specify in the order the persons to whom refunds must be made if the person to whom the order is directed elects to take the action described in paragraph (3). If an order under this subsection is directed to more than one person, the Secretary shall specify which person has the election under this subsection.

"(d)(1) No charge shall be made to any person (other than a manufacturer, distributor, or retailer) who avails himself of any remedy provided under an order issued under subsection (c), and the person subject to the order shall reimburse each person (other than a manufacturer, distributor, or retailer) who is entitled to such a remedy for any reasonable and foreseeable expenses incurred by such person in availing himself of such remedy.

"(2) An order issued under subsection (b) or (c) with respect to a device may require any person who is a manufacturer, distributor, or retailer of the device to reimburse any other person who is a manufacturer, distributor, or retailer of such device for such other person's expenses in connection with carrying out the order, if the Secretary determines such reimbursement to be in the public interest.

"(3) An order under subsection (c) may be issued only after an opportunity for an informal hearing. If the Secretary determines that any person who wishes to participate in such hearing is a part of a class of participants who share an identity of interest, the Secretary may limit such person's participation in such hearing to participation through a single representative designated by such class (or by the Secretary of such class fails to designate such a representative).

"(e) The remedies provided for in this section shall be in addition to and not in substitution for any other remedies provided by law."

PROHIBITED ACTS

SEC. 402. Section 301 of such Act, as amended by section 302 of this Act, is further amended by adding at the end thereof the following new paragraph:

"(q)(1) The failure or refusal to furnish any notification or other material or information as required by section 515 or 516; or (2) the failure or refusal to comply with any requirement prescribed under authority of section 515(c)."

CONFORMING AMENDMENT

SEC. 403. Section 502(j) of such Act is amended by inserting "or manner" after "dosage".

TITLE V—REQUIREMENT OF GOOD MANUFACTURING PRACTICE

SEC. Section 501 of the Federal Food, Drug, and Cosmetic Act, as amended by sections 202 and 301 of this Act, is further amended by adding at the end thereof the following new paragraph:

"(g) If it is a device and the methods used in, or the facilities or controls used for, its manufacture, processing, packing, holding, or installation do not conform to, or are not operated or administered in conformity with, current good manufacturing practice, as determined by regulations of the Secretary promulgated after consultation with all interested persons and after an opportunity for a hearing, to assure that such device is safe and effective."

TITLE VI—RECORDS AND REPORTS; INSPECTION AND REGISTRATION OF ESTABLISHMENTS; OFFICIAL NAMES

SEC. 601. Chapter V of the Federal Food, Drug, and Cosmetic Act is further amended by adding at the end thereof the following new section:

"RECORDS AND REPORTS ON DEVICES

"SEC. 516. (a)(1) Every person engaged in manufacturing, processing, distributing, or selling a device that is subject to a performance standard promulgated under section 513, or with respect to which there is in effect an approval under section 514 of an application filed under subsection (c) thereof, shall establish and maintain such records, and make such reports to the Secretary, of data relating to clinical experience and other data or information, received or otherwise obtained by such person with respect to such device, and bearing on the safety or effectiveness of such device, or on whether such device may be adulterated or misbranded, as the Secretary may by general regulation, or by special regulation or order applicable to such device, require. In prescribing such regulations or issuing such orders the Secretary shall have due regard for the professional ethics of the medical profession and the interests of patients and shall provide, wherever he deems it appropriate, for the examination, upon request, by the persons to whom such regulations or orders are applicable, of similar information received or otherwise obtained by the Secretary.

"(2) Every person required under this subsection to maintain records, and every person in charge or custody thereof, shall, upon request of an officer or employee designated by the Secretary, permit such officer or employee at all reasonable times to have access to and copy and verify such records.

"(b) Subsection (a) shall not apply to—

"(1) practitioners licensed by law to prescribe or administer drugs and devices and who manufacture or process devices solely for use in the course of their professional practice;

"(2) persons who manufacture or process devices solely for use in research or teaching and not for sale; and

"(3) such other classes of persons as the Secretary may by or pursuant to regulation exempt from the application of this subsection upon a finding that such application is not necessary to accomplish the purposes of this section.

"(c) Every person engaged in manufacturing a device subject to this Act shall provide to the Secretary upon his request such technical data and other data or information with respect to such device as may be reasonably required to carry out this Act."

INSPECTION RELATING TO DEVICES

SEC. 602. (a) The second sentence of subsection (a) of section 704 of such Act is amended by inserting "or prescription devices" after "prescription drugs" both times it appears.

(b) The third sentence of such subsection is amended (1) by striking out "for prescription drugs", (2) by striking out "and antibiotic drugs" and inserting in lieu thereof ", antibiotic drugs, and devices", (3) by striking out "or section 507 (d) or (g)" and inserting in lieu thereof ", section 507 (d) or (g), section 514(k), or section 516", and (4) by inserting "or devices" after "other drugs", inserting "or of a device subject to section 514" after "new drug", and inserting "or section 516" after "section 505(j)".

(c)(1) Paragraph (1) of the sixth sentence of such subsection is amended by inserting "or devices" after "drugs" each time such term occurs.

(2) Paragraph (2) of that sentence is

amended by inserting ", or prescribe or use devices, as the case may be," after "administer drugs"; and by inserting ", or manufacture or process devices," after "process drugs".

(3) Paragraph (3) of that sentence is amended by inserting ", or manufacturer or process devices," after "process drugs".

REGISTRATION OF DEVICE MANUFACTURERS; OFFICIAL NAMES OF DEVICES

SEC. 603. (a) Section 510 of such Act is amended as follows:

(1) The section heading is amended by inserting "AND DEVICES" after "DRUGS".

(2) Subsection (a)(1) of such section is amended by inserting "or device package" after "drug package"; by inserting "or device" after "the drug"; and by inserting "or user" after "consumer".

(3) Subsections (b) and (c) of such section are amended by inserting "or a device or devices" after the word "drugs" every time such term occurs.

(4) Subsection (d) is amended to read as follows:

(d)(1) Every person duly registered in accordance with the foregoing subsections of this section shall immediately register with the Secretary any additional establishment which he owns or operates in any State and in which he begins the manufacture, preparation, propagation, compounding, or processing of a drug or drugs, or of a device or devices.

"(2) Every person who is registered with the Secretary pursuant to the first sentence of subsection (b, or (c) or paragraph (1) of this subsection shall, if any device is thereafter manufactured, prepared, propagated, compounded, or processed in any establishment with respect to which he is so registered, immediately file a supplement to such registration with the Secretary indicating such fact."

(5) Subsection (g) is amended by inserting "or devices after "drugs" each time such term occurs in paragraphs (1), (2), and (3) of such subsection.

(6) The first sentence of subsection (i) is amended by inserting ", or a device or devices" after "drugs or drugs"; and the second sentence of such subsection is amended by inserting "shall require such establishment to provide the information required by subsection (j) in the case of a device or devices and" immediately before "shall include", and by inserting "or devices" after "drugs".

(7) Subsection (j) is amended—

(A) in paragraph (1), preceding subparagraph (A), by striking out "a list of all drugs by established name" and inserting in lieu thereof "a list of all drugs and a list of all devices in each case by established name"; and by striking out "drugs filed" and inserting "drugs or devices filed in lieu thereof;

(B) in subparagraph (A) of paragraph (1), by striking out "such list" and inserting "the applicable list" in lieu thereof; by inserting "or a device contained in the applicable list with respect to which a performance standard has been promulgated under section 513 or which is subject to section 514," after "512,"; and by inserting "or device" after "such drug" each time it appears;

(C) in subparagraph (B) or paragraph (1), before clause (i), by striking out "drug contained in such list" and inserting "drug or device contained in an applicable list" in lieu thereof;

(D) in clause (i) of paragraph (1)(B), by amending such clause to read as follows—

"(i) which drug is subject to section 503(b)(1), or which device, is a prescription device a copy of all labeling for such drug or device, a representative sampling of advertisements for such drug or device, and, upon request made by the Secretary for good cause, a copy of all advertisements for a particular drug product or device, or";

(E) in clause (ii) of paragraph (1)(B), by amending such clause to read as follows:

"(ii) which drug is not subject to section 503(b)(1), or which device is not a prescription device, the label and package insert for such drug or device and a representative sampling of any other labeling for such drug or device;"

(F) in subparagraph (C) of paragraph (1), by striking out "such list" and inserting "an applicable list" in lieu thereof;

(G) in subparagraph (D) of paragraph (1), by striking out "the list" and inserting "a list" in lieu thereof; by inserting "or the particular device contained in such list is not subject to a performance standard promulgated under section 513, or is not a prescription device" after "512,"; and by inserting "or device" after "particular drug product;

(H) in paragraph (2), by inserting "or device" after "drug" each time it appears and, in subparagraph (C), by inserting "each" before "by established name".

(b) Subsection (o) section 502 of such Act is amended by striking out "is a drug and".

(c) The second sentence of section 801(a) of such Act is amended by inserting "or devices" after "drugs" both times such words appear.

Official Names

(d)(1) Subparagraph (1) of section 502(e) of such Act is amended by striking out "subparagraph (2)" and inserting in lieu thereof "subparagraph (3)".

(2) Subparagraph (2) of section 502(e) of such Act is redesignated as subparagraph (3) and is amended by striking out "this paragraph (e)" and inserting in lieu thereof "subparagraph (1)".

(3) Paragraph (e) is further amended by inserting a new subparagraph (2) as follows:

"(2) If it is a device, unless its label bears, to the exclusion of any other nonproprietary name, the established name (as defined in subparagraph (4)) of the device, if such there be, prominently printed in type at least half as large as that used thereon for any proprietary name or designation for such device: *Provided*, That to the extent compliance with the requirements of this subparagraph is impracticable, exemptions shall be established by regulations promulgated by the Secretary."

(4) Such paragraph is further amended by adding at the end thereof a new subparagraph as follows:

"(4) As used in subparagraph (2), the term 'established name', with respect to a device, means (A) the applicable official name designated pursuant to section 508, or (B) if there is no such name and such device is an article recognized in an official compendium then the official title thereof in such compendium, or (C) if neither clause (A) nor clause (B) of this subparagraph applies, then the common or usual name of such device, if any."

(e) Section 508 of such Act is amended (1) in subsections (a) and (e) by adding "or device" after "drug" each time it appears; (2) in subsection (b) by adding after "all supplements thereto," the following: "and at such times as he may deem necessary shall cause a review to be made of the official names by which devices are identified in any official compendium, and all supplements thereto"; (3) in subsection (c)(2) by adding "or device" after "single drug", and by adding "or to two or more devices which are substantially similar in design and purpose" after "purity,"; (4) in subsection (c)(3) by adding "or device" after "useful drug", and after "drug or drugs" each time it appears; and (5) in subsection (d) by adding "or devices" after "drugs".

(f) Section 301 of the Drug Amendments of 1962 (76 Stat. 793) is amended by inserting "and devices" after "drugs" each time such word appears, except that "or devices" is inserted after "which drugs" and after "intrastate commerce in such drugs".

TITLE VII—GENERAL PROVISIONS

ADVISORY COUNCIL ON DEVICES, ETC.

SEC. 701. Chapter VII of the Federal Food, Drug, and Cosmetic Act is amended by adding at the end thereof the following new section:

"ADVISORY COUNCIL ON DEVICES, AND OTHER ADVISORY COMMITTEES

"SEC. 708. (a) For the purpose of advising the Secretary with respect to matters of policy in carrying out the provisions of this Act relating to devices, there is established in the Department an Advisory Council on Devices appointed by the Secretary without regard to the civil service and classification laws. The persons so appointed shall be manufacturers and other persons with special knowledge of the problems involved in the regulation of various kinds of devices under this Act, members of the professions using such devices, scientists expert in the investigational use of devices, engineers expert in the development of devices, and members of the general public representing consumers of devices.

"(b) The Secretary may also from time to time appoint, without regard to the civil service or classification laws, in addition to the advisory councils and committees otherwise authorized under this Act, such other advisory committees or councils as he deems desirable.

"(c) Members of an advisory council or committee appointed pursuant to subsection (a) or (b) who are not in the regular full-time employ of the United States shall, while attending meetings or conferences of the council or committee or otherwise engaged on its business, be compensated at per diem rates fixed by the Secretary but not in excess of the rate for grade GS–18 of the General Schedule at the time of such service, including traveltime, and while so serving away from their homes or regular places of business they may be allowed travel expenses (including per diem in lieu of subsistence) as authorized by title 5, United States Code, section 5703, for persons in the Government service employed intermittently."

RESEARCH AND STUDIES

SEC. 702. Chapter VII of such Act, as amended by section 701 of this Act, is further amended by adding at the end thereof the following new section:

"RESEARCH AND STUDIES RELATING TO DEVICES

"SEC. 709. (a) The Secretary is authorized, directly or through contracts with public or private agencies, institutions, and organizations and with individuals, to plan, conduct, coordinate, and support—

"(1) research and investigation into the safety and effectiveness of devices, and into the causes and prevention of injuries or other health impairments associated with exposure to or use of devices;

"(2) studies relating to the development and improvement of device performance standards, and device testing methods and procedures; and

"(3) education and training with respect to the proper installation, maintenance, operation, and use of devices.

"(b) In carrying out the purposes of subsection (a), the Secretary, in addition to or in aid of the foregoing—

"(1) shall, to the maximum practicable extent, cooperate with and invite the participation of other Federal or State departments and agencies having related interests, and interested professional or industrial organizations;

"(2) shall collect and make available, through publications and by other appropriate means, the results of, and other information concerning, research and other activities undertaken pursuant to subsection (a); and

"(3) may procure (by negotiation or otherwise) devices for research and testing purposes, and sell or otherwise dispose of such products."

PUBLICITY

SEC. 703. Section 705 of such Act is amended by adding at the end thereof the following new subsection:

"(c) To assist in carrying out the provisions of this Act, the Secretary may cause to be disseminated information regarding standards, testing facilities, and testing methods promulgated, established, or approved under this Act and other information relating to the nature and extent of hazards subject to this Act. Subject to the provisions of section 301(j), the Secretary may also cause to be published reports summarizing clinical data relevant to marketed products approved under this Act."

SEC. 704. Chapter IX of such Act is amended by adding at the end thereof the following new subsection:

"EFFECT ON STATE REQUIREMENTS

"SEC. 903. (a) Whenever a performance standard pursuant to section 513 or scientific review pursuant to section 514 under this Act is in effect, no State or political subdivision of a State shall have any authority either to establish or to continue in effect any provision of a standard or regulation which prescribes any requirements as to the performance, composition, contents, design, finish, construction, packaging, or labeling of such product which are designed to deal with the same device unless such requirements are identical to the Federal requirements.

"(b) Nothing in this section shall be construed to prevent the Federal Government or the government of any State or political subdivision thereof from establishing a safety requirement applicable to a device for its own use if such requirement imposes a higher standard of performance than that required to comply with the otherwise applicable Federal requirements.

"(c) Upon application of a State or political subdivision thereof, the Secretary may by rule, after notice and opportunity for oral presentation of views, exempt from the provisions of subsection (a) (under such conditions as he may impose) a proposed safety requirement described in such application, where the proposed requirement—

"(1) imposes a higher level of performance than the Federal standard,

"(2) is required by compelling local conditions, and

"(3) does not unduly burden interstate commerce."

SEC. 705. Section 301(j) of such Act is amended by inserting "511" before "512", by inserting "513, 514, 515, 516" after "512", and by adding at the end thereof the following new sentence: "The Secretary may provide any information which contains or relates to a trade secret or other matter referred to in this section or in section 1905 of title 18, United States Code, to a contractor in furtherance of the provisions of this Act, and such contractor shall take such security precautions as are prescribed in regulations promulgated by the Secretary and shall be subject to the provisions and penalties established in this Act and in section 1905 of title 18, United States Code."

SEC. 706. Section 201 of such Act is amended by striking subsection (h) and inserting in lieu thereof the following new subsection.

"(h) The term 'device' (except when used in paragraph (n) of this section and in sections 301(i), 403(f), 502(c), and 602(c)) means instruments, apparatus, implements, machines, contrivances, implants, in vitro reagents, and other similar or related artcles, including their components, parts, and accessories (1) recognized in the official National Formulary, the official United States Pharmacopeia or any supplement to them; or (2) intended for use in the diagnosis of disease or other conditions or in the cure, mitigation, treatment, or prevention of disease in man or other animals; or (3) intended to affect the structure or any function of the body of man or other animals; and (4) which do not achieve any of their principal intended purposes through chemical action within or on the body of man or other animals and which are not dependent upon being metabolized for the achievement of any of their principal intended purposes."

SEC. 707. Section 502 of such Act is amended by adding at the end thereof the following new paragraphs:

"(r) In the case of any device that is a prescription device, if its advertising is false or misleading in any particular.

"(s) In the case of any prescription device distributed or offered for sale in any State, unless the manufacturer, packer, or distributor thereof includes in all advertisements, and other descriptive printed matter issued or caused to be issued by the manufacturer, packer, or distributor with respect to that device a true statement of (1) the established name as defined in section 502(e), printed prominently and in type at least half as large as that used for any trade or brand name thereof, (2) a full description of the components of such device or the formula showing quantitatively each ingredient of such device to the extent required in regulations which shall be issued by the Secretary after an opportunity for a hearing, and (3) such other information in brief summary relating to side effects, contraindications, and effectiveness as shall be required in regulations which shall be issued by the Secretary after an opportunity for a hearing: *Provided*, That (A) except in extraordinary circumstances, no regulation issued under this paragraph shall require prior approval by the Secretary of the content of any advertisement, and (B) no advertisement of a prescription device, published after the effective date of regulations issued under this paragraph applicable to advertisements of prescription devices, shall, with respect to the matters specified in this paragraph or covered by such regulations, be subject to the provisions of sections 12 through 17 of the Federal Trade Commisison Act, as amended (15 U.S.C. 52–57). This paragraph shall not be applicable to any printed matter which the Secretary determines to be labeling as defined in section 201(m) of this Act.

SEC. 708. (a) Section 201 of such Act is amended by adding at the end thereof the following:

"(y) The term 'prescription device' means any device which the Secretary shall designate by regulation as being restricted to sale or distribution only upon the written or oral authorization of a practitioner licensed by law to administer or use such device and under such other conditions as the Secretary may by regulation prescribe. The Secretary may designate as a prescription device, pursuant to the preceding sentence, only a device which:

"(1) because of its potentiality for harmful effect, or the collateral measures necessary to its use, is not safe for use except under the supervision of a practitioner licensed by law to administer or use such device; or

"(2) is limited by an approved application under section 514 to use under the professional supervision of a practitioner licensed by law to administer or use such device."

SEC. 709. Section 304(a)(2) of such Act is amended to delete "and" before "(C)," to replace the period with a comma, and to add the following at the end thereof: "and (D) Any adulterated or misbranded device."

EXPORTATION OF DEVICES

SEC. 710. The last sentence of section 801 (d) of such Act is amended by inserting before the period at the end thereof: ", or to authorize the exportation of any device which does not comply with section 513 or 514 of this Act. The Secretary may permit exportation of any article if he determines that such exportation is in the interest of public health and safety, and has the approval, of the country to which it is intended for export."

EFFECTIVE DATES AND TRANSITIONAL PROVISIONS

SEC. 711. (a) Except as provided in subsections (b) and (c) of this section, the foregoing provisions of this Act shall take effect on the date of the enactment of this Act.

(b) Paragraph (f) of section 501 of the Federal Food, Drug, and Cosmetic Act, as added to such section by section 301(a) of this Act, shall, with respect to any particular use of a device, take effect (1) on the first day of the thirteenth calendar month following the month in which this Act is enacted, or (2) if sooner, on the effective date of an order of the Secretary approving or denying approval of an application with respect to such use of the device under section 514 of such Act as added by section 301(b) of this Act.

(c) Any person who, on the day immediately preceding the date of enactment of this Act, owned or operated any establishment in any State (as defined in section 201 of the Federal Food, Drug, and Cosmetic Act) engaged in the manufacture or processing of a device or devices, shall, if he first registers with respect to devices, or supplements his registration with respect thereto, in accordance with subsection (b) of section 510 of that Act (as amended by section 603 of this Act) prior to the first day of the seventh calendar month following the month in which this Act is enacted, be deemed to have complied with that subsection for the calendar year 1974. Such registration, if made within such period and effected in 1975, shall also be deemed to be in compliance with such subsection for that calendar year.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 93–670), explaining the purposes of the measure.

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

EXCERPT

I. HISTORY OF REGULATION OF MEDICAL DEVICES AND NEED FOR LEGISLATION

Federal authority to regulate medical devices was first provided in the Federal Food, Drug, and Cosmetic Act of 1938. There had been no provisions in the Food and Drugs Act of 1906 to regulate device safety and claims made for devices. During the 1930's reformers pressed for enactment of legislation to enable the Food and Drug Administration (FDA) to undertake the same kind of effort against unsafe or quack devices as the 1906 Act had allowed against impure or fraudulent drugs.

The 1938 Act defined "device" and provided the same basic authority over devices as applied to drugs, with the important exception of preclearance authority which was only provided for new drugs. From legislative

history it is clear the term "device" was intended to include both quack machines and legitimate articles such as surgical instruments, trusses, prosthetic devices, ultraviolet lights, contraceptives, and orthopedic shoes. No additional authority has been provided since 1938 to improve public protection against unsafe or unreliable devices.

At the time the 1938 Act became law, many of the legitimate devices were relatively simple items which applied basic scientific concepts so that experts using them could recognize whether the device was functioning. The major concern with these devices was assuring truthful labeling. In the early years, FDA's activity concerned grossly hazardous products such as lead nipple shields which exposed nursing infants to danger of lead poisoning. FDA also attacked nasal vaporizors and stem pessaries used in contraception or for producing abortion which had the potential for causing puncture or infection. FDA efforts against thermometers which failed to record properly stimulated the development of standards for these products which greatly improved their reliability. Similarly, FDA actions against prophylactics (condoms) forced industry measures to reduce the incidence of defects in these products.

Immediately after enactment of the 1938 Act, FDA made numerous seizures of misbranded devices. During World War II, however, regulatory activity in this area dropped off because war needs resulted in scarcity of metals and other materials used to make nonessential devices. When metals and other materials were again available after the war, numerous devices again appeared, many of which were in violation of the Act.

Many of FDA's legal actions involved fraudulent devices. Since ancient times, mankind has used various kinds of gadgetry to cure or ward off serious ailments. Charms and talismans have been used throughout recorded history by people who have attributed magical qualities to them. Inventive individuals have sought to apply the latest scientific discoveries to the alleviation of health conditions. For example, after Benjamin Franklin's discovery of the electric force present in lightning, numerous individuals sought to use electrical energy to treat human ailments. At the time of the American Revolution, a gadget known as the Perkins Tractor became quite popular. This device was claimed to be capable of drawing disease out of the body by its electrical current. Although the construction and fantastic claims made for many quack devices over the years often seem quite amusing, use of these devices can have serious health consequences. Whether sold to a consumer or a health professional, a device which does not perform as promised may pose a risk to health as well as an economic detriment to the purchaser. Reliance on unwarranted claims made for a device, recommending use in serious disease conditions, may induce the purchaser to forego seeking timely and appropriate medical treatment. Fraudulent devices were a major concern of Congress in 1938 when it gave FDA authority to regulate devices.

A quack device which was the subject of FDA action in the late 1940's was the Spectochrome, of one Dinshah P. Ghadiali, which consisted of a 1,000-watt lamp, in a cabinet supplied with colored glass slides to fit an aperture through which the light bathed the patient. By becoming a member of Ghadiali's "Institute" for a fee of $90 a person could obtain the lamp plus voluminous literature which sought to cloak the scheme in oriental mysticism and sanctity. Claims were made for its value in treating such diseases as diabetes, cancer, tuberculosis and syphilis, and several thousand lamps were distributed. The first action against the lamp was a single seizure. After a trial which lasted thirty days, the jury rendered a verdict for the Government, and the court enjoined distribution of the lamp. Ghadiali, nevertheless, continued to ship it. Multiple seizures followed which did not stop him. Criminal prosecution was then filed against Ghadiali and his corporation. After a trial, in which the Government presented an array of physicians and relatives of victims who had used the device and died from the diseases it was represented to cure. After a verdict of guilty, the court imposed against Ghadiali and his corporation fines totaling $20,000 and a three-year prison sentence against Ghadiali, but imprisonment was suspended on the condition that the business be stopped.

The Spectochrome case is related in detail, since it indicates the vast amount of effort the Government must expend in stopping the marketing of bogus devices.

Another type of device which was the subject of FDA action was the "Zerret Applicator," popularly called the "Plastic Dumbell," which consisted of two plastic water tumblers filled partially with water, sealed with paraffin, joined at their mouths by scotch tape, and set into paraffin in the handle of plastic baby rattles. It was claimed to introduce in the human body the energy given off by "expanded hydrogen atoms" or "Z rays" alleged to be present in the liquid sealed in the tumblers. The user was to hold the article in his hands keeping the feet flatly on the floor without crossing the legs, or while reclining. This it was claimed, caused the atoms of the body to expand and bring health through the hands. This article costing $50, was offered to correct obesity and abnormal thinness due to glandular malfunctioning, correct diarrhea and constipation, reverse the aging process, rejuvenate the user, and cure "any disease known to mankind."

The "Vrilium Tube" was a small pencil-shaped tube containing a glass vital of a white granular substance (barium chloride) worth one two-thousandths of a cent, but this tiny gadget, also called the "Magic Spike," was sold for $300 to gullible sick people. They were told that it had radioactive powers that would cure disease when it was worn on the body, and these trusting purchasers were using it for cancer, diabetes, leukemia, ulcers, and other serious diseases.

One popular area for quack devices has been diagnostic products. During the 1950's the biggest source of such devices was the Electronic Medical Foundation of San Francisco. On March 16, 1954, an injunction barred shipment in interstate commerce of "Blood Specimen Carriers" for use in the Foundation's diagnostic machine, the "Radioscope." There were estimated to be about 5,000 of the devices throughout the country. The diagnostic service was based upon the theory that any ailment can be diagnosed by measuring emanations from a dried blood spot on sterile paper. Practitioners who mailed in the blood spots taken from their patients received, for a fee, a diagnosis blank filled in with the diseases which the patient was supposed to have, their location in the body, and the recommended "dial settings" for treatment with the Foundation's devices. The blood-spotted paper was put into a slot of the electrical device called the "Radioscope" while the operator stroked with a wand the abdomen of a person holding metal plates connected to the device. If a wand "stuck" to a particular location, that was supposed to be a manifestation of an "electronic reaction," and the operator determined from this the identity, kind, location, and significance of any disease present. Investigation disclosed that this diagnostic service was incapable of distinguishing the blood of animals or birds from that of man, or that of the living from the dead. Even a spot of coal-tar dye was reported as indicating systematic toxemia. The Foundation's literature listed hundreds of diseased conditions which could be treated by their machines once the diagnoses had been made by means of the "Radioscope." Other devices for which diagnostic as well as therapeutic claims were made were the "Drown Radio Therapeutic Instrument," the "Magnetic Affinitizer," and the "Neuromicrometer." These devices involved their own bizarre intricacies of operation.

A considerable number of devices for applying electricity to the body were subject to regulatory action. This included: (1) devices which produced galvanic (direct) current of low voltage by means of dry cells or batteries ("Electreat," "Acme Electric Machine"), (2) devices which used alternating current with a transformer to reduce the voltage ("Sinuothermic," "Elector-Way"), (3) devices in which alternating current as added to galvanic in order to obtain a rippled or pulsating galvanic current ("Facial and Body Genie," "Vitalitone," "Elector-Pulse"). Other devices sought to use radioactivity, ultrasonic energy, or infrared, or ultraviolet light to diagnose or treat disease.

Some fraudulent devices have been sold to practitioners rather than consumers. One such device as the Micro-Dynameter, a string galvanometer for measuring minute electrical currents which was claimed to be capable of allowing diagnosis of particular diseases based on each disease's electrical potential. Nearly 1,200 units of the product were destroyed during one 12-month period after FDA obtained an injunction against continued shipment of the device in 1963.

FDA began focusing more attention on hazards from legitimate medical devices around 1960. The post-war era was characterized by many new medical discoveries and saw the development of a vast array of new and complicated medical equipment. Inventions included heart pacemakers, kidney dialysis units, and artificial blood vessels and heart valves.

Although many lives have been saved or improved by the new discoveries, the potential for harm to consumers has been heightened by the critical medical conditions in which sophisticated modern devices are used and by the complicated technology involved in their manufacture and use. In the search to expand medical knowledge, new experimental approaches have sometimes been tried without adequate premarket clinical or animal testing, quality control in materials selected, or obtaining patient consent.

The present law's inadequacy has become a matter of acute concern because of the rapid technological change in the medical device field. The sophistication of modern medical devices makes careful testing necessary to determine if a device operates safely and as claimed. In early regulatory actions FDA was able to carry its burden of proof that a device is unsafe or misbranded through expert testimony; more recently FDA has had to undertake testing of devices suspected of violating the law. Many devices are so intricate that skilled health professionals are unable to ascertain whether they are defective. Increasing numbers of patients have been exposed to increasingly complex devices which pose serious risk if inadequately tested or improperly designed or used.

S. 2368 recognizes the benefits that medical research and experimentation to develop devices offers to mankind. It recognizes, too, the need for regulation to assure that the public is protected and that health professionals can have more confidence in the performance of devices.

The need for device legislation is demonstrated by the history of several cases against

unsafe devices undertaken by FDA during the past few years. Hundreds of thousands of consumers bought a device caled Relaxicisor during the 1950's and 1960's. This device was represented as an aid in reducing weight and operated by sending shocks through the muscles. Testing revealed the device could aggravate muscular, gastrointestinal, and other disorders. It took FDA five years to complete court proceedings necessary to eliminate Relaxicisors from the market. FDA expended some half-million dollars in this effort.

FDA's experience eliminating the Diapulse device from the market is another case demonstrating the unwieldy procedures and lack of preventive provisions of present law. Diapulse was a heat-generating device which was marketed to medical practitioners for some 121 therapeutic claims. The firm lacked scientifically valid data to substantiate the efficacy of the device in any of the conditions for which it was promoted. The first seizure of a Diapulse device occurred in December 1965. As a result of lengthy court proceedings against the device and company appeals it was not until 1972 that injunction against the manufacturer was obtained. During fiscal year 1973, FDA seized over 350 Diapulse devices.

In the late 1960's two important court decisions indicated that certain products which are in the legal grey area between drugs and devices may be considered drugs and hence subject to premarket clearance. In *Amp, Inc.* v. *Gardner*, 389 F. 2d 825 (2 Cir. 1968), the Court of Appeals for the Second Circuit held that a nylon suture was a new drug and not a device. Shortly thereafter the Supreme Court held that an antibiotic sensitivity disc was a drug in *United States* v. *An Article of Drug . . . Bacto-Unidisk*, 395 U.S. 954 (1968). As a result of these decisions FDA classified as drugs soft contact lenses, a pregnancy kit, and intrauterine contraceptive devices which contain drugs or trace metals. FDA has administratively developed a distinction between drug and device, which favors classifying a product as a drug if its intended action is chemical, or based on highly complex technology potential hazards of which may be reduced through new drug controls. FDA has tried to avoid lengthy court battles that could tie up the rest of its efforts.

The need for more comprehensive authority to regulate medical devices has been recognized by Presidents Kennedy, Johnson, and Nixon. In 1969, Dr. Theodore Cooper, Director of the National Heart and Lung Institute, headed a panel to review the need for additional medical device legislation. That panel reported its results in 1970. The Cooper committee searched the scientific literature for accounts of injuries from medical devices. Some 10,000 injuries were recorded, of which 731 resulted in death. For example, 512 deaths and 300 injuries were attributed to heart valves; 89 deaths and 186 injuries to heart pacemakers; 10 deaths and 8,000 injuries to intrauterine devices. After hearing the views of the medical community, the industry and consumer representatives, the Cooper Committee agreed with past proposals calling for device legislation to provide for standard-setting for certain devices and premarket clearance for others. A third category would be exempt from standards or preclearance. The Cooper Committee also recommended that a balance be struck between the need for continuing research and the need for improved patient protection through a system of independent peer review for experimental devices.

II. HEARINGS

The Committee held two days of hearings on medical device legislation and received testimony from twenty witnesses representing the Administration, industry groups, consumer groups, and professional groups. All witnesses agreed that there was a general need for medical device legislation although each had specific recommendations for changes in the Chairman of the Health Sub committee, Senator Kennedy's bill, S. 2368; S. 1446, the Administration's bill introduced by Senator Javits; and S. 1337, introduced by Senator Nelson.

Congressman L. H. Fountain, Chairman of the House Intergovernmental Relations Subcommittee testified that "medical device legislation is sorely needed." In his testimony, he reviewed the findings of 5 days of hearings before his Subcommittee concerned with issues regarding the safety and effectiveness of particular medical devices; intrauterine contraceptive devices.

The Administration was represented by Assistant Secretary for Health Charles C. Edwards, who was accompanied by Dr. Alexander M. Schmidt, Commissioner of the Food and Drug Administration. Dr. Edwards stated "we support this legislation and urge its prompt enactment." His testimony recounted the experience FDA has had in trying to regulate medical devices in the absence of specific device legislation. Dr. Edwards' testimony also reviewed the findings of the "Cooper Committee," established by the Department of Health, Education, and Welfare in 1969 to review the need for medical device legislation. After a thorough search of the scientific literature for injuries associated with medical devices, the "Cooper Committee" reported that there were 10,000 serious injuries of which 731 resulted in death. The "Cooper Committee" also endorsed the need for medical device legislation. Dr. Edwards testified that "the increasing sophistication of medical devices has outpaced the Department's ability to protect the public from those that are faulty. One reason for this is that current law imposes no duty upon medical device manufacturers to establish a safety or efficacy of their products prior to marketing." Dr. Edwards went on to testify that the Department did not "have authority to prescribe standards of safety to which devices must conform."

Dr. Sidney Wolfe testified on behalf of the Health Research Group of Washington, D.C. Dr. Wolfe's testimony described the hazards associated with the use of life-supporting medical devices which had been developed without any regulatory oversight. He expressed the view that the premarket clearance section of the legislation was the key to appropriate safeguarding of the public health, and questioned whether standard setting would provide an adequate guarantee of safety or efficacy.

Dr. Russell J. Thompson, M.D., of the Silas B. Hayes Army Hospital at Fort Ord testified about his experience with the intrauterine device. He felt that the history of the development of IUDs illustrated the need for device regulation and testified:

"* * * under current standards of nonregulation in the United States, I could take a paperclip and fashion it into an IUD. I could begin inserting it into women without even informing them that it is an experimental and never-tested IUD, and I would not even have to inform the EDA of my newly invented IUD."

The testimony of Joel J. Noble, the Director of the Emergency Care Research Institute in Philadelphia also endorsed the need for medical device legislation. He testified about the results of his research which showed that:

"* * * the problems associated with most medical devices which may lead to adverse affects, including injury or death, are, in order of decreasing incidence: (1) operator error resulting from inadequate training, (2) deficiencies in repair maintenance inspection and control of devices within health care facilities, (3) fundamental design deficiencies, (4) deficiencies in manufacturing quality control."

Foster Whitlock, Vice Chairman, Board of Directors, Johnson and Johnson and the Chairman-Elect of the Board of Directors of the Pharmaceutical Manufacturers Association, spoke on behalf of an industry panel which consisted of Kenneth Marshall of the Health Industries Association; James D. Weirman of the Medical Surgical Manufacturers Association; Thomas E. Holleran of the National Electrical Manufacturers Association; Rodney R. Munsey of the Pharmaceutical Manufacturers Association; and Adrian L. Ringuette of the Scientific Apparatus Makers Association. Mr. Whitlock, on behalf of the panel, testified:

"Let me start by saying that in our opinion, S. 2368 is in most respects responsive to the needs of the public. We are in basic accord with its major provisions."

Mr. Whitlock and each of the panel members presented a series of specific recommendations for changes in S. 2368, each of which was considered by the Committee during its Executive Committee consideration of the measure, and many of which were incorporated into the Committee-reported bill.

Dr. Ralph B. Wolfe testified on behalf of the Planned Parenthood Federation of America. He responded to the concerns raised by Russell Thompson about the safety and effectiveness of IUDs and recounted the experience of his organization using the IUD. With regard to the specific legislation, Dr. Wolfe testified overall that:

"* * * The proposed legislation is comprehensive and meritorious. It should satisfy the long overdue need for strict regulation in an increasingly important area related to the public's well-being."

Dr. George Meyers representing the American Dental Association testified to the effect that the House of Delegates of the ADA had not yet formally reviewed the legislation, but that he personally endorsed it and that it was appropriate for the dental industry to be included in its jurisdiction. Mr. James Murray represented the American Dental Trade Association. In his testimony, he agreed that there was a need for medical devices legislation but argued that dental devices should be exempted from the provisions of the legislation. He pointed out that most dental devices do not have great potential for harm and are not life-threatening, and that the market for dental products is very small. He testified:

"* * * To subject dental devices to the costly premarket clearance provision of the proposed legislation would seriously impair the improvement of existing dental devices and the development of new ones."

Carl Parker represented the Dental Manufacturers of America. His testimony also opposed the inclusion of the dental industry under the jurisdiction of this legislation.

Dr. Arthur Beall, Professor of Surgery at the Baylor College of Medicine, represented the American College of Chest Physicians, the American College of Cardiology and the Society of Thoracic Surgery. Dr. Beall testified, "at the outset, Mr. Chairman, let me say that S. 2368 is fundamentally a sound and helpful piece of legislation." Dr. Beall's testimony presented specific suggestions for improvement in this legislation all of which were considered by the Committee during its Executive session consideration of the measure and many of the suggestions were incorporated into the Committee-reported bill.

Dr. Gerald Ranier, a practicing thoracic and cardiovascular surgeon and Associate Clinical Professor of Surgery on Voluntary Faculty of the University of Colorado Medical School, testified on behalf of the Association for the Advancement of Medical Instrumentation. In his testimony, he stated that "AAMI supports, in principle, this legislation." His testimony also offered several specific suggestions for improvements, which were reviewed by the Committee during its Executive session consideration of the bill.

The final witness was Dr. Richard E. Palmer, member of the Board of Trustees of the American Medical Association. He testified on behalf of the AMA that:

"We support the principles and many of the provisions contained in your bill, S. 2368, which are similar to a House counterpart bill, but we would like to offer in our supplementary statements suggestions for modifications with respect to the bill for the consideration of the Committee."

He also testified that:

"We believe that the general approach taken in the legislation should be supported. We think it is advisable that devices should be defined, identified and classified. Similarly, it is beneficial that provision should be made for maximum use not only of the expertise within the FDA, but also significant expertise which is to be found in the medical scientific and manufacturing communities. We are pleased that the legislation provides for the use of expert consultation on recommendations in the classification and evaluation of evidence upon which determination for safety effectiveness and proper classification are based."

III. COMMITTEE VIEWS ON THE MEDICAL DEVICES BILL

Committee views—Section 511

The Committee recognizes the great diversity among the various medical devices and their varying potentials for harm as well as their potential benefit to improved health. Therefore the Committee recommends that all medical devices be classified into one of three categories based upon the degree of risk to the public health and safety represented by each individual device or class of devices. The Committee believes that those devices for which insufficient information exists to assure effectiveness or to assure that exposure to such devices will not cause unreasonable risk of illness or injury, and for which standards or other means may not be appropriate to reduce or eliminate such risk of illness or injury, should be subject to the most rigorous kind of premarket scientific review. The Committee believes that in respect to other devices, if the nation's experts, who will be well represented on the classification panels, determine that it is appropriate to establish reasonable performance standards relating to safety and effectiveness in order to protect the public health and safety, then the devices may be placed in the standard-setting category. Finally, the Committee believes that if the panels conclude that still other devices are safe and effective when used in conjunction with instructions for usage and warnings of limitation, then neither the premarket clearance nor standard-setting mechanism should be necessary to protect the public health and safety.

It is the Committee's intent that the widest range of national expertise in the medical devices area should be utilized in the establishment of classification panels. The Committee recognizes that experts from the industry could significantly contribute to the work of such panels because of their knowledge of industry practices and available technology. The Committee was concerned, however, about potential conflict of interest if industry representatives were to have ultimate decision-making responsibilities in an area that could vitally affect their own interest and perhaps their employment. The Committee therefore has provided that industry members may serve on the panels, but has specified that they be non-voting members.

The Committee was equally concerned that representatives of consumer interests be able to participate on the panels. The Committee has therefore designated a non-voting consumer panel member for each of the panels.

The Committee is aware that the Food and Drug Administration has already begun a preliminary classification of medical devices. In this regard, there have been considerable questions with regard to the appropriate weight that should be given to classifications already made by the panels now in existence under present law. These panels have not fully utilized or adhered to the criteria for classifications as embodied in this bill. Therefore the Committee does not believe that prior classifications should be accepted as such, but that a review of the work of these existing panels should be carried out. On the other hand, the Committee believes that the work of these panels has been most valuable and should wherever applicable, be utilized. Therefore, the Committee has authorized the Secretary to utilize the existing panels, and the information and findings developed by such panels, wherever review determines that to be the appropriate procedure.

The Committee recognizes the importance of the classification process. The report of the panel is considered to be a preliminary classification. This is to avoid a conflict which could arise if a device was classified by a panel under one classification and yet later failed to meet the statutory prerequisites for being so classified or met the statutory prerequisites for a different classification. The Committee wishes to make it clear that the classification report is to be used as guidance by the Secretary in pursuing the procedures set out in other sections for permanently subjecting devices to particular regulatory procedures. This preliminary report is intended to serve as notice to manufacturers and others of the intent to proceed in a certain direction and thereby provide industry with an opportunity to begin developing any data or information which may be needed later to support continued marketing of a device. Because of the preliminary nature of the classification there is no need to provide full administrative safeguards for this process, which thereby facilitates and expedites the chore of classifying thousands of devices. The Committee has provided for full administrative safeguards once classification is final and a course of action has been embarked upon.

The Committee believes that a manufacturer who thinks he has developed a significantly new or modified medical device should have the opportunity to petition for a classification of that new device. Until such time as that new product is classified the manufacturer may not market the product. The purpose of this provision is not intended to be strictly comparable to the new drug provisions in the Food, Drug and Cosmetic Act. This section is simply intended to provide a mechanism whereby devices which are new or which significantly differ from those devices previously classified, can be brought to the attention of the Secretary for the purpose of classification prior to marketing.

Section 513

This section authorizes the Secretary to establish standards for medical devices. The Committee purposely added the word "performance" before the word "standards" in this section. It is not the intention of the Committee to simply authorize the establishment of standards for the purpose of mechanically standardizing medical devices. The Committee believes that standards must relate to the safety or effectiveness (including reliability over time) of the device or other "performance" characteristics. The Committee intends that performance standards shall also go to questions of indicated uses, proper labeling, instructions for use, warnings and uniformity of manufacture when those are in the interest of safety or proper and effective use.

The Committee recognizes that the state of the art in the medical devices field is rapidly changing and continually improving and has therefore provided that the Secretary shall undertake a periodic evaluation of the adequacy of all performance standards to be sure that they reflect changes in technology or medical science.

The Committee believes that maximum use should be made of standards that have already been developed by other Federal agencies and other nationally recognized standard-setting agencies or organizations. The Committee believes that the Secretary should review existing standards and should determine their applicability to meeting the requirements of this section.

The Committee has provided for procedural safeguards in the standard-setting process. There is time to comment upon the published notice of the need to develop a standard. If after reviewing those comments the Secretary publishes findings which are not responsive to the comments, a mechanism is provided for an appeal of the Secretary's findings to the Court of Appeals and eventually to the Supreme Court. There is further review once a standard has been developed and the Secretary has issued a proposal to promulgate a standard. At that point interested parties may comment upon the proposal or can request referral of the proposal to an independent scientific advisory committee for review. There is further recourse in terms of appealing the order establishing the standard to the Court of Appeals and, if necessary, to the Supreme Court. The Committee believes that the availability of these safeguards will protect and balance the rights of the different interests involved in the regulation of medical devices.

The Committee believes that the development of standards requires the application of sophisticated knowledge. It is recognized that a considerable amount of expertise in this area exists outside the Government. The Committee wanted to use this expertise and yet at the same time guard against a potential conflict of interest which might result if a standard were developed by a party having a proprietary interest in the nature of that standard. Therefore, the Committee-reported bill provides that when more than one offer to develop a standard is received, and where each offer is technically competent, the Secretary shall give priority to offerors who have no proprietary interest in the device for which the standard is to be developed. The Committee believes that, when nongovernmental groups (offerors) offer to develop standards for the Secretary's consideration, members of such groups should be required to disclose certain information in order to minimize the potential for conflict of interest that might arise. Such information, as required by regulation, shall be made publicly available at such time as an offer is accepted by the Secretary, in order to aid in the assessment of a proposed standard. The language in the bill is derived from the guidelines used by the National Academy of Sciences in requiring disclosure by committee members "On Potential Sources of Bias". The Committee intends that

the Secretary shall be guided by these guidelines, and by the Conflict of Interest provisions of Public Law 87-849 (18 U.S.C. 202(a)), in drafting regulations under this section.

The Committee has authorized the Secretary, under this Section, to impose individual lot-testing where it is necessary and where no more practical means to achieve consistency or reliability are available. The Committee's intent is not to thwart the use of this procedure, but rather to insure that it will not be required as a regular part of each and every standard. To the extent that safety, effectiveness and reliability can reasonably be achieved without imposing individual lot-testing, the Committee intends that the procedure not be used.

The Committee was impressed by testimony at the hearings to the effect that the skill of the user of the medical device has a direct and significant bearing on the safety and effectiveness of that device. Therefore the Committee intends that the evaluation of the safety and efficacy of a device be done in relation to the skill of the person who is to utilize it. The Committee intends that if a device is safe only in the hands of eminently qualified specialists, that that device will be restricted to use by those specialists.

The Committee believes it necessary to specifically prohibit manufacturers from stockpiling devices from the date of promulgation of a performance standard and the effective date of such a standard. This is analogous to provisions of the Consumer Product Safety Act and is intended to prohibit manufacturers or distributors from building abnormal inventories of products which would not meet an appropriate standard.

The Committee wishes to make it clear that standards and premarket approval mechanisms are not mutually exclusive. A component of a device which is subject to premarket clearance may also be required to conform to an applicable standard. The basic intent of the legislation is to assure safe and effective devices and the Secretary is authorized to use all of the authorities contained in this Act in any combination deemed necessary to protect the public health and safety.

The Committee has specifically exempted all veterinary devices from the purview of this legislation.

The Committee is aware of the special relationship that each health practitioner has with his patients. It is also aware of the need to develop special customized devices to meet the particular needs of a given patient. It is also aware of the need for individual research on medical devices. Therefore the Committee exempts custom devices from the standard setting requirements and from premarket scientific review. This exemption shall apply only for devices ordered by physicians and the other health professionals designed by regulation, according to their own specifications. Those medical devices which are ordered for individual patients, to qualify for this exemption, may not be used as a course of conduct and may not be generally available through commercial channels to the professions. It is the intent of these provisions to allow physicians to order custom-made products but not to permit manufacturers to circumvent standards-setting and scientific review requirements by commercially exploiting these products. The phrase "devices not being used as course of conduct" does not prohibit a physician from ordering a custom instrument and using it in his practice on several patients. This exemption has been a cause of serious concern for the Committee, although it recognizes the need to exempt such devices so that innovation is not stifled and so that custom fitting or sizing would not be prohibited. It is not the intent of this exemption to allow for the development of customized "quack" devices or devices known to be unsafe or ineffective.

The Committee has approached the problem of "quack" or worthless devices in an additional way, by authorizing the ban of certain devices which present a risk of illness, injury, disability or deception and for which feasible standards could not be established and premarket scientific review would not be adequate. This section is aimed primarily at quack, worthless or totally unproven devices, but the Committee envisions that there will be other instances in which the banning of devices would be the appropriate regulatory action to be pursued. The Committee has also included a provision to authorize the seizure of devices which are distributed wholly in intrastate commerce. This provision will be applicable to all devices and will assist enforcement by doing away with the cumbersome and time consuming task of establishing interstate shipment. This provision will be particularly useful against quack devices.

The Committee recognizes the rapidly changing nature of the devices field and therefore feels that provisions must be made to amend standards on the basis of improved technology or new scientific evidence. Such amendments should be made in an expedited fashion to that appropriate changes can be rapidly implemented. The purpose of this authority is to permit new or improved devices to be marketed without delay so that the public may have such beneficial devices available to them as soon as possible.

Section 514

This section provides for the premarket scientific review of medical devices. The Committee spent a great deal of time deciding upon the criteria to be used in determining whether or not a particular device should be subject to premarket scientific review. The Administration's bill would have restricted such review to devices used in "life threatening situations" among other preconditions for such review. The Committee believes that this approach would be too restrictive because many devices could cause serious illness or injury which are not necessarily used in life threatening situations. The Committee believes that the potential for harm inherent in a certain device may not be determined solely on the basis of its intended use. Therefore the Committee has provided that the Secretary may declare a device subject to premarket clearance if, after consultation with appropriate panels, such review is found appropriate to insure safety and effectiveness or to reduce or eliminate unreasonable risk of illness or injury. The Committee intends that devices which are considered to be "life supporting or life sustaining" shall be subject to premarket scientific review. In addition, the Committee believes that the Secretary should have the authority to declare a device subject to scientific review whenever the Secretary feels that such a classification would be appropriate to protect the public health and safety. This authority would enable the Secretary to require premarket review even if the classification panels had not recommended such review. Additionally, the Committee has provided that premarket scientific review should be imposed only when there is no more practical means available to reduce or eliminate such a risk of illness or injury. However, the Committee wishes to make clear that this latter criterion should not be viewed in the absolute. It is not intended to impose upon the Secretary that he establish beyond any doubt that there is no other means available to accomplish the goals of safety and effectveness. Rather, he must reasonably find that other readily available means do not offer the same assurance of success or probability of success as premarket review does.

In the course of its deliberations the Committee was guided by the decisions that have been made by the classification panel on the review of cardiovascular devices already in existence. In particular the minutes of the panel meeting on October 9, 1973 said:

The panel also reviewed the classification results for all of the cardiovascular devices. It was pointed out that since the scientific review or premarket clearance process may be the only method available to the panel by which it may request and analyze data pertinent to a device's safety and efficacy, that several different types of devices may show up in this proposed regulatory category. Obviously those devices which are life supporting, life sustaining or potentially hazardous to health, and which at the same time are in a stage of rapid development need premarket clearance in order to insure their safety and efficacy. Other devices which are also potentially hazardous to health or life supporting or life sustaining may also be placed in the scientific review category even though their widespread clinical use may generally be considered safe and effective. It is not expected that this latter group of devices would require the same type of review as the first group of devices mentioned. However, under proposed legislation, placing them in scientific review would give the Secretary and the advisory panel the opportunity to request and analyze the safety and efficacy data when this appears necessary in order to protect the public health.

Pacemakers and artificial heart valves are examples of life supporting devices which are in a stage of development which is rapidly changing and which would require scientific review. Monitoring devices used in an intensive care unit and a number of devices used to diagnose cardiac function are examples of the latter group of scientific review devices discussed in the paragraph above.

The Committee understands that the decision to require premarket clearance is one of the most crucial decisions to be made under this Act. It has therefore constructed appropriate appeal mechanisms into the legislation. Once a regulation has been published declaring that a device shall be subject to scientific review, a mechanism is provided whereby that decision may be appealed to the Court of Appeals and eventually the Supreme Court.

The Committee believes that the scientific review process must be one that is characterized by the highest standards of scientific excellence. In order to avoid a proliferation of scientific panels under this Section, the Committee has decided that the panels used for classification shall, to the extent possible, be utilized during the process of premarket scientific review. These panels will be subject to the Federal Advisory Committee Act.

The Committee has built further appeals mechanisms into the scientific review process. Once an application for scientific review has been submitted and reviewed under this Section, the applicant may appeal a negative decision by requesting that his application be referred to an independent advisory committee (in lieu of a hearing). If the independent advisory committee concurs in the decision to deny the applicant's proposal or if the Secretary does not concur in the committee's recommendation to permit marketing, the applicant may seek review by the Court of Appeals and eventually appeal to the Supreme Court.

The Committee recognizes the necessity to encourage scientific investigation in the medical devices field and has attempted to provide optimum freedom for individual

scientific investigators in their pursuit of that objective. The Committee has therefore provided an exemption to qualified scientific investigators from the requirements of this Section during the time of the investigational use of devices in order that they may collect sufficient data to establish that the device should be on the market. The Secretary may, by regulation (after an opportunity for an informal hearing), establish procedures governing this exemption in addition to those set out in the legislation. The Committee has provided in the reported bill that the Secretary shall have thirty days after the receipt of a submission under this Section to determine whether or not the investigation is appropriate. The Secretary may not delay the beginning of an investigation beyond thirty days unless he finds that the investigation does not or will not conform to this Section or to the regulations issued thereunder and has notified the sponsor of such findings. The Committee has also specifically defined the meaning of informed consent which must be obtained in all but exceptional cases from any individual being used in investigations under this Section.

The Committee was impressed by the argument presented by the devices industry of the need to establish a mechanism for the approval of devices subject to rapid obsolescence or frequent modification. Therefore, the Committee has established in the reported bill the product development protocol mechanism for such devices. The decision on whether or not this provision should be used in a particular case rests solely with the Secretary and in his discretion. The Committee wishes to make it clear that only an informal hearing shall be provided for a revocation of a product development protocol before the Secretary has approved a notice of completion. However, once a notice of completion is approved, the applicant shall have the same administrative rights as the holder of an approval under scientific review.

Section 515

The Committee has been guided in the development of this section by the provisions of the Federal Hazardous Substances Act and the Consumer Product Safety Act. The Committee believes that producers, assemblers, distributors and importers of devices should immediately notify the Secretary of any defect which could create a substantial risk to the public health or safety or fails to comply with the established standards. The Committee wants to make it clear that information or statements exclusively derived from the notification required by this Section cannot be used as evidence in any proceeding brought against a natural person pursuant to Section 303 of the Federal Food, Drug and Cosmetic Act with respect to a violation of law occurring prior to or concurrently with a notification. The Committee feels that the Secretary should have considerable discretion in determining whether or not users of devices must be notified of defects in any given case. The Committee believes, however, that notice of defective devices should go to the general public unless the Secretary determines that such notification would endanger the public health or is unwarranted because of the insignificant nature of the deviation from the standard.

Section 501

The Committee has amended Section 501 of the Federal Food, Drug and Cosmetic Act to authorize the Secretary to issue substantive current good manufacturing practice regulations which will be applicable to medical devices and establishments manufacturing, processing or handling medical devices. The Committee believes that both industry and consumers have a vital interest in these regulations and that each should have a full opportunity to participate in the development of such regulations.

Section 502

The Committee believes that the Secretary of Health, Education, and Welfare should have authority to regulate prescription medical device advertising. Therefore, the Committee has provided that the Federal Trade Commission Act (15 U.S.C. 52–57) will not be applicable to the advertising of prescription medical devices. The Committee believes that the Secretary of HEW in administering this new law will develop significantly more expertise in the area of medical devices than the Federal Trade Commission and that therefore the regulation of prescription device advertising is more properly vested in the agency most knowledgeable about the area and the one that is truly charged with matters affecting public health and thus assuring the safety and efficacy of medical devices.

Section 700

The Committee recognizes that the medical device field is a rapidly expanding industry. The Committee feels that the Secretary should be authorized to provide for (either directly or through contracts) new research and investigation into the safety and effectiveness of devices and the causes and prevention of injuries or other health impairments associated with exposure to or use of such devices. In addition, research should be carried out to lead to the development and improvement of device performance standards. The Committee recognizes that a device is only as good as the expert who uses it and therefore authorizes the Secretary to conduct programs for the education and training of individuals with respect to proper installation and use of devices.

Section 201

The Committee recognizes that there is confusion at the present time about whether certain articles are to be treated as devices or drugs under the Food, Drug and Cosmetic Act. Therefore, the Committee reported bill has carefully defined "device" so as to specifically include implants, in vitro diagnostic products and other similar or related articles. In vitro diagnostic products include those products which are not ingested and which are used to assist in the diagnosis of disease or other conditions of the body.

Section 801

The Committee reported bill has amended Section 801 of the Food, Drug and Cosmetic Act, which relates to the exportation of devices. The Committee does not believe that substandard or unsafe or ineffective devices should be permitted to be exported to foreign nations and has thus provided in its bill that the Secretary may deny export of any devices which do not fully conform to the provisions of this Act. The Committee has, however, found that in many instances, articles subject to the Federal Food, Drug and Cosmetic Act which may not meet domestic standards for one reason or another might properly and significantly benefit foreign nations. The Committee has therefore provided in this section of the bill that such articles may be exported to foreign countries when the Secretary finds that the non-compliance is not of such a nature as to expose the populations of foreign nations to undue risks of the public health and provided that the foreign nation specifically approves of such an export.

General

The Committee wishes to take specific note of the testimony of a number of witnesses, both within and without the industry who expressed concern about the impact of this legislation on the small manufacturer of medical devices. The concern stemmed from the importance of the small innovative manufacturer in the invention and development of new medical devices and the inability of these firms, because of limited financial resources, to sustain the high level of administrative costs demanded of a highly regulated industry. The Committee believes that these concerns are legitimate, as long as they are concerns for the preservation of small business consistent with the public's need for safe and effective medical devices. The Committee is confident that the administration of this new law will also take into account the need to preserve the small manufacturer's role in the device industry.

IV. TABULATION OF VOTES CAST IN COMMITTEE

Pursuant to section 133(b) of the Legislative Reorganization Act of 1949, as amended, the following is a tabulation of votes in Committee:

There were no rollcall votes cast in the Committee.

1. A Kennedy amendment making technical and conforming changes carried unanimously by voice vote.

2. A Dominick amendment excluding veterinary devices from the jurisdiction of the legislation carried unanimously by voice vote.

3. Several Nelsen amendments with regard to premarket clearance and standard setting were adopted unanimously by voice vote.

4. The motion to favorably report the bill carried unanimously by voice vote.

V. COST ESTIMATES PURSUANT TO SECTION 252 OF THE LEGISLATIVE REORGANIZATION ACT OF 1970

In accordance with Section 252(a) of the Legislative Reorganization Act of 1970 (Public Law 91–510, 91st Congress) the Committee estimates that the cost which would be incurred in carrying out this bill is as follows:

No new funds are authorized by this legislation. The administration estimated that supplemental funds in the amount of $14 million would be requested in order to carry out the provisions of this act.

Mr. NELSON. Mr. President, I am pleased to support the Medical Device Safety Act, a long-overdue and significant piece of legislation that will fill a serious regulatory gap in the Federal Food, Drug, and Cosmetic Act.

For the first time, medical devices, like drugs, will be required either to be premarket tested for safety and efficacy, or to meet minimum standards showing that they are safe and reliable for use over time.

An estimated 12,000 medical devices are now on the market. This rapidly growing industry now has retail sales of some $3 billion, about half that of the pharmaceutical industry.

This legislation distinguishes medical devices from drugs for the purpose of regulation, so that devices shall be classified in three ways: those requiring premarket scientific review; those requiring evidence that they meet performance standards; or those exempt from both such requirements, if they are determined to be safe and effective when used in conjunction with adequate instructions and warnings.

In 1967, the late President Johnson called for medical device legislation in his consumer protection message to Congress. A bill that I first introduced in 1969 responded to that message. The same bill

was reintroduced in 1971, and as S. 1337 on March 22, 1973.

A number of provisions from that bill, with modifications, are incorporated in the bill now before the Senate, S. 2368.

The bill requires that devices found by classification panels to be "life-sustaining or life-supporting" shall be subject to premarket scientific testing. This insures that devices having the greatest potential for hazard or human harm are subjected by manufacturers to careful scientific study and testing before they are marketed.

The Secretary of HEW, based on scientific expert advice, will establish protocols for such testing, and require that test data be submitted to HEW, when a manufacturer seeks approval of a device for marketing. This is comparable to the drug law.

The bill does not specify what the scientific testing protocols should be. That is up to the scientific experts in the agency. Test requirements obviously will vary in degree, depending on the type and use of a device.

The Secretary also has the authority to require premarket clearance for any device when he determines such action will protect the public health and safety. Thus, the Secretary has the broad authority to require such test data without having to wait for a specific classification by a panel, if he determines it is necessary, such as in emergency situations.

These are vitally important provisions in the legislation, and will significantly strengthen the authority of the Federal Government to protect the public from inadequately tested medical devices.

The public should not be the guinea pig for such testing. Life-sustaining or life-threatening medical devices should be thoroughly studied and tested for safety and efficacy before they are widely used.

No one should be exposed to possible electrocution, unwarranted infection, or permanent disability by faulty manufactured or poorly designed medical devices.

The bill also contains safeguards against misuse of a "custom device" exemption. Under the bill, "custom devices" may be used if they are "ordered by a physician—or other specially qualified persons authorized by regulations promulgated by the Secretary after an opportunity for a hearing—to be made in a special way for individual patients." Such devices are exempt from the premarket clearance or standard requirements of the legislation.

"Custom devices" should be allowed to be developed. However, there must be assurances that such exempt devices cannot be used as a course of practice or sold commercially, without adequate safeguards that they are safe and effective.

The legislation contains language prohibiting "custom devices" from being used widely as a course of conduct, or marketed commercially.

The bill contains a requirement for disclosure of information about potential sources of bias by persons outside the Government who participate in the drafting of proposed standards, which the Federal Government adopts. This information will be required by regulation, and will be made public at such time as a standard is accepted by the Government. This provides the opportunity to determine whether such offerors of standards have potential sources of bias or conflicts of interest. The language in the bill is derived from the guidelines now used by the National Academy of Sciences in requiring disclosure by their committee members of potential sources of bias. It is intended that the Secretary shall be guided by these guidelines, and by the conflict of interest provisions of Public Law 87-849 (18 U.S.C. 202(a)) in drafting regulations under this provision.

Furthermore, the bill contains provisions insuring against domination of the classification panels by industry or others with potential conflicts of interest. Both industry and consumer representatives will sit on such panels as nonvoting members, who can offer their expertise to the panel deliberations.

The bill insures that defective devices will be reported to the Government, and removed from the market where necessary.

It prohibits the export of unapproved devices, unless the Secretary determines such devices are not harmful, and the country importing the devices approves.

The bill also requires the Secretary to regulate the advertising of prescription devices, as he does for prescription drug advertising.

The committee carefully considered this legislation, and in my view, has recommended a strong bill that will protect the public health and safety while at the same time encourage continued advances in this fast growing and remarkable scientific field.

The amendment was agreed to.

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

Mr. KENNEDY. Mr. President, the Senate has today passed a landmark piece of health regulatory legislation. This will give the Food and Drug Administration authority to regulate for the first time the development and marketing of medical devices.

The need for this regulatory legislation has been well documented. Over 10,000 injuries have been recorded resulting directly from unsafe medical devices; 731 of these injuries resulted in death. For example, 512 deaths and 300 injuries were attributed to heart valves; 89 deaths and 186 injuries were attributed to heart pacemakers; 10 deaths and 8,000 injuries were attributed to intrauterine devices.

S. 2368 provides for a flexible use of powerful regulatory authority. Those devices which are used in life-supporting or life-sustaining situations and which represent a real hazard to the public health and safety will be subject to the most rigorous kinds of premarket clearance. Such critical devices as heart valves and pacemakers fall into this category. Those devices for which experts agree standardsetting is sufficient to protect the public health and safety will not have to go through the premarket clearance.

Finally, those devices which are generally safe when used in accordance with agreed-upon labeling instructions are exempted from either premarket clearance or standard-setting procedures. Tongue depressors are an example of devices that fall into this category. The purpose of this multifaceted approach is to apply the proper amount of regulation for each device so as to both protect the public health and safety and assure a continuing effort in the research and development of new medical devices.

Hearings before the Health Subcommittee last February demonstrated that in this country a physician is free to prescribe a drug for any purpose that he wishes, be it an approved purpose or an unapproved and experimental purpose; he is free to perform experimental surgery solely on the basis of his own independent judgment without subjecting that judgment to peer review; and he is free to develop and use experimental medical devices without regard to any standards. We saw examples of cases where medical practitioners developed medical devices in isolation which eventually did grievous harm to several patients. The legislation enacted today by the Senate will assure that this never happens again. It is a long missing and much needed piece of authority for the Food and Drug Administration and is a significant step forward in our efforts to improve the quality of health care for all Americans.

ADDITIONAL EXPENDITURES BY COMMITTEE ON RULES AND ADMINISTRATION

The resolution (S. Res. 266) authorizing additional expenditures by the Committee on Rules and Administration for inquiries and investigations was considered and agreed to, as follows:

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.

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Does the distinguished acting minority leader wish to be recognized?

Mr. GRIFFIN. No, Mr. President.

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of routine morning business for not to exceed 30 minutes, with statements therein limited to 5 minutes.

Mr. MANSFIELD. 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. STAFFORD. 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.

TRIBUTE TO SENATOR BIBLE

Mr. STENNIS. Mr. President, I rise to pay a special tribute to my fellow Senator and good friend, Senator ALAN BIBLE, of Nevada.

We all know, as his colleagues, that he is one of the busiest of Senators. But at the same time he is a most unselfish man, in that he is always ready to take time from his tremendously busy schedule to do something helpful for a colleague.

As the Senators know, I was hospitalized for part of the last session of Congress. When the time came that I should be starting to hold hearings as chairman of the Public Works Subcommittee of the Senate Appropriations Committee, I asked ALAN BIBLE if he would undertake to do this for me. I reminded him that if he were kind enough to accede to my request, it would also involve taking the public works appropriations bill to the floor and then to conference.

As Senators know, Senator BIBLE already has this responsibility as Chairman of the Interior Appropriations Subcommittee, as well as his many other demanding duties. Nevertheless, in typical helpfulness, he agreed immediately to undertake the handling of the public works appropriations. He said that when he could hold the hearings himself, he would do so; that when there were conflicts with Interior hearings, he would ask other members of the subcommittee to chair the hearings; and that he would be glad to handle the bill on the floor and in conference. He said this cheerfully and without hesitation, although I know from past observation that he already had a backbreaking schedule.

With his usual competence he accomplished these tasks, and I am deeply grateful to him. I am also very grateful to the several other members of the Public Works Appropriations Subcommittee who shared in chairing the hearings and in the subcommittee markup, including the Senator from Oregon (Mr. HATFIELD), who is the senior member of the minority. They all gave me their help when I needed it badly, and I appreciate it.

We who know ALAN BIBLE so well are never surprised at how much he can do, and how quickly he can do it. I have served with him in the Senate for 20 years, and he has always been able to do this. He is gifted with an extraordinary amount of commonsense, and he has a strong background of legal learning and experience. These qualities enable him to ask very penetrating questions and to arrive with minimum loss of time at accurate judgments. When these abilities are combined with the fact that he has as much energy as any man I have ever known, then we have a man of extraordinary competence. And this is what ALAN BIBLE is.

He is also my close and valued friend. I learned with great regret of his decision to retire at the end of this Congress. I do not challenge his judgment, and I will miss him greatly. We will all miss him. He is a real workhorse, and a stalwart in the Senate. He is a dedicated spokesman for the people of Nevada, and is a great citizen of the United States.

My warm thanks go to the Senator from Nevada for his assistance to me during the last session.

QUORUM CALL

Mr. STAFFORD. 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. STAFFORD. 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.

TRIBUTE TO SENATOR SYMINGTON

Mr. STENNIS. Mr. President, I wish to pay a special tribute to our distinguished colleague from Missouri, Senator SYMINGTON, for his accomplishments, during the first session of this Congress, as the acting chairman of the Senate Armed Services Committee.

I was not able to return to carry on my duties in the Senate from January 30 of last year until September 5. At this time the military procurement authorization bill was ready to report. In fact it was reported the following day, September 6.

All of the work connected with the preparation and reporting of the bill, and the military construction bill which followed, was accomplished while Senator SYMINGTON was serving as acting chairman of the Armed Services Committee. This included the long hearings on the bill. At my request he was the floor leader when the bill was considered by the Senate, and he headed the Senate conferees in the eminently successful resolution of the differences between the Senate and House bills.

Senator SYMINGTON is a man of strong conscience and great dedication. When these responsibilities fell to his lot, he applied himself with much diligence. He worked day and night, and he is entitled to be very proud of what he accomplished. He rendered a very fine service to the committee, to the Senate, and to the Nation.

My respected friend from Missouri is a man of great fairness, as well as a man of conviction. Over a considerable number of years of association with our national military establishment including a tenure as the first Secretary of the Air Force he has learned the fundamentals and a great amount of detail about many military matters, and he has formed some firm convictions as a result of this knowledge. However, as I said, he has a great sense of fairness in all matters. In chairing the Armed Services Committee he was careful to see that all members had a voice, that all problems were fully explored to the satisfaction of the members, and that the committee majority view prevailed and was presented to the Senate. If he had differing individual views he presented them as such. He showed an attitude toward committee work that is admirable.

I wish to extend my warm thanks to Senator STUART SYMINGTON for all the hard work he did, which under normal circumstances would have fallen to my lot. I thank him for his unfailing courtesies to the committee members, and for the many special courtesies he so graciously extended to me. I wish to state my admiration for the manner in which he accomplished his tasks as acting chairman of the Armed Services Committee.

Also, Mr. President, I wish especially to thank every member of the Committee on Armed Services for the work and attention they gave to the affairs of the committee in 1973. All the time I was away every thought I had of the committee was of the fullest satisfaction that they would perform their duties to the very best of their ability and their judgment, and that is exactly what they did,

to the credit of the committee, the Senate, the Nation.

QUORUM CALL

Mr. STAFFORD. 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. MANSFIELD. 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.

EXTENSION OF PERIOD FOR TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the morning hour be continued indefinitely.

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

Mr. MANSFIELD. 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. MANSFIELD. 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.

APPOINTMENTS TO DEFENSE MANPOWER COMMISSION

Mr. MANSFIELD. Mr. President, on behalf of the minority leader and myself, and in accordance with Public Law 93–155, we appoint the following persons to the Defense Manpower Commission: Karl Bendetsen and Curtis Tarr.

ORDER OF BUSINESS

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

The ACTING PRESIDENT pro tempore. The Senate is now in morning business.

Is there further morning business?

LEAVE OF ABSENCE

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the distinguished Senator from West Virginia, the assistant majority leader (Mr. ROBERT C. BYRD), be granted an official leave of absence from the Senate for today.

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

ORDER FOR READING OF WASHINGTON'S FAREWELL ADDRESS ON FEBRUARY 18, 1974—APPOINTMENT BY THE VICE PRESIDENT

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of Washington's Farewell Address this year occur on February 18 instead of on February 22 as provided in the order of the Senate on January 24, 1901.

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

The Chair, on behalf of the Vice President, pursuant to the order of the Senate of January 24, 1901, as modified February 1, 1974, appoints the Senator from Alabama (Mr. ALLEN) to read Washington's Farewell Address on February 18, 1974.

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.

ECONOMIC REPORT OF THE PRESIDENT—MESSAGE FROM THE PRESIDENT

The PRESIDING OFFICER (Mr. METZENBAUM) laid before the Senate a message from the President of the United States, which, with the accompanying report, was referred to the Joint Economic Committee. The message is as follows:

To the Congress of the United States:

The United States enters 1974 in a position of leadership in the world economy. The dollar is strong, we have constructive economic relations throughout the world, and we have the greatest freedom of action resulting from our great capacity to produce. We must take the responsibilities and the opportunities this position of leadership gives us.

Nineteen hundred and seventy-three was a year of problems and progress in the American economy. In some respects the problems were greater than we expected and the progress was less than we had hoped. But the areas of our solid achievements were more important than the areas of our disappointments. We and the world around us have difficult tasks ahead—primarily to deal with an old problem, inflation, and to deal with one that has just become acute, energy. But the United States confronts these difficulties with a strong and adaptable economy, which means an economy of capable and enterprising people.

In the middle of 1971, when the New Economic Policy was launched, the country had three economic objectives: To promote the expansion of output and reduce unemployment, to correct the persistent deficit in the U.S. balance of payments, and to check the inflation which had been going on for 5½ years. To achieve these objectives a comprehensive program of action was initiated. Taxes were reduced. Price and wage controls were instituted. The exchange rate of the dollar was set free to adjust to market conditions, and steps were initiated to improve the international monetary system.

There has been great progress toward two of these three objectives. Production and employment have risen rapidly. Total civilian employment was 6.8 million higher in December 1973 than in June 1971. The unemployment rate had fallen from 6 percent to a little under 5 percent. In 1973 a larger percentage of the civilian population over the age of 16 was employed than ever before.

With vigorously rising employment, and rising productivity as well, there was a big increase in output of goods and services, the essential ingredients of higher living standards. In the 2½ years of the New Economic Policy, total output increased by 14 percent, which is about 35 percent above our average for a period of this length. The real income of American consumers per capita, after taxes, rose by 8½ percent, also well above our long-term rate. Both real output and real income, of course, reached record highs.

The second goal of the New Economic Policy, to strengthen the international financial position of the United States and of the world, was also largely achieved. The significance of this goal is commonly neglected in America. But a country whose currency is weak, whose currency others don't want to hold, is greatly limited in what its government and citizens can do—in buying goods abroad, in traveling freely, in investing freely, in maintaining forces abroad if necessary. And if a country goes on spending more abroad than it earns abroad, its freedom of action is going to be curtailed. There has been a dramatic change in our balance of trade, from a deficit of $917 million in the first half of 1971 to a surplus of $714 million in the second half of 1973. We have not only improved our own position but we have also taken the lead in strengthening the international system. The more flexible system we have promoted withstood numerous shocks during 1973, and at the same time the world economy and international trade and investment continued to expand.

It is the third of the three objectives of the New Economic Policy—the control of inflation—that has been our great difficulty. Until the end of 1972 the New Economic Policy, drawing on the results of earlier fiscal and monetary restraints, worked well in getting the rate of inflation down, even though worrisome rises in food prices appeared. But in 1973 inflation speeded up sharply. During the year, consumer prices increased by almost 9 percent.

Of course, the progress on the first two objectives was connected with the disappointment on the third. The rapid rise toward full employment, the expansion of our net exports, and the reduction in the value of the dollar to make the United States more competitive, all contributed to the resurgence of inflation. But there were other factors at work, less directly under our control. Food production lagged in major producing countries, including the United States. An extraordinary combination of booms in other countries boosted prices of industrial materials. Countries jointly controlling a large part of the world's exportable oil

supplies decided to raise their prices substantially. During 1973 food prices accounted for 51 percent of the total rise of consumer prices, and energy prices accounted for another 11 percent.

The American people generally prospered despite the inflation in 1973. Their incomes, on the average, rose more than prices. But there were many families for which that was not true. We cannot accept continuation of the inflation rate of 1973, and still less can we risk its acceleration. We must dedicate ourselves to carrying on the fight against inflation in 1974 and thereafter.

There are at least four lessons we can learn from our past experience in combating inflation:

1. *The importance of patience.* To correct a powerful trend of the economy which has been going on for some time requires time. Sharply squeezing down the economy in an effort to halt inflation would produce a severe drop in employment and economic activity and create demands for a major reversal of policy. Pumping up the economy to get quickly to full employment would risk setting off even swifter inflation. We need a greater steadiness of policy.

2. *The importance of the rest of the world.* The events of 1973 brought our external economic relations sharply to our attention. Most simply put, it will be exceedingly hard for us to have a stable economy in an unstable world. We must contribute a stabilizing influence to the world economy of which we are a large part. We must promote concerted efforts to maintain the health of the world economy.

3. *The importance of production.* Despite other vicissitudes, what determines the economic well-being of the American people more than anything else is the rate of production. The rapid increase of production has provided the rising real incomes of the American people. More specifically, increasing food production is the best way to deal with the food price problem, and increasing our energy supplies is the best way to deal with the energy shortage. We think of ourselves as a Nation with high and strongly rising output. We are. But we can do better and it is important that we do better.

4. *The importance of free markets.* In the past several years, under the pressure of emergency conditions, we have made great, but temporary, departures from reliance on free prices and free markets. In special circumstances and for short periods these departures have been helpful. But taken together, these experiences have confirmed the view that the free market is, in general, our most efficient system of economic organization, and that sustained and comprehensive suppression of it will not solve the inflation problem.

At the beginning of 1974 the three problems which have dominated economic policy for many years—inflation, unemployment, and the balance of payments—have been joined by a fourth—the energy problem. Or rather, the other three problems have been pervaded by the energy problem. The present oil situation means that we are paying much higher prices for imported oil than formerly and that the volume of imports at the present time is less than we would freely buy even at those prices. But the prices and volumes are both highly uncertain and add uncertainties to the economic picture for the year.

The current and prospective oil situation will at the same time raise prices, limit production in some industries, and reduce demand in others. It will be the objective of the Administration's policy to do three things in this circumstance:

1. To keep the moderate slowdown of the economic boom from becoming excessive because of the energy shortage;
2. To keep the rise of fuel prices from spilling over unnecessarily into more inflation in other parts of the economy; and
3. To set the stage for stronger economic expansion with greater price stability after the initial price and output disruptions caused by the energy shortage have been absorbed.

Achieving these goals in this unpredictable economic environment will require alertness and adaptability. We cannot set a policy at the beginning of the year and let it run without further consideration. But we can describe the main elements of our present strategy.

1. We will maintain a budget of moderate economic restraint. Even though the combination of urgent requirements and inescapable commitments generates pressures for huge expenditure increases, the budget I will propose will keep the expenditures within the revenues that the tax system would yield at full employment.
2. We will be prepared to support economic activity and employment by additional budgetary measures, if necessary.
3. We urge the Congress to enact the legislation I proposed last year for improving the unemployment compensation system, with further strengthening amendments I will submit. This would provide better protection for workers who may lose their jobs, whether because of the energy shortage or for other reasons, and also help to protect the economy better against the secondary effects of their unemployment.
4. Working together with other consuming countries, including the developing countries, and with the oil-exporting countries, we will try to arrive at an understanding on mutually beneficial conditions of exchange.
5. We will try to manage the energy shortage in such a way as to keep the loss of jobs and production to a minimum, although some loss is inevitable in the short run. The allocation system is designed to assure an adequate flow of oil to those industries where lack of it would limit employment the most. We shall also have to provide or permit incentives—including higher prices—for maximum imports, for maximum domestic exploration and production, and for efficient use of our scarce supplies. To prevent higher prices from causing excess profits, I have proposed an Emergency Windfall Profits Tax, which I urge the Congress to enact promptly.
6. We will work with other oil-importing countries to prevent the higher prices of oil and its limited supply from generating a downward spiral of recession. The higher prices will cause dislocations and impose burdens on all consuming countries; they do not have to cause a spreading recession if we manage our affairs cooperatively and wisely.
7. We will continue our policy of maximum agricultural production to help hold down food prices.
8. We will continue our policy of progressive removal of price and wage controls in order to restore the flexibility needed for efficiency and expansion in a time of economic strain.

The effort to maintain the stability of our economy in the face of the present unusual conditions will absorb a great deal of attention this year. But we must not neglect the fundamental factors which determine the prosperity of the American people in the longer run. One of these has come to general public attention with a rush—the need for adequate supplies of energy at reasonable cost. We are seeing the possible consequences of being deprived of these, and we must not allow it.

The energy problem has had two main parts for some time:

First, with rapidly rising world demand for energy, most of which comes from depletable resources, we could run into sharply increasing costs of energy unless vast investments are made in research, development, experimentation, and production.

Second, we are exposed to the danger of being thrown back upon inadequate or very expensive sources of energy earlier than necessary by joint action of a few countries that control a large part of the existing low-cost reserves of oil.

To deal with this problem I began proposing almost 3 years ago, a number of governmental measures to permit or assist development of energy within the control of the United States. In 1973 the second part of the problem, which had formerly been a threat, became a reality at least temporarily, and this has demonstrated unmistakably the urgency of the steps I have recommended.

I propose that the United States should commit itself to "Project Independence" to develop the capacity for self-sufficiency in energy supplies at reasonable cost. One key element of Project Independence is a 5-year, $10 billion program of federally financed research and development in the field of energy. My budget for fiscal year 1975 will include almost $2 billion for this purpose. By far the largest part

of the research, development, and production required by Project Independence will be private, and steps to stimulate the private contribution are essential. Among the numerous measures to this end which I called attention to in my latest energy message on January 23, were several tax proposals. Last April I proposed that the investment credit be extended to cover exploratory drilling for new oil and gas fields, while the tax shelters for wealthy taxpayers associated with such drilling would be eliminated. In my recent message I asked Congress to eliminate the depletion allowance given to U.S. companies for foreign oil production but to retain it for domestic production, in order to shift the incentive to exploration and production at home. I have also asked the Treasury Department to prepare proposals for revising the treatment of taxes paid by oil companies to foreign governments, both to improve tax equity and to increase the incentive for domestic production.

Energy is only the most dramatic example of the need for policies to promote a rising American standard of living by increasing production and assuring the stability of supplies. There are many others.

I. We have discovered that we no longer have a surplus of food, in the sense of producing more than we need either to consume at home or to sell abroad in order to pay for the things we buy abroad. We no longer have great reserves of food in storage and acreage withheld from us. We have freed the American farmer to produce as much as he can and we should keep him free. American agriculture is, and should be, heavily involved in exports. This means that the American food price level and the American consumer are directly influenced by the forces of world demand and supply. International cooperation is needed to promote food production and the maintenance of stocks adequate to shield consumers from the more extreme variations of output. At the call of the Secretary of State, preparations are now being made for a conference on this subject to be held under United Nations auspices.

II. Our ability to buy abroad what is produced more efficiently abroad, and to sell abroad what we produce more efficiently, contributes to the productivity of the American economy. At my recommendation the countries of the world are now preparing to negotiate new steps in foreign trade policy which will further invigorate this beneficial process. I urge the Congress to enact promptly the trade legislation I have proposed to permit the United States to participate in these negotiations.

III. One of our most essential industries—freight transportation—is unfortunately shot through with inefficiencies. Many of these inefficiencies are the result of obsolete, shortsighted, and excessive regulation. Hundreds of millions and probably billions of dollars a year could be saved by unleashing carriers and shippers to carry the freight on the most efficient mode of transportation, in the most efficient way. I have sent to the Congress new proposals to this end.

IV. In 1973, as in 1972 relatively few days of work were lost as a result of industrial disputes. Continuation of this record would be a valuable contribution to the level and stability of production. I have appointed a Commission on Industrial Peace, composed of leaders of management and labor with an impartial chairman, to make recommendations for bringing that about.

V. In addition to the major research and development effort to provide secure supplies of energy, without abusing our natural environment in doing so, this Administration is continuing its support of research and development projects that will help maintain a healthy rate of innovation and productivity growth in the rest of our economy. These activities will be supported at record levels in the coming year, and we are also trying to get a higher return for every dollar we spend.

VI. An indispensable source of economic growth is saving and investment in productive facilities. It should be the policy of government to interfere with this process as little as possible. The government should not absorb private savings into financing its deficits in times when private investment would otherwise utilize all the private saving. Our basic budget policy of balancing the budget or running a surplus under conditions of high employment carries out this principle. Moreover, taxation should not depress productive investment by unduly burdening its return. We should not indulge in demagogic and shortsighted attacks upon profits.

VII. We must push forward, as we have been doing, to remove barriers against the entry of women and minorities into any occupation and against their maximum training and advancement. The men and women of the country are its greatest economic resource. To fail to use any of this resource to its full potential is a serious loss to us all.

* * * * *

Compared with our parents and grandparents we are enormously rich. We have protections against the ebbs and flows of economic life that they never expected and barely imagined. But I cannot assure the American people of an easy time. Like our parents and grandparents, we have our own tests. If we meet them with fortitude and realism the period ahead can be one not only of material advance but also of spiritual satisfaction.

RICHARD NIXON.

February 1, 1974.

EXECUTIVE MESSAGES REFERRED

As in executive session,

The PRESIDING OFFICER (Mr. METZENBAUM) 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.)

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

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

REPORT ON OVEREXPENDITURE OF AN APPROPRIATION

A letter from Deputy Director, Office of Management and Budget, Executive Office of the President, reporting, pursuant to law, that the appropriation to the Department of Labor for "Limitation on Grants to States for Unemployment Insurance and Employment Services" for the fiscal year 1974, had been apportioned on a basis which indicates the necessity for a supplemental estimate of appropriation. Referred to the Committee on Appropriations.

REPORT ON FINAL DETERMINATION OF DOCKET NO. 144

A letter from the Chairman, Indian Claims Commission, reporting, pursuant to law, on its final determination of Docket No. 144, the Pillager Bands of Chippewa Indians in the State of Minnesota, plaintiffs, v. The United States of America, defendant. Referred to the Committee on Appropriations.

PROPOSED LEGISLATION BY THE DEPARTMENT OF DEFENSE

A letter from the Acting General Counsel, Department of Defense, transmitting a draft of proposed legislation to amend title 10, United States Code, to authorize the negotiated sale by the Department of Defense of certain equipment, materials, and obsolete spare parts to U.S. purchasers, and for other purposes (with accompanying papers). Referred to the Committee on Armed Services.

REPORT ON NUMBER OF OFFICERS ASSIGNED OR DETAILED TO PERMANENT DUTY AT THE SEAT OF GOVERNMENT

A letter from the Secretary of the Air Force, reporting, pursuant to law, that, as of December 31, 1973, there was an aggregate of 2,291 officers assigned or detailed to permanent duty in executive part of the Department of the Air Force at the seat of Government. Referred to the Committee on Armed Services.

REPORT ON CONSTRUCTION PROJECTS PROPOSED TO BE UNDERTAKEN FOR THE ARMY NATIONAL GUARD

A letter from the Deputy Assistant Secretary of Defense, reporting, pursuant to law, on construction projects proposed to be undertaken for the Army National Guard (with accompanying papers). Referred to the Committee on Armed Services.

REPORT ON DEPARTMENT OF DEFENSE PROCUREMENT FROM SMALL AND OTHER BUSINESS FIRMS

A letter from the Assistant Secretary of Defense (Installations and Logistics), transmitting, pursuant to law, a report on Department of Defense procurement from small and other business firms, for July 1973–September 1973 (with an accompanying report). Referred to the Committee on Banking, Housing and Urban Affairs.

REPORTS OF NATIONAL RAILROAD PASSENGER CORPORATION

A letter from the Director, Federal Affairs, National Railroad Passenger Corporation, a report of that Corporation, for the month of October 1973 (with an accompanying report). Referred to the Committee on Commerce.

A letter from the Director, National Railroad Passenger Corporation, a report of that Corporation, for the month of December

1973 (with an accompanying report). Referred to the Committee on Commerce.

DETROIT 5-YEAR FINANCIAL FORECAST

A letter from the controller, city of Detroit, Mich., transmitting, for the information of the Senate, the Detroit 5-year financial forecast (with an accompanying document). Referred to the Committee on Finance.

PROPOSED LEGISLATION BY THE DEPARTMENT OF STATE

A letter from the Administrator, Agency for International Development, transmitting a draft of proposed legislation to amend the Foreign Assistance Act of 1961 to authorize an appropriation to provide disaster relief, rehabilitation, and reconstruction assistance to Pakistan, Nicaragua, and the Sahelian nation of Africa (with accompanying papers). Referred to the Committee on Foreign Relations.

REPORT OF ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

A letter from the Chairman, Advisory Commission on Intergovernmental Relations, transmitting, pursuant to law, a report of that Commission, dated January, 1974 (with an accompanying report). Referred to the Committee on Government Operations.

REPORT OF COMPTROLLER GENERAL

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report on assessment of Federal Regional Councils, Office of Management and Budget and other Federal agencies, dated January 31, 1974 (with an accompanying report). Referred to the Committee on Government Operations.

REPORT OF SECRETARY OF HEALTH, EDUCATION, AND WELFARE

A letter from the Secretary of Health, Education, and Welfare, transmitting, pursuant to law, a negative report covering the disposal of excess property in foreign countries for calendar year 1973 (with an accompanying report). Referred to the Committee on Government Operations.

REPORT OF GENERAL SERVICES ADMINISTRATION

A letter from the Administrator, General Services Administration, transmitting, pursuant to law, the 1973 annual report of the Administration (with an accompanying report). Referred to the Committee on Government Operations.

REPORT OF COLORADO RIVER BASIN PROJECT

A letter from the Assistant Secretary of the Interior, transmitting, pursuant to law, the annual report of the Colorado River Basin Project for the fiscal year ended June 30, 1973 (with an accompanying report). Referred to the Committee on Interior and Insular Affairs.

PROPOSED LEGISLATION BY THE DEPARTMENT OF THE INTERIOR

A letter from the Assistant Secretary of the Interior, transmitting a draft of proposed legislation to declare that 3.308 acres, more or less, of federally owned land is held by the United States in trust for the Pueblo of Cochiti (with an accompanying paper). Referred to the Committee on Interior and Insular Affairs.

REPORT OF NATIONAL PARK FOUNDATION

A letter from the Chairman, National Park Foundation, transmitting, pursuant to law, a report for 1973 (with an accompanying report). Referred to the Committee on Interior and Insular Affairs.

REPORT OF NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

A letter from the Chairman, National Commission on Libraries and Information Service, transmitting, pursuant to law, his 1972–1973 annual report (with an accompanying report). Referred to the Committee on Labor and Public Welfare.

REPORT ON GS–17 POSITIONS BY IMMIGRATION AND NATURALIZATION SERVICE

A letter from the Commissioner, Immigration and Naturalization Service, Department of Justice, reporting, pursuant to law, on the number of GS–17 positions. Referred to the Committee on Post Office and Civil Service.

REPORT OF NEW ENGLAND REGIONAL COMMISSION

A letter from the Federal Cochairman, New England Regional Commission, transmitting, pursuant to law, a report of the Commission for fiscal year 1973 (with an accompanying report). Referred to the Committee on Public Works.

REPORT OF COASTAL PLAINS REGIONAL COMMISSION

A letter from the Federal Cochairman, Coastal Plains Regional Commission, transmitting, pursuant to law, the sixth annual report of the Commission for fiscal year ended June 30, 1973 (with an accompanying report). Referred to the Committee on Public Works.

PROPOSED LEGISLATION BY VETERANS' ADMINISTRATION

A letter from the Administrator, Veterans' Administration, transmitting a draft of proposed legislation to amend title 38, United States Code, to increase the rates of vocational rehabilitation, educational assistance, and special training allowances paid to eligible veterans and persons (with accompanying papers). Referred to the Committee on Veterans' Affairs.

REPORT OF ATOMIC ENERGY COMMISSION

A letter from the Atomic Energy Commission, transmitting, pursuant to law, a report of the Commission for 1973 (with an accompanying report). Referred to the Joint Committee on Atomic Energy.

PETITIONS

Petitions were laid before the Senate and referred as indicated:

By the ACTING PRESIDENT pro tempore (Mr. BURDICK):

A resolution adopted by judges of the U.S. District Court for the Central District of California, relating to the report of the Commission on Revision of the Federal Court Appellate System. Referred to the Committee on the Judiciary.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. PELL, from the Committee on Labor and Public Welfare, with amendments:

H.R. 12253. An act to amend the General Education Provisions Act to provide that funds appropriated for applicable programs for fiscal year 1974 shall remain available during the succeeding fiscal year and that such funds for fiscal year 1973 shall remain available during fiscal years 1974 and 1975 (Rept. No. 93–674).

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. ABOUREZK:

S. 2936. A bill for the relief of Jack George Makari. Referred to the Committee on the Judiciary.

By Mr. RIBICOFF:

S. 2937. A bill to amend the Internal Revenue Code of 1954 to terminate the percentage depletion method of computing the depletion deduction for oil and gas wells and oil shale, to deny the deduction of intangible drilling and development costs, to impose certain limitations on the foreign tax credit allowable to oil extracting or refining corporations, and to require the President to report annually the amount of revenue lost under provisions of such code permitting credits, deductions, or exclusions and to explain in such report the reason for the existence of such provisions. Referred to the Committee on Finance.

By Mr. JACKSON (for himself, Mr. METCALF, Mr. HASKELL, Mr. FANNIN, and Mr. BARTLETT):

S. 2938. A bill to implement the Federal responsibility for the care and education of the Indian people by improving the services and facilities of Federal Indian health programs and encouraging maximum participation of Indians in such programs, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

By Mr. DOMENICI:

S. 2939. A bill to authorize the Comptroller General of the United States to acquire and make available to the Congress, the President, and the public certain information and data relating to energy supplies and shortages. Referred to the Committee on Government Operations.

By Mr. FANNIN (for himself and Mr. BIBLE):

S. 2940. A bill to authorize the construction, operation, and maintenance of certain works in the Colorado River Basin to control the salinity of water delivered to users in the United States and Mexico. Referred to the Committee on Interior and Insular Affairs.

By Mr. BAYH (for himself, Mr. BENNETT, Mr. BIBLE, Mr. DOLE, Mr. GRAVEL, Mr. HART, Mr. HATHAWAY, Mr. HUMPHREY, Mr. JAVITS, Mr. MCGEE, Mr. MCGOVERN, Mr. MOSS, Mr. PERCY, Mr. RANDOLPH, Mr. TAFT, Mr. THURMOND, and Mr. WILLIAMS):

S. 2941. A bill to amend title XVIII of the Social Security Act to provide for coverage under part B of medicare for routine Papanicolaou tests for the diagnosis of uterine cancer. Referred to the Committee on Finance.

By Mr. BAYH:

S. 2942. A bill to authorize and direct the Administrator of the Federal Energy Office to establish an inventory of the total aggregate amount of crude oil, and other petroleum products currently held by certain oil producers, refiners, distributors, and pipeline corporations, and users. Referred to the Committee on Interior and Insular Affairs.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. RIBICOFF:

S. 2937. A bill to amend the Internal Revenue Code of 1954 to terminate the percentage depletion method of computing the depletion deduction for oil and gas wells and oil shale, to deny the deduction of intangible drilling and development costs, to impose certain limita-

tions on the foreign tax credit allowable to oil extracting or refining corporations, and to require the President to report annually the amount of revenue lost under provisions of such Code permitting credits, deductions, or exclusions and to explain in such report the reason for the existence of such provisions. Referred to the Committee on Finance.

AN END TO TAX LOOPHOLES FOR THE OIL COMPANIES

Mr. RIBICOFF. Mr. President, the same American oil companies that are reaping huge profits from the Nation's energy crisis continue to take advantage of enormous loopholes in the U.S. tax laws. These tax loopholes needlessly increase the profits of companies that already are making more money than they need to finance the development of new sources of oil. The loopholes also encourage the companies to drill for gas and oil in foreign countries that then deny this country the use of such oil. Today I am introducing legislation to end these glaring faults in our tax laws by eliminating the oil depletion allowance, and the special deduction for intangible drilling costs for both domestic and foreign operations, and by severely restricting the use oil companies can make of the foreign tax credit.

The plain but shocking truth is that under the present tax laws the oil companies pay practically no U.S. income taxes. In 1972, the latest year for which figures are available, four of the largest oil companies paid U.S. income taxes at an average rate of 2.89 percent. Exxon paid taxes at a 6.5-percent rate, Mobil at a 1.3-percent rate, Standard Oil of California at a 2.05-percent rate, and Texaco at a 1.7-percent rate. As meager as these taxes are, they were up from 1969 when Gulf paid 0.4 percent and Texaco paid 0.7 percent on net income.

The taxes the oil countries pay on their foreign operations alone is even lower. In 1973 two-thirds of the profits of the Nation's five biggest international oil companies came from their overseas operations. Yet, because of the foreign tax credit laws, the oil companies will not pay $1 of U.S. taxes on these profits.

Because the U.S. oil companies have clearly not been paying their fair share of taxes, the American people end up paying twice. Once, when they pay sky-high prices for gas, and once on April 15 when they pay higher personal income taxes required to make up for the exceptionally low income taxes paid by the oil industry.

At the same time that the oil companies are enjoying a tax bonanza, they are recording excessive profits. The 1973 profits of the 16 largest oil industry companies were up over 50 percent from last year. For the fourth quarter of 1973 alone, when the United States was just beginning to feel the critical energy shortage, profits were as much as 70 percent above 1972 profits for the same period.

The oil industry has already posted huge price increases this past year. The cost of a gallon of gasoline has jumped from around 35 cents to over 50 cents, while the cost of heating oil has at least doubled. All indications are that prices will continue to rise. Domestic oil now selling for $5.25 a barrel may be selling before long for $7 a barrel. All these past and future price hikes will assure large profits for the oil companies for years to come.

The huge profits—and tiny taxes—that the U.S. oil companies are making make it totally unnecessary to continue to afford the companies special tax preferences. Even without them, the oil companies will have sufficient profits to drill for new oil.

While our present tax laws grant special preferences to an industry that no longer needs it, they also have contributed to our energy crisis by encouraging the oil companies to locate more and more of their business in foreign countries where they can avoid paying any U.S. taxes. The result has been to make the Nation overly dependent on foreign oil. Despite the fact that the demand for energy has been growing at a rate of 4 to 5 percent a year for the last 20 years, refinery capacity hardly grew at all during the 1960's and early 1970's. Production of crude oil in the United States is today at the same rate as it was 3 years ago even though large oil reserves still exist in this country. As a result, our dependence on foreign oil has increased from close to none in 1968 to over one-third of our total demand. The present embargo has forced the country to pay a very high price for this dependence on foreign oil in terms of lost jobs, inflation, disrupted lives, and general inconvenience. We must amend our foreign tax credit laws so it is no longer more profitable to build a refinery, or drill a well, in Saudi Arabia than in the United States.

One of the three inequitable, unwise, and unnecessary loopholes eliminated by my legislation is the 50-year-old oil depletion allowance. Every other business can deduct from its gross sales only the actual cost of replacing the goods it sells. Oil companies, however, can deduct 22 percent of their gross revenues from their taxable income, whether or not this deduction bears any relation to the actual cost of replacing the oil sold. It is as if a taxpayer first reduced his yearly salary by 22 percent before he even started to fill out his tax forms.

The industry saved about $705 million in U.S. taxes in calendar year 1971 because of the oil depletion allowance. It has been estimated that because of rising prices this provision will cost the U.S. taxpayer $2.6 billion in fiscal year 1975.

My bill eliminates the oil depletion allowance for both foreign and domestic operations of U.S. oil companies. Like any other industry, oil companies would still be entitled to deduct the actual cost of replacing each barrel of oil they sell.

Another special tax preference now permits an oil company to deduct in the first year all the intangible drilling costs incurred in finding and developing a new oil well. If any other company bought a new machine with the expected life of 10 years, the company would be required to amortize its cost, and each year deduct only one-tenth of the total cost of the machine. An oil company can, however, deduct in the first year the costs of all the goods or services without lasting value which it uses in the exploration and development of the new well. This includes such items as labor, equipment rentals, cost of building roads to a drilling site, and preparing the site. As a result, the company is able to show a paper loss for the first year of successful operation even though the well, in fact, operates at a profitable rate during the first year, and for many years thereafter. The income tax savings which the company as a result enjoys during the well's first year of operation amounts, in effect, to an immediate, interest-free loan which no other business gets.

This particular tax break will save the oil companies—and cost the country—an estimated $800 million in revenues in fiscal year 1975.

Under my proposed legislation the oil company could no longer write off all its intangible drilling costs in the first year. Like any other business, the oil companies would be forced to amortize their intangible drilling costs over the estimated life of the well.

Finally, American oil companies with branches or subsidiaries operating abroad have avoided paying huge amounts of U.S. taxes on their overseas operations through exploitation of the foreign tax credit. This greatest of all abuses must be eliminated immediately. If it is not, eliminating the oil depletion allowance and the intangible drilling costs provisions would not raise by even $1 the amount that oil companies now pay in taxes on their foreign operations.

The basic concept of a foreign tax credit is a fair one. If an American company has to pay a 48-cent foreign income tax on every dollar earned in a foreign country it is unfair to make the same company pay another 48 cents in U.S. income taxes. This would amount to double taxation and leave the company with practically no net earnings. The law therefore provides that a company can subtract from its potential U.S. tax liability for its overseas operations the taxes paid on the same operations to foreign countries. But the American oil companies have grossly abused this right to foreign tax credits.

The first gimmick the oil companies use is to simply overstate the size of their so-called foreign tax bills. They do this by classifying royalties and other normal business expenses as income taxes. When a company pays a royalty or bonus to the United States for the right to drill oil on U.S. lands it treats this as a business expense which it deducts from the earnings on which it must pay U.S. income taxes. But since the early 1950's, the oil companies have obtained a number of rulings from the Government permitting them to treat as an income tax payment, rather than a business expense, the payment to a foreign country of the exact same type of oil royalties or bonuses. Every time an oil company now pays $1

in royalties to an Arab sheik, the company subtracts $1 from the tax that it would otherwise have to pay to the United States on its foregoing operations.

By calling a business expense a tax, the oil prdoucing countries, in collaboration with the oil companies, thus divert money from the U.S. Treasury and into the already brimming coffers of the oil companies.

A few figures demonstrate how huge a loophole the foreign tax credit has in fact been for U.S. oil companies.

The U.S. oil companies account for more than 45 percent of all the foreign tax credits claimed by all U.S. industry. While U.S. businesses on the whole use the foreign tax credit provision to reduce taxes paid to the United States by 15 percent, the Treasury Department has estimated that oil companies used the foreign tax credit in 1971 to reduce their U.S. taxes by more than 75 percent. And the size of the loophole has increased tremendously since 1971. In Saudi Arabia alone, the so-called taxes paid the government on a barrel of oil have increased over eight times since February 1971.

Because of the oil company's use of foreign tax credits, U.S. corporations earned $1,085,000,000 on mining and oil operations abroad in 1970, but paid not one penny in U.S. taxes on that income. It has been estimated that for fiscal year 1975, the taxes that the oil companies would pay to the United States, were it not for the tax credit, could be as high as $1.75 billion. Yet, because of the foreign tax credit, the companies will in all likelihood pay not 1 cent of taxes. Foreign credits from profitable overseas operations have, in fact, exceeded U.S. tax liabilities every year since 1962.

The legislation I am introducing today specifically prohibits an oil company from including in its foreign tax credit the royalties, bonuses, or other payments made to a foreign country which are not bona fide income taxes. The provision provides that in determining what portion of an oil company's payments to a foreign country represents a bona fide income tax payment, the Secretary of the Treasury shall consider whether the payments claimed as foreign tax payments are roughly similar to the income taxes paid by other persons in the country who are not in the oil business. Such a comparison should prove a reliable way to judge whether the payments made to foreign countries are in fact bona fide taxes.

It appears, for instance, that domestically owned corporations in Kuwait and Saudi Arabia that are unrelated to the oil business actually pay little or no income taxes.

My proposal will drastically reduce the size of the foreign tax credits that oil companies can use to avoid paying U.S. taxes on their overseas operations. It will not prohibit them, however, from claiming as an income tax credit any payments which can be shown to the satisfaction of the Government to be bona fide income tax payments. But royalties and other business expenses which are not true income taxes would be deductible by U.S. oil companies, just as in the case of similar payments made in this country.

In addition to treating business costs as taxes, some oil companies inflate the size of the foreign tax credit yet further by taking advantage of a law which allows companies operating in several countries to spread the foreign tax credit around from country to country to get advantage of as much of its foreign tax credit as possible. For instance, an oil company operating in a foreign country with low income taxes might use all the foreign tax credit available to it from that country, and still be left with a U.S. tax liability of one-half million dollars. But by calculating its foreign tax credits under the so-called overall limitation method, the oil company can in fact offset this tax by using a one-half million dollar excess foreign tax credit it earned from the payment of high foreign income taxes in another country. For example, some of the major international oil companies have large tanker fleets flying the flags of such countries as Panama, Liberia, and Honduras that require no corporate income taxes. Profits made on these operations could be sheltered from U.S. taxes through use of some of the excess foreign tax credits generated in other countries such as Saudi Arabia.

This must be stopped. Under my proposal an oil company would be required in most cases to limit its foreign tax credits in any foreign country to the income tax actually paid to that country. This is known as the per country limitation. If, however, because of losses on some operations, the oil company could reduce its U.S. taxes more by using the per country limitation than by combining the credits earned in different foreign countries under the overall limitation method, the company would then be forced to use the overall limitation. This would prevent the company from using the losses incurred in one country to reduce its U.S. taxes, while at the same time using the full amount of the foreign tax credits earned in other countries.

Finally, the oil companies line their coffers by storing up their excess foreign tax credits over a number of years. Because they have been allowed to treat royalties as taxes, the oil companies have earned tax credits far in excess of what they could possibly use in the year the income was earned. Under the present law these excess credits are not, however, lost, for the oil companies are allowed to carryover their excess credits for up to 5 years. Even if oil companies are forced by this legislation to treat royalties as a deductible business expense when filling out their 1974 taxes, the companies could still avoid paying any significant amount of taxes on their foreign investments for a number of years because of the excess tax credits they still have from past years. It has been estimated that the five largest companies have stored up from past years more than $2 billion in foreign tax credits.

Consequently, my bill prohibits an oil company from using a foreign tax credit earned in 1 year to offset U.S. taxes incurred in other years.

Elimination of all these special tax breaks simply means that the oil companies will from now on be treated on an equal basis with any other business in this country. Up to now, this country has showered the oil companies with tax preferences. Yet, this country now finds itself beset by an energy crisis of very serious proportions. Obviously, the answer to the energy crisis is not in retaining the unfair tax preferences which have proved so ineffectual in preventing the crisis in the first place.

Even if these tax preferences were once justified in order to assure adequate exploration and development of new sources of oil, they can no longer be justified in light of the high oil prices the oil companies are now charging, and the record profits they are making, and will continue to make, for as many years as the energy crunch lasts.

Since these special preferences reduce the taxes oil companies pay on their foreign operations they are doubly unwise, for this country can no longer help finance the development of oil in foreign countries which then sell the oil back to us at exorbitant prices, or refuse us, for political reasons, the use of such oil at all.

Even apart from the energy crisis, the encouragement our tax laws give to foreign investments is very ill-advised. It means that money that would otherwise be used at home to bolster this country's economy is instead diverted to fuel the economies of Arab sheikdoms. The book value of U.S. investment abroad in petroleum approached $25 billion in 1971. This represented almost 30 percent of total U.S. direct investments abroad.

Economists and other experts in the field widely agree that the special tax preferences now provided oil companies are no longer justified. The administration itself has recognized the need for eliminating the oil depletion allowance for foreign wells and for a reduction in the foreign tax credits available to oil companies. Two of the largest oil companies in the country, Atlantic-Richfield and Shell, have publicly stated that the oil depletion allowance should be eliminated.

Clearly, the time has arrived to reform the oil tax laws and save the country the over $4 billion a year of potential tax revenues now lost to the oil companies.

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

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

S. 2937

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

SECTION 1. REPEAL OF PERCENTAGE DEPLETION.

Section 613(b) of the Internal Revenue Code of 1954 (relating to percentage depletion rates) is amended by—

(1) striking out subparagraph (A) of paragraph (1) and redesignating subparagraphs (B) and (C) as (A) and (B), respectively; and

(2) striking out paragraph (2) and inserting in lieu thereof the following:

"(2) 15 Percent.—If from deposits in the United States, gold, silver, copper, and iron ore.".

SEC. 2. INTANGIBLE DRILLING AND DEVELOPMENT COSTS.

Section 263(c) of the Internal Revenue Code of 1954 (relating to intangible drilling and development costs in the case of oil and gas wells) is repealed.

SEC. 3. LIMITATIONS ON FOREIGN TAX CREDIT.

(a) DEFINITIONS OF CREDITABLE TAXES.—Section 903 of the Internal Revenue Code of 1954 (relating to credit for taxes in lieu of income, etc., taxes) is amended to read as follows:

"(a) IN GENERAL.—For purposes of this subpart and sections 164(a) and 275(a), the term 'income, war profits and excess profits taxes' means a tax paid in lieu of a tax on income, war profits, or excess profits otherwise generally imposed by any foreign country or by any foreign possession of the United States.

"(b) BONA FIDE FOREIGN INCOME TAXES.—For purposes of this subpart, and sections 164(a) and 275(a), in the case of tax paid or accrued to any foreign country with respect to income derived from the extraction, production, transportation, or refining of oil or gas in such country, the term 'income, war profits, and excess profits tax' does not include and royalty, bonus, or other payment which does not constitute the payment of a bona fide federal or national income tax, as determined by the Secretary or his delegate. In determining whether a payment is the payment of a bona fide federal or national income tax, the Secretary or his delegate shall take into consideration whether the effective rate of tax, or the amount of tax, bears a reasonable relationship to any income, war profits, and excess profits taxes actually collected by the foreign country from its citizens, or from business entities owned by its citizens which are engaged in activities other than the extraction, production, transportation, or refining of oil or gas. The Secretary or his delegate shall prescribe such regulations as may be necessary to carry out the provision of this subsection.

(b) Lesser of Overall or Per County Limitation.—Section 904(b) of such Code (relating to election of overall limitation) is amended by adding at the end thereof the following new paragraph:

"(4) Election required or denied in certain cases.—A taxpayer who, for the taxable year, paid taxes for which a credit is allowable under this subpart on income from the extraction, production, or transportation, or refining of oil or gas in more than one foreign country shall elect the limitation provided by subsection (a)(2) for that taxable year if the total amount of the taxes payable under this chapter, taking into account such election, is greater than the total amount of taxes which would be payable if the limitation imposed by subsection (a)(1) were elected. Such a taxpayer shall elect the limitation provided by subsection (a)(1) for that taxable year if the total amount of taxes payable under this chapter for such year, taking into account such election, is greater than the total amount of such taxes which would be payable if the limitation under subsection (a)(2) were elected."

(c) Termination of Carryover or Carryback.—Section 904(d) of such Code (relating to carryback and carryover of excess taxes paid) is further amended by inserting the following at the end of subsection (d): "The provisions of this subsection shall not apply in the case of taxes paid to any foreign country on income from the extraction, production, transportation, or refining of oil or gas in that country.".

SEC. 4. EFFECTIVE DATE.

The amendments made by sections 1, 2, and 3 apply with respect to taxable years beginning after December 31, 1973.

By Mr. JACKSON (for himself, Mr. METCALF, Mr. HASKELL, Mr. FANNIN, and Mr. BARTLETT):

S. 2938. A bill to implement the Federal responsibility for the care and education of the Indian people by improving the services and facilities of Federal Indian health programs and encouraging maximum participation of Indians in such programs, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

INDIAN HEALTH LEGISLATION

Mr. JACKSON. Mr. President, I am introducing for appropriate reference, legislation which addresses one of the most deplorable situations in the United States, that of the provision of basic health services to Indians.

Earlier this Congress, the Senate passed the Indian Financing Act, to provide economic assistance to enable the Indian people to design and build their own future. By unanimous vote on January 28 of this year, the Indian Self-Determination and Educational Reform Act was ordered reported to the Senate by the Committee on Interior and Insular Affairs. Both of these measures reaffirm the policy of this body that it is the Indian people who must decide their own future and they provide the educational and economic tools to shape that future.

The most basic human right must be the right to enjoy decent health. Certainly, any effort to fulfill Federal responsibilities to the Indian people must begin with the provision of health services. In fact, health services must be the cornerstone upon which rest all other Federal programs for the benefit of Indians. Without a proper health status, the Indian people will be unable to fully avail themselves of the many economic, educational, and social programs already available to them or which this Congress will provide them.

The purpose of the legislation I introduce today is to augment and expand upon presently established health programs and services for Indian citizens. It is designed to eliminate enormous backlogs of essential patient care, to construct and renovate hospitals and other health facilities which at the present time are either nonexistent or in a state of general deterioration, and to provide financial and organizational support for the development and growth of urban Indian health projects.

In the early history of this country, Federal health services provided to Indians were confined to those military physicians assigned to frontier forts and reservations. Primarily the attention of these physicians focused on preventing the spread of smallpox and other contagious diseases; diseases, I may point out, which were virtually unknown to Indians before their contact with the white man.

In 1849, with the transfer of the Bureau of Indian Affairs to the Department of the Interior, Indian health policy shifted from military to civilian administration. Although some limited progress occurred under this new administrative arrangement, by 1875 there were still only about half as many doctors as there were Indian agencies, and by 1900 the physicians serving Indians numbered only 83. During this time Indian health services were financed out of miscellaneous funds of the Bureau of Indian Affairs. It was not until 1911 that general Indian health appropriations began.

In the mid-1920's a more concerted effort was made to assist the health needs of Indian communities, facilitated by the assignment of commissioned officers of the Public Health Service to Indian health programs. Considerable improvement in Indian health can be said to have resulted from the contributions of these officers. While these highly trained medical and public health officers strengthened the overall direction of the Federal Indian health program, they were unable to overcome the serious health problems of Indians due to other shortcomings in the Indian health program. Outdated and inadequate Federal health facilities and delivery systems were incapable of sustaining the demands for service found on Indian reservations. Finally, in an effort to consolidate and expand the diverse and disjointed programs of Indian health care and to accommodate Indian health needs which had grown to crisis proportions, Congress, in 1955, transferred all authority for Indian health from the Department of the Interior to the Public Health Service.

Presently, the responsibility for providing adequate health and medical services for Indian people resides with the Indian Health Service, a special branch of the Public Health Service within the Department of Health, Education, and Welfare. Of the approximately 827,000 Indians in the United States representing some 260 tribes and 215 Alaskan Native villages, more than half a million Native Americans depend almost entirely upon the Indian Health Service for medical and hospital care. To meet the needs of these citizens, the Service operates 51 hospitals in 13 States offering a total of 2,700 beds with an additional 1,000 beds provided through contract facilities with local private and public hospitals. The total manpower of these services constitutes more than 7,000 professional and staff personnel, including some 450 physicians and 170 dentists in the Commissioned Officers Corps of the Public Health Service. Contracts with some 300 private and community hospitals and 500 physicians provide additional personnel and facilities.

Although the Indian Health Service has begun at long last to achieve a limited progress in improving the health status of Indian people, health statistics reveal that in spite of this progress the vast ma-

jority of Indians live in an environment characterized by inadequate and understaffed health facilities, improper or nonexistent waste and water systems, and continuing dangers of deadly or disabling diseases. These circumstances have produced a situation in which the health of Indians ranges far below that of other Americans. Health concerns which most of our communities have forgotten as long as 25 years ago continue to plague Indian communities. For every Indian health need treated by existing services, another need will go unmet, only to arise at a later date, inhibiting the lives and pursuits of native citizens and strangling their development as free, self-determined people.

Illustrative of this situation are the following facts: the incidence of tuberculosis for Indians and Alaska Natives is 6.4 times higher than the rate for all citizens of the United States; the Indian and Alaska Natives rate for diabetes is almost twice that of all races of the United States; and while respiratory and gall bladder illnesses are not reported in the general population, Indian Health Service officials state emphatically that the rates for these diseases among Indians and Alaska Natives are significantly higher than the general population. Otitis media, an infection of the inner ear, affecting most commonly children under the age of 2 years, continues to be a leading cause fo disability in American Indians and Alaska Natives.

Although surgical treatment is possible which can generally prevent the long-term and serious disabilities of deafness and learning deficiencies, only a fraction of this essential surgery is now being provided. The infant mortality rate among Indians is almost 1½ times the national average while the Indian birth rate soars at a ratio twice that of other Americans. The frequency with which these events occur and the prevalence of disease in Indian communities cannot help but have a significant impact on the social and cultural fiber of Indian societies, contributing to their general disintegration and attendant problems of mental illness, alcoholism, accidents, homicide and suicide. For example, suicide within Indian communities is approximately twice as high as in the total U.S. population. The real life facts of Indian health in this Nation add up to the simple yet deplorable conclusion that while every other American can expect to live to the age of at least 70.4 years, the Indian and Alaska Native can expect to live only to age 64.9.

All efforts to alter these conditions are met with an initial and fundamental impediment of outdated or inadequate health facilities. Of existing facilities, some 38 hospitals, 66 health centers and 240 other health stations are at least 20 years old.

Many of them are old one-story Army-style buildings with inadequate electricity, ventilation, insulation, and fire protection systems, and of such insufficient size to jeopardize the health and safety of their occupants. To meet the needs of some 530,000 Indians, Service and contract facilities provide some 3,700 hospital beds. Compared with a national average of 1 hospital bed per 125 persons Indian facilities provide 1 bed per 132 persons, a shortage of more than 200 beds under existing standards of service and demand. A special committee of the American Medical Association has investigated the condition of Indian health services. It is their conclusion that only 21 of the 51 existing Indian Health Service hospitals meet their standards of accreditation (either because of insufficient staffing or poor physical plants), that two-thirds of the hospitals are obsolete, and that 22 need complete replacement.

In order to overcome the gross deficiencies in the quantity and quality of existing facilities, more money must be allocated. Per capita expenditures for Indian health purposes are 30 to 40 percent below expenditures for the average American community. The greater incidence of disease among Indians renders this deficiency all the more acute. It is further compounded by the fact that many of our more modern national health programs, designed to assist the general population, are difficult or impossible to apply to Indians. Medicare, medicaid, and social security programs afford little relief because, given their unique social situation, few Indians either know they are eligible for medicare or have not worked long enough for social security eligibility.

At the center of this tragic set of circumstances is probably the most pressing and serious problem facing Indian Health Service, the manpower shortage among physicians and related health personnel. At present there are 450 physicians in the Indian Health Service. Simply translated this represents a ratio of one physician for 1,080 Indians as against a national average of slightly over 600 persons per physician. These shortages are complicated by the highly dispersed and remote nature of Indian tribes, vast distances between settled areas on reservations, and the lack of adequate roads and minimum emergency transportation systems

Unfortunately, the Indian people cannot look to their own tribal members for relief in this vital health manpower shortage category. There are only 50 known physicians of Indian descent engaged in the practice of medicine today, and all but 2 or 3 are serving non-Indian patients. My proposed legislation holds promise for opening new opportunities for young Indian men and women to enter medicine and other health professions for service to their own people.

I find particularly disturbing the projection that severe manpower shortages are likely to become even more acute in the coming years due in large part to the decline in recruitment for the Public Health Service Commissioned Officers Corps. In past years the main source of the Service's physicians enlisting in the Public Health Service has greatly declined. An absence of adequate housing facilities and the remoteness and cultural isolation of assignments have added to the problem of recruiting professional manpower. Leading medical officials have given truly dire warnings that any further decline in manpower could have critical implications for the health of Indians.

By and large the problems I have described for you are with respect to those Indians who live on or near reservations and are members of federally recognized tribes or Indians. However, a substantial segment of the Indian population—300,000 to 400,000—resides away from the reservation, mostly in large urban centers.

My bill contains a provision aimed specifically at assisting urban Indians to develop health leadership among their own members and to establish the kind of resource identification which will help to meet the most pressing health needs of these deserving people. An integral aspect of this effort will involve an outreach program to seek out individuals and families who require health care and refer them to services at the earliest possible date.

While current Indian policy prohibits the extension of the special Indian Health Service hospital and medical care program to the urban centers, I am convinced that my proposal in this area of concern will do much to alleviate a serious health situation among the Indian people concentrated in a number of major cities throughout the United States. I want to underscore the fact that the funds designated for these programs will in no way reduce the level of funding I have proposed to meet the serious health and medical needs for thousands of Indian people residing on federally recognized reservations and in Indian communities. I want both the members of federally recognized tribes and the urban Indians to understand that my bill in no way sets up a "tug of war" over limited financial resources and services but rather the measure addresses itself to the needs of both groups.

Title I of my bill is designed to augment the inadequate number of health professionals serving the Indian community. Part A provides scholarship grants to individuals who are enrolled in medical schools: schools of optometry, osteopathy, dentistry, pharmacy, podiatry, public health or nursing; or schools licensed by a State to train persons in the allied health professions. These grants contain the condition that the individuals who receive them must serve the Indian community after completion of their professional training. Part B provides scholarship grants to Indians who have finished high school and demonstrate a capability of successfully completing a premedical, predental or preosteopathy course of study.

Part C addresses the problem of maintaining the physicians, once trained, in the rural and remote areas where a significant portion of the Indian people reside. The difficulties associated with meeting physician needs in rural America are well known. These difficulties are based on several critical factors among which are lack of sufficient monetary reward, few social amenities available in rural communities, inadequate housing and the inability to have frequent asso-

ciation with professional colleagues. While it is difficult to say with certainty that any one of these factors is overriding when a young physician is preparing to initiate his career, the ability to frequently associate with professional colleagues can be an important consideration in determining where he will practice. Part C attempts to offset the negative impact of the lack of such associational opportunities in rural areas by providing allowances to Service physicians to enable them to leave their duty station for prescribed periods of time for professional consultation and refresher training courses.

Title II provides added appropriations over a 5-year period to alleviate the tremendous backlog in basic patient care, field health care and dental care. In addition, funds are provided for basic maintenance and repair of existing hospitals and related facilities. Also provided are such additional health personnel and administrators necessary to implement this massive effort to reduce the patient backlog.

Title III, part A, attacks the problem of inadequate or outdated Service hospitals, health centers and health stations by authorizing $400 million over 5 years for construction of new facilities. This title, if enacted, would constitute a major effort at eliminating some of the more archaic health installations and at the same time providing some new facilities in geographic areas where they are critically needed. The Secretary of Health, Education, and Welfare is also authorized to equip and staff these facilities at levels commensurate with their operation at optimum levels of effectiveness.

Part B authorizes $470 million over a 5-year period to supply vitally needed safe water and sanitary waste disposal facilities in both existing and new Indian homes and communities. It requires the Secretary of Health, Education, and Welfare, together with the Secretaries of Interior and Housing and Urban Development, to come forth within 3 months with a plan to provide the essential water and sanitation facilities in accordance with the 5-year expenditure schedule.

Title IV is designed to give Indians greater access to and benefits from the present social welfare programs presently available to all Americans. To accomplish this the bill will provide for direct medicare and medicaid payments to Indian health hospitals instead of to the general Treasury.

Title V encourages the establishment of "outreach programs" in urban areas to make health services more accessible to the urban Indian population. A few urban Indian organizations have already established referral services to assist their members in securing the fullest possible access to adequate medical services and facilities. This bill gives recognition to the modest success of these organizations in the urban Indian community. To encourage additional efforts, the Secretary of Health, Education, and Welfare is authorized to enter into contracts with urban Indian organizations to provide them with financial assistance. These contracts are conditioned upon the urban Indian organizations identifying the available health resources within the urban centers in which they are situated, determining the Indian population which are or could be recipients of health services; and assisting urban Indians in utilizing these available resources.

Title VI provides for an evaluation system whereby the Secretary of Health, Education, and Welfare is required within 3 months of the end of fiscal year 1978 to submit a report containing a review and assessment of the programs provided under this bill including recommendations of additional programs and assistance designed to bring Indians to a health status equal to that of the general population.

Mr. President, in conclusion I want to state emphatically that unless our Government is willing to take affirmative action to improve the health status of Indian people, I am convinced that many of our efforts to improve the social and economic progress of Indians will stand as mere hollow promises. I ask my colleagues how individual Indians and their tribes whose health status is at least a generation behind that of the general population can aggressively pursue complex community, social and economic development plans when they are faced with such serious health constraints?

Mr. President, I stand on the principle that every Indian man, woman and child in this Nation has the God given right to enjoy sound physical and mental health. The members of this great body can help Indian people to achieve that right. In fact we owe them that right due to the Indians' unique historic and legal relationship with the Federal Government which has its basis in the Constitution itself. But to do so we must be prepared to provide them with appropriate tools—financial resources, facilities, manpower training and flexible authorities—to develop a health delivery system capable of achieving this highly desirable goal.

Mr. President, that concludes my formal remarks. I ask that the bill be printed in the RECORD along with several tables which demonstrate all too clearly the deplorable health conditions presently existing among Indians.

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

S. 2938

A bill to implement the Federal responsibility for the care and education of the Indian people by improving the services and facilities of Federal Indian health programs and encouraging maximum participation of Indians in such programs, and for other purposes

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

FINDINGS

SEC. 2. The Congress finds that—

(a) Federal Indian health services to maintain and improve the health of the Indians are consonant with and required by the Federal Government's historical and unique legal relationship with, the resulting responsibility to, the American Indian people.

(b) A major national goal of the United States is to provide the quantity and quality of health services which will permit the health status of Indians to be raised to the highest possible level and to encourage the maximum participation of Indians in the planning and management of those services.

(c) Federal health services to Indians have resulted in a reduced prevalence and incidence of preventable illnesses and unnecessary and premature deaths among Indians.

(d) Despite such services, the unmet health needs of the American Indian people are severe and the health status of Indian is far below that of the general population of the United States. Illustratively, for Indians compared to all Americans in 1971, the tuberculosis death rate was over four and one-half times greater, the influenza and pneumonia death rate over one and one-half times greater, and the infant death rate about 20 percent greater.

(e) All other Federal services and programs in fulfillment of the Federal responsibility to Indians are jeopardized by the low health status of the American Indian people.

(f) Further improvement in Indian health is imperiled by—

(1) inadequate, outdated, inefficient and undermanned facilities. For example, only 21 of 51 Indian Health Service hospitals are accredited; only 12 meet national fire and safety codes; and 57 areas with Indian populations have been identified as requiring either new or replacement health centers and stations, or clinics remodeled for improved or additional service;

(2) shortage of personnel. For example, about two-thirds of the service hospitals, four-fifths of service hospital outpatient clinics, and one-half of the service health clinics meet only 80 percent of staffing standards for their respective services;

(3) insufficient services in such areas as laboratory, hospital inpatient and outpatient, eye care and mental health services and services available through contracts with private physicians, clinics, and agencies. For example, about 82 percent of the surgical operations needed for otitis media are unperformed, over 57 percent of required dental services have not been provided, and about 98 percent of the need for hearing aids is unmet;

(4) related support factors. For example, over 700 housing units are needed for staff at remote service facilities;

(5) lack of access of Indians to health services due to remote residences, undeveloped or underdeveloped communication and transportation systems, and difficult, sometimes severe, climatic conditions; and

(6) lack of safe water and sanitary waste disposal services. For example, over 40,000 existing, and 62,000 planned replacement and renovated, Indian housing units need new or upgraded water and sanitation facilities.

(g) The Indian people's growing confidence in Federal Indian health services is revealed by their increasingly heavy use of such services. Progress toward the goal of better Indian health is dependent on this continued growth of confidence. Both such progress and such confidence are dependent on improved Federal Indian health services.

DECLARATION OF POLICY

SEC. 3. The Congress hereby declares that it is the policy of this Nation, in fulfillment of its special responsibilities and legal obligation to the American Indian people, to meet the national goal of providing the highest possible health status to Indians and to provide existing Indian health services with all resources necessary to effect that policy.

DEFINITIONS

SEC. 4. For purposes of this Act—

(a) "Indian", unless otherwise designated, means a person who is a member of an Indian tribe.

(b) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native

community as defined in the Alaska Native Claims Settlement Act (85 Stat. 688), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(c) "Secretary", unless otherwise designated, means the Secretary of Health, Education, and Welfare.

(d) "Service", unless otherwise designated, means the Indian Health Service.

TITLE I—INDIAN HEALTH MANPOWER

SEC. 101. The purpose of this title is to augment the inadequate number of health professionals serving Indians and remove the multiple barriers to the entrance of health professionals into the Service and private practice among Indians.

PART A—HEALTH PROFESSIONS SCHOLARSHIP PROGRAM

SEC. 102 (a). The Secretary shall, in accordance with the provisions of this title, make scholarship grants to individuals (i) who are enrolled in medical schools; schools of optometry, osteopathy, dentistry, pharmacy, podiatry, public health, or nursing; or schools licensed by a State to train persons in the allied health professions and (ii) who agree to provide their professional services to Indians after completion of their professional training.

(b)(1) The Secretary shall, in awarding scholarship grants under this part, accord priority to applicants as follows—

(A) first, to any qualified applicant who is a member of an Indian tribe and resides on an Indian reservation;

(B) second, to any qualified applicant who is a member of an Indian tribe and resides in a place other than an Indian reservation;

(C) third, to any other qualified applicant.

(2) Scholarship grants under this title shall be made with respect to academic years.

(c)(1) Any scholarship grant awarded to any individual under this title shall be awarded under the condition that such individual will, after the completion of his professional training, provide his professional services to Indians.

(2) The Secretary shall prescribe by regulations—

(A) the criteria for determining when an individual is providing professional services to Indians in fulfillment of the condition for scholarship assistance provided in paragraph 1, and

(B) the reasonable period of time said condition must be complied with by such individual.

(3) If any individual to whom the condition referred to in paragraph (1) is applicable fails, within the period prescribed pursuant to regulations under paragraph (2), to comply with such condition for the full period, the United States shall be entitled to recover from such individual an amount equal to the amount produced by multiplying—

(A) the aggregate of (i) the amounts of the scholarship grant or grants (as the case may be) made to such individual under this part, and (ii) the sums of the interest which would be payable on each such scholarship grant if, at the time such grant was made, such grant were a loan bearing interest at a rate fixed by the Secretary of the Treasury, after taking into consideration private consumer rates of interest prevailing at the time such grant was made, and if the interest on each such grant had been compounded annually, by

(B) a fraction the numerator of which is the number obtained by subtracting from the number of months to which such condition is applicable a number equal to one-half of the number of months with respect to which compliance by such individual with such condition was made, and the denominator of which is a number equal to the number of months with respect to which such condition is applicable.

Any amount which the United States is entitled to recover under this paragraph shall, within the three-year period beginning on the date the United States becomes entitled to recover such amount, be paid to the United States. Until any amount due the United States under this paragraph on account of any grant under this part is paid, there shall accrue to the United States interest on such amount at the same rate as that fixed by the Secretary of the Treasury pursuant to clause (A) with respect to the grant on account of which such amount is due the United States.

(4)(A) Any obligation of any individual to comply with the condition applicable to him under the preceding provisions of this subsection shall be canceled upon the death of such individual.

(B) The Secretary shall by regulations provide for the waiver or suspension of any such obligation applicable to any individual whenever compliance by such individual is impossible or would involve extreme hardship to such individual and if enforcement of such obligation with respect to any individual would be against equity and good conscience.

SEC. 103. The Secretary may enter into agreements with any schools referred to in section 102(a), hospitals, or appropriate public or private agencies under which such schools, hospitals, or other agencies will, as agents of the Secretary, perform such functions in the administration of this part, as the Secretary may specify. Any such agreement with any such school, hospital, or agency may provide for payment by the Secretary of amounts equal to the expenses actually and necessarily incurred by such school, hospital, or agency in carrying out such agreement.

SEC. 104. There are authorized to be appropriated for the purpose of this part $8,000,000 for fiscal year 1975, $16,000,000 for fiscal year 1976, $22,000,000 for fiscal year 1977, $30,000,000 for fiscal year 1978, and $34,000,000 for fiscal 1979, and, for each succeeding fiscal year, such sums as may be necessary to continue to make such grants to individuals who (prior to July 1, 1979) have received such grants and who are eligible for such grants under this part during such succeeding fiscal year.

PART B—HEALTH PROFESSIONS PREPARATORY SCHOLARSHIP PROGRAM

SEC. 105. (a) The Secretary shall, in accordance with the provisions of this part, make scholarship grants to Indians who—

(1) have successfully completed their high school education; and

(2) have demonstrated an aptitude for being capable of successfully completing a pre-medical, pre-dental, or pre-osteopathy course of study.

(b) A scholarship grant made under this part shall be for a period not to exceed two academic years.

(c) A scholarship grant made under this part may cover costs of tuition, books, transportation, board, and other necessary related expenses.

(d) There are authorized to be appropriated for the purpose of this part $1,000,000 for fiscal year 1975; $2,000,000 for fiscal year 1976; $3,000,000 for fiscal year 1977; $3,000,000 for fiscal year 1978; and $3,000,000 for fiscal year 1979.

PART C—CONTINUING EDUCATION ALLOWANCES

SEC. 106. (a) In order to encourage professionals to join the Service and to provide their services in the rural and remote areas where a significant portion of the American Indian people reside, the Secretary may provide allowances to Service physicians to enable them for a period of time each year prescribed by regulation of the Secretary to take leave of their duty stations for professional consultation and refresher training courses.

(b) There are authorized to be appropriated for the purpose of this section $350,000 for fiscal year 1975, $350,000 for fiscal year 1976, $375,000 for fiscal year 1977, $390,000 for fiscal year 1978, and $410,000 for fiscal year 1979.

TITLE II—HEALTH SERVICES

SEC. 201. (a) For the purpose of eliminating backlogs in Indian health care services and to supply known, unmet medical, surgical, dental and other Indian health needs, the Secretary is authorized to expend, through the Service, $123,500,000 over a five fiscal year period in accordance with the schedule provided in subsection (c). As such funds which are appropriated pursuant to this Act are to eliminate health services backlogs, they shall not be used to offset or limit the appropriations required by the Service to continue to serve the health needs of Indian people during and subsequent to such five fiscal year period but shall be in addition to the annual appropriations required to continue the health service program to the Indian people.

(b) The Secretary is also authorized to employ persons to implement the provisions of this section during the five fiscal year period in accordance with the schedule provided in subsection (c). Such persons shall be in addition to, and shall not reduce the number of, the employees required to conduct ongoing activities of the Service during and subsequent to such period.

(c) The following amounts and positions are authorized, by fiscal year, for the specific purposes noted:

(1) patient care (direct and indirect): for fiscal year 1975, $11,000,000 and 240 positions; for fiscal year 1976, $17,000,000 and 540 positions; for fiscal year 1977, $14,000,000 and 410 positions; for fiscal year 1978, $9,000,000 and 500 positions; and for fiscal year 1979, $7,000,000 and 490 positions;

(2) field health, excluding dental care (direct and indirect): for fiscal year, 1975, $12,000,000 and 300 positions; for fiscal year 1976, $10,000,000 and 225 positions; for fiscal year 1977, $7,000,000 and 200 positions; for fiscal year 1978, $7,000,000 and 200 positions; and for fiscal year 1979, $5,000,000 and 100 positions;

(3) dental care (direct and indirect): for fiscal year 1975, $900,000 and 60 positions; for fiscal year 1976, $700,000 and 75 positions; for fiscal year 1977, $700,000 and 75 positions; for fiscal year 1978, $600,000 and 75 positions; and for fiscal year 1979, $600,000 and 60 positions; and

(4) maintenance and repair (direct and indirect): for fiscal year 1975, $6,000,000 and 30 positions; for fiscal year 1976, $4,000,000 and 30 positions; for fiscal year 1977, $4,000,000 and 30 positions; for fiscal year 1978, $4,000,000 and 30 positions; and for fiscal year 1979, $3,000,000 and 30 positions.

TITLE III—HEALTH FACILITIES

PART A—CONSTRUCTION AND RENOVATION OF SERVICE FACILITIES

SEC. 301. For the purpose of eliminating inadequate, outdated and otherwise unsatisfactory Service hospitals, health centers, health stations and other Service facilities, the Secretary is authorized to expend $400,000,000 over a five fiscal year period in accordance with the following schedule:

(a) hospitals: for fiscal year 1975, $40,000,000; for fiscal year 1976, $76,000,000; for fiscal year 1977, $65,000,000; for fiscal year 1978, $55,000,000; and for fiscal year 1979, $80,000,000.

(b) health centers and health stations: for fiscal year 1975, $4,000,000; for fiscal year 1976, $6,000,000; for fiscal year 1977, $2,000,000; for fiscal year 1978, $2,000,000; and for fiscal year 1979, $11,000,000.

(c) staff housing: for fiscal year 1975, $13,000,000; for fiscal year 1976, $21,000,000; for

fiscal year 1977, $16,000,000; for fiscal year 1978, $5,000,000; and for fiscal year 1979, $4,000,000.

SEC. 302. The Secretary is authorized to equip and staff such Service facilities at levels commensurate with their operation at optimum levels of effectiveness.

SEC. 303. For the purpose of implementing the provisions of this part, the Secretary shall assure that the rates of pay for personnel engaged in the construction of renovation of facilities constructed or carried out in whole or in part by funds made available pursuant to this part are not less than the prevailing local wage rates for similar work as determined in accordance with the Act of March 3, 1921 (48 Stat. 1491), as amended.

PART B—CONSTRUCTION OF SAFE WATER AND SANITARY WASTE DISPOSAL FACILITIES

SEC. 304. (a) For the purpose of reducing health hazards, the Secretary is authorized to expend, pursuant to Public Law 86-121, $470,000,000 within a five fiscal year period following the enactment of this Act, in accordance with the schedule provided in subsection (b), to supply unmet needs for safe water and sanitary waste disposal facilities in existing and new Indian homes and communities.

(b) The following amounts are authorized, by fiscal year, for the purpose prescribed in subsection (a): $90,000,000 in fiscal year 1975; $95,000,000 in fiscal year 1976; $95,000,000 in fiscal year 1977; $95,000,000 in fiscal year 1978; and $95,000,000 in fiscal year 1979.

(c) The Secretary is authorized and directed to develop a plan, together with the Secretaries of Housing and Urban Development and the Interior, to assure that the schedule provided for in subsection (b) will be met. Such plan shall be submitted to the Congress no later than ninety days from the date of enactment of this Act.

TITLE IV—ACCESS TO HEALTH SERVICES

SEC. 401. (a) Notwithstanding any other provision of law, for the purpose of Title XVIII of the Social Security Act, as amended, the Service facilities used to provide health care and services to Indians are hereby deemed to be accredited facilities, the services so provided shall be deemed to be provided by licensed practitioners in their respective fields, and the facilities may receive payment for such services on the same basis as other providers of service.

(b) The Secretary shall undertake to improve and maintain such service facilities such that they will, at a minimum, meet the accreditation standards imposed on other providers of service.

(c) Any payments received for services provided to beneficiaries hereunder shall be credited to the appropriation charged for the actual provision of care and services and shall not be considered in determining appropriations for health care and services to Indians.

(d) Nothing herein authorizes the Secretary to provide services to an Indian beneficiary with coverage under Title XVIII of the Social Security Act, as amended, in preference to an Indian beneficiary without such coverage.

SEC. 402. (a) Notwithstanding any other provision of law, for the purpose of Title XIX of the Social Security Act, as amended, the Service facilities used to provide health care and services to Indians are hereby deemed to be accredited facilities and the services so provided in these facilities are deemed to be provided by licensed practitioners in their respective fields.

(b) The Secretary is authorized to enter into agreements with the appropriate State agency for the purpose of receiving reimbursement for health care and services provided to Indians who are beneficiaries under Title XIX of the Social Security Act, as amended.

(c) The Secretary shall undertake to improve such facilities such that they will meet or exceed any applicable accredited standard.

(d) Any payments received for services provided beneficiaries hereunder shall be credited to the appropriation charged for the actual provision of care and services, which amount shall not be considered in determining appropriations for the provision of health care and services to Indians.

(e) Nothing in this section shall authorize the Secretary to provide services to an Indian beneficiary with coverage under Title XIX of the Social Security Act, as amended, in preference to an Indian beneficiary without such coverage.

TITLE V—ACCESS TO HEALTH SERVICES FOR URBAN INDIANS

SEC. 501. The purpose of this title is to encourage the establishment of outreach programs in urban areas to make health services more accessible to the urban Indian population.

SEC. 502. For the purpose of this title—

(a) "Urban Indian" means any individual who resides in an urban center and who is (i) an Indian as defined in section 4(a) of this Act or (ii) a person of Indian descent who is considered ineligible for the special programs and services of the Service and the Bureau of Indian Affairs and who, in accordance with regulations promulgated by the Secretary which take into consideration such person's health needs, lack of access to health services, and other relevant factors, is identified as an appropriate recipient of assistance from an urban Indian organization in accordance with the provisions of this title.

(b) An "urban Indian organization" is a non-profit corporate body situated in an urban center, composed of urban Indians, and providing the maximum participation of all interested Indian groups, which body is capable of legally cooperating with other bodies, Federal, State and local, for the purpose of performing the activities described in section 503(c).

(c) An "urban center" is any community which has a sufficient urban Indian population with unmet health needs to warrant assistance under this title, as determined by the Secretary.

SEC. 503(a). The Secretary shall enter into contracts with urban Indian organizations to provide Federal assistance to such organizations for the purpose of establishing and administering outreach programs to make urban Indians in the urban centers in which such organizations are situated knowledgeable of the health service resources available within such centers and the means of gaining access to those resources.

(b) Urban Indian organizations shall make use of Federal assistance provided by contracts pursuant to this title not to provide health services to urban Indians but to render advice and consultation to such Indians concerning the availability and means of access to all public and private health services.

(c) The Secretary shall place such conditions as he deems necessary in any contract which he makes with any urban Indian organization pursuant to this title. Such conditions shall include, but are not limited to, requirements that the organization successfully undertake the following tasks:

(1) determine, in accordance with the regulations promulgated pursuant to section 502(a), the population of urban Indians which are or could be recipients of such services;

(2) identify all public and private health service resources within the urban center in which the organization is situated which are or may be available to urban Indians;

(3) assist such resources in providing service to such urban Indians;

(4) assist such urban Indians in becoming familiar with and utilizing such resources;

(5) provide basic health educaton to such urban Indians;

(6) identify gaps between unmet health needs of urban Indians and the resources available to meet such needs; and

(7) make recommendations to the Secretary and Federal, State, local and other resource agencies on methods of improving health service programs to meet the needs of urban Indians.

(d) The Secretary shall by regulation prescribe the criteria for selecting urban Indian organizations with which to contract pursuant to this title. Such criteria shall, among other factors, take into consideration—

(1) the extent of the unmet health care needs of the urban Indian in the urban center in question;

(2) the size of the urban Indian population which is to receive assistance;

(3) the relative accessibility which such population has to health care services in such urban center;

(4) the extent, if any, that the project would duplicate any previous or current public or private project funded by another source in such urban center;

(5) the appropriateness and likely effectiveness of a project assisted pursuant to this title in such urban center;

(6) the existence of an urban Indian organization capable of performing the activities set forth in subsection (c) and of entering into a contract with the Secretary pursuant to this title; and

(7) the extent of existing or likely future participation of appropriate health and health-related State, local, and other resource agencies.

SEC. 504 (a) Contracts with urban Indian organizations pursuant to this title shall be in accordance with all Federal contracting laws and regulations except that, in the discretion of the Secretary, such contracts may be negotiated without advertising and need not conform with the provisions of the Act of August 24, 1935 (49 Stat. 793), as amended.

(b) Payments under any contracts pursuant to this Act may be made in advance or by way of reimbursement and in such installments and on such conditions as the Secretary deems necessary to carry out the purposes of this title.

(c) Notwithstanding any provision of law to the contrary, the Secretary may, at the request or consent of an urban Indian organization, revise or amend any contract made by him with such organization pursuant to this title as necessary to carry out the purposes of this title: *Provided, however,* That whenever an urban Indian organization requests retrocession of the Secretary for any contract entered into pursuant to this title, such retrocession shall become effective upon a date specified by the Secretary not more than one hundred and twenty days from the date of the request by the organization or at such later date as may be mutually agreed to by the Secretary and the organization.

(d) In connection with any contract made pursuant to this title, the Secretary may permit an urban Indian organization to utilize, in carrying out such contract, existing facilities owned by the Federal Government within his jurisdiction under such terms and conditions as may be agreed upon for their use and maintenance.

(e) The contracts authorized under this title may include provisions for the performance of personal services which would otherwise be performed by Federal employees: *Provided,* That the Secretary shall not make any contract which would impair his ability to discharge his trust responsibilities to any Indian tribe or individuals.

(f) Contracts with urban Indian organizations and regulations adopted pursuant to

this title shall include provisions to assure the fair and uniform provision by such organizations of services and assistance to Indians in the conduct and administration of programs or activities under such contracts.

SEC. 505. For each fiscal year during which an urban Indian organization receives or expends funds pursuant to a contract under this title, the organization which requested such contract or grant shall submit to the Secretary a report including information gathered pursuant to 503(c) (6) and (7), information on activities conducted by the organization pursuant to the contract, an accounting of the amounts and purposes for which Federal funds were expended, and such other information as the Secretary may request. The reports and records of the urban Indian organization with respect to such contract or grant shall be subject to audit by the Secretary and the Comptroller General of the United States.

SEC. 506. There are authorized to be appropriated for the purpose of this title $3,000,000 for the fiscal year 1975; $4,000,000 for the fiscal year 1976; and $5,000,000 for the fiscal year 1977.

SEC. 507. Within six months after the end of fiscal year 1976, the Secretary shall review the program established under this title and shall submit to the Congress his assessment thereof and recommendations for any further legislative efforts he deems necessary to meet the purposes of this title.

TITLE VI—MISCELLANEOUS

SEC. 601. The Secretary shall report annually to the President and the Congress on progress made in effecting the purposes of this Act. Within three months after the end of fiscal year 1978, the Secretary shall review the programs established or assisted under this Act and shall submit to the Congress his assessment thereof and recommendations of additional programs or additional assistance necessary to, at a minimum, provide health services to Indians, and ensure a health status for Indians, which is at a parity with the health services available to, and the health status of, the general population.

SEC. 602. The Secretary may prescribe such regulations as he deems necessary to carry out the purposes of this Act. Such regulations shall provide the opportunity for maximum participation of Indians in the planning and implementation of Indian health programs.

SEC. 603. The funds appropriated pursuant to this Act shall remain available until expended.

HEALTH MANPOWER STATISTICS

The number of Indian Health Service physicians and registered nurses per 100,000 persons served by the Indian Health Service has continually lagged behind the rate for the United States.

A degree of success has been shown in closing the gap between the physician rates for the Indian Health Service and the United States all races. The number of physicians per 100,000 population in 1971 in the Indian Health Service was 58 percent of the U.S. rate. In 1960 the IHS rate was less than 40 percent of the U.S. rate.

The rate for registered nurses within the IHS has remained almost constant since 1967. The range during this period was from a low of 213 registered nurses per 100,000 population in 1967 to a high of 230 in 1956. The rate for the United States has experienced a continual increase from 1956 through 1971.

NUMBER OF REGISTERED NURSES AND PHYSICIANS—INDIAN HEALTH SERVICES AND UNITED STATES, ALL RACES

Year	Registered nurses			Physicians		
	Number IHS staff	Rate per 100,000 IHS	Rate per 100,000 United States [1]	Number IHS staff	Rate per 100,000 IHS	Rate per 100,000 United States [2]
1971	1,073	228	356	458	98	[3] 170
1970	1,007	219	347	449	93	[3] 166
1969	981	217	338	425	94	[3] 163
1968	984	222	331	392	88	[3] 161
1967	930	213	325	357	82	158
1966	909	212	319	335	78	156
1964	913	222	306	299	73	151
1962	875	221	298	256	65	NA
1960	809	213	282	216	57	148
1958	828	229	268	209	58	NA
1956	790	230	259	195	57	NA

[1] Facts about Nursing.
[2] Health Resources Statistics, 1971.
[3] Estimated.
NA—Not available.

INFANT DEATH RATES BY AGE

The 1971 Indian and Alaska native infant death rate is 24 percent higher than the provisional U.S. all races rate for 1971. The Indian and Alaska native infant death rate was 65 percent higher than the U.S. all races rate in 1966. Thus, we have seen considerable improvement in the Indian and Alaskan native infant death rate just since 1966.

The neonatal death rate for the Indian and Alaska native is below that of the U.S. However, the postneonatal rate is over 2.3 times the U.S. rate. This ratio, however, is improving. In 1966 the Indian and Alaska native rate was 3.3 times the U.S. rate.

INFANT DEATH RATES BY AGE AT DEATH—INDIANS AND ALASKA NATIVES AND UNITED STATES, ALL RACES

[Rates per 1,000 live births]

	Infant death rate	Neonatal				Postneonatal, 28 days to 11 mo.
		Total	Under 1 day	1 to 6 days	7 to 27 days	
Indians and Alaska Natives:						
1971	23.8	12.5	7.4	3.4	1.7	11.4
1970	NA	NA	NA	NA	NA	NA
1969	NA	NA	NA	NA	NA	NA
1968	30.9	14.4	7.9	4.1	2.4	16.5
1967	32.2	15.3	8.4	5.1	1.8	16.9
1966	39.0	17.3	9.0	5.6	2.7	21.7
United States, all races:						
1971 [1]	19.2	14.3	NA	NA	NA	4.9
1970 [1]	19.8	14.9	NA	NA	NA	5.0
1969 [1]	20.7	15.4	NA	NA	NA	5.4
1968	21.8	16.1	9.5	5.1	1.5	5.7
1967	22.4	16.5	9.6	5.3	1.6	5.9
1966	23.7	17.2	10.0	5.6	1.6	6.5

[1] Provisional, Monthly Vital Statistics Report, NCHS, vol. 20, No. 11.
NA—Not available.

MEDICAL CARE COST

The consumer price index for medical care shows a continuous upward trend. Physician fees, hospital daily charges, and drugs and prescriptions costs increased; physician fees were 32 percent above the base year 1967, hospital daily charges 66 percent, and drugs and prescriptions 6 percent.

CONSUMER PRICE INDEX FOR URBAN WAGE EARNERS AND CLERICAL WORKERS, U.S. CITY AVERAGE

[1967=100]

Year	Medical care				Physicians' fees				Hospital daily services charges				Drugs and prescriptions			
	March	June	September	December	March	June	September	December	March	June	September	December	March	June	September	December
1961	80.8	81.4	81.9	82.3	78.3	78.9	79.4	80.2	58.9	60.8	61.8	62.7	103.4	103.7	103.1	102.7
1962	83.1	83.7	83.9	84.3	80.8	81.3	81.7	82.2	64.3	64.7	65.5	66.1	102.3	102.1	101.0	100.0
1963	84.9	85.7	86.0	86.2	82.9	83.1	83.4	83.8	68.1	68.9	69.8	70.4	100.8	100.8	100.8	100.0
1964	86.8	87.3	87.6	88.0	----------	85.0	----------	86.3	71.7	72.3	73.0	73.7	----------	100.7	----------	100.2
1965	88.8	89.4	89.8	90.5	----------	88.0	88.7	89.6	75.4	76.2	77.4	78.5	----------	100.2	100.0	100.2
1966	91.7	92.9	94.7	96.5	91.2	93.0	95.1	96.6	80.4	82.1	86.3	91.5	100.5	100.7	100.6	100.4
1967	98.5	99.7	101.3	102.7	98.5	99.8	101.3	102.5	97.1	100.0	102.0	105.6	100.1	99.8	100.0	100.2
1968	104.5	105.6	107.1	109.1	104.1	105.3	106.5	108.4	109.9	112.2	115.8	119.6	100.3	100.1	100.1	100.0
1969	111.6	113.5	115.3	115.7	110.9	113.0	114.8	116.3	124.5	126.8	130.9	133.9	100.9	101.4	101.4	101.7
1970	118.2	120.5	122.6	124.2	119.0	121.6	123.3	125.7	139.4	142.1	147.5	152.0	102.5	103.8	104.3	104.2
1971	126.8	128.6	130.4	130.1	128.0	129.9	131.5	132.2	157.1	160.5	164.4	165.5	104.9	105.7	105.7	105.0
1972	131.4	132.4	133.1	134.4	132.9	133.9	134.4	135.4	NA	NA	NA	NA	105.7	105.8	105.7	105.6

DENTAL SERVICES PROVIDED BY AGE

In fiscal year 1972, 72 percent of the required services in the age group 5–14 were provided. This age group has historically seen the highest percentage of required services provided. The percentage decreased with each successive age group.

Estimated services required for the Indian and Alaska native population in fiscal year 1972 was over 2 million. The percentage of required services provided was 40.3.

It is estimated that a total dental program should provide comprehensive dental services to 70–80 percent of the population 3–19 years and 46 percent of the population over age 20. The IHS dental program provided less than 60.2 percent of the needed services for Indian children less than 20 years of age and only 18.9 percent of the services needed for the Indian population age 20 and over.

PERCENT OF ESTIMATED REQUIRED DENTAL SERVICES PROVIDED, FISCAL YEAR 1972

Age group (in years)	Services required per person examined	Indian health service population	Estimated services required in population	Services provided direct and contract	Percent of required services provided
All ages	8.06	469,632	2,098,215	844,724	40.3
Under 5	6.66	61,287	102,042	41,596	40.8
5 to 9	6.45	70,698	364,801	268,554	73.6
10 to 14	5.72	66,800	305,676	214,057	70.0
15 to 19	7.03	53,172	261,659	119,883	45.8
20 to 24	9.80	33,057	161,979	49,615	30.6
25 to 34	10.72	52,148	279,513	63,727	22.8
35 to 44	11.29	43,192	243,818	39,387	16.2
45 to 54	11.57	33,997	177,005	24,927	15.1
55 to 64	11.19	27,135	121,456	14,267	11.7
65 to 74	10.91	18,086	59,195	6,603	11.2
75 and over	10.47	10,060	21,065	2,108	10.0

INFANT DEATHS

The infant death rate among Indians and Alaska Natives declined 61.9 percent between 1955 and 1971. The 1955 rate of 62.5 had been reduced to 23.8 deaths per 1,000 live births by 1971. Concurrently, the U.S. general population experienced a drop of 27.3 percent. The 1955 Indian and Alaska Native infant death rate was 2.37 times the U.S. All Races rate. By 1971 the Indian rate had been reduced to 1.24 times the U.S. rate. The Alaska Native rate has consistently exceeded the Indian rate. In 1971 the Alaska Native rate was 17 percent higher than the Indian rate.

INFANT DEATHS AND DEATH RATES—INDIAN AND ALASKA NATIVES IN 24 RESERVATION STATES AND UNITED STATES, ALL RACES, CALENDAR YEARS 1955–71

[Rates per 1,000 live births]

Year	Indian and Alaska Native		Indian		Alaska Native		United States all races	
	Number	Rate	Number	Rate	Number	Rate	Number	Rate
1971	560	23.8	513	23.5	47	27.4	NA	[3] 19.2
1970	[1] 570	NA	[1] 523	NA	[1] 47	NA	NA	[3] 19.8
1969	579	NA	533	NA	46	NA	75,073	21.5
1968	668	30.9	606	30.2	62	40.4	76,263	21.8
1967	666	32.2	571	30.1	95	55.6	79,028	22.4
1966	822	39.0	722	37.7	100	51.4	85,516	23.7
1965	872	39.0	740	36.4	132	65.4	92,866	24.7
1964	856	37.6	747	35.9	109	54.8	99,783	24.8
1963	972	43.6	864	42.9	108	50.7	103,390	25.2
1962	967	44.2	827	41.8	140	66.8	105,479	25.3
1961	961	44.4	827	42.3	134	64.0	107,956	25.3
1960	1,064	50.3	914	47.6	150	76.3	110,873	26.0
1959	1,016	49.5	870	46.7	146	76.7	112,008	26.4
1958	1,123	58.0	989	56.7	134	69.0	113,789	26.1
1957	1,136	60.4	989	58.2	147	80.2	112,094	26.3
1956	1,066	59.4	900	56.1	166	87.0	108,183	26.0
1955	1,065	62.5	936	61.2	129	74.8	106,903	26.4

[1] Estimated.

[3] Provisional, Monthly Vital Statistics Report, NCHS, vol. 20, No. 12.

TUBERCULOSIS DEATHS AND DEATH RATES

Tuberculosis death rates for Indians and Alaska Natives, combined, declined about 86 percent from 1955 to 1971. In 1971 the Indian rate was about 1/6 what it was in the 1954–1956 period, and the Alaska Native rate was only 1/16 as high as it had been in the 1954–1956 period. Concurrently, there was a decline in the U.S. All Races rate from 9.1 deaths per 100,000 population in 1955 to a provisional figure of 2.1 in 1971. As a result, the combined Indian and Alaska Native rate, which was 6.1 times the U.S. rate in 1955, was still 3.7 times as high in 1971.

TUBERCULOSIS MORTALITY—INDIANS AND ALASKA NATIVES IN 24 RESERVATION STATES AND UNITED STATES, ALL RACES CALENDAR YEARS 1955 TO 1971, RATES PER 100,000 POPULATION [1]

Year	Indian and Alaska Native		Indian		Alaska Native		United States, all races		Ratio Indian and Alaska Native to United States, all races
	Number of deaths	Rate	Number of deaths	Rate	Number of deaths	Rate	Number of deaths	Rate	
1971	56	7.8	51	7.6	5	9.7	[2] 4,380	[2] 2.1	3.7
1970	NA	NA	NA	NA	NA	NA	[2] 5,560	[2] 2.7	NA
1969	86	12.6	82	13.0	4	8.0	5,567	2.8	4.5
1968	78	12.8	71	12.8	7	12.9	6,292	3.1	4.1
1967	90	13.5	82	13.4	8	14.3	6,901	3.5	3.9
1966	91	15.3	85	15.4	6	15.3	7,625	3.9	3.9
1965	104	19.0	96	19.3	8	16.0	7,934	4.1	4.6
1964	111	21.8	103	21.6	8	24.0	8,303	4.3	5.1
1963	130	25.1	114	24.8	16	28.5	9,311	4.9	5.1
1962	150	26.0	137	25.3	13	34.0	9,506	5.1	5.1
1961	120	25.4	105	24.5	15	34.8	9,938	5.4	4.7
1960	115	26.6	98	25.1	17	43.1	10,866	6.1	4.3
1959	163	29.0	140	27.9	23	41.8	11,456	6.5	4.5
1958	150	34.3	138	31.5	12	65.1	12,361	7.1	4.8
1957	186	38.2	134	34.2	43	83.3	13,324	7.8	4.9
1956	212	46.2	171	40.2	41	116.8	14,054	8.4	5.5
1955	253	55.1	208	47.3	45	157.5	14,940	9.1	6.1

[1] Indian and Alaska Native rates are 3-year averages through 1968. All other rates are based on single year data.

[2] Provisional figures —Monthly Vital Statistics Report.

NA Not available.

INDIAN AND ALASKA NATIVE ADMISSIONS

Admissions to IHS and contract hospitals have experienced an upward trend since 1955. Admissions for fiscal year 1972 are more than double the admissions reported in 1955. Admissions to contract hospitals have increased more rapidly than for IHS facilities. The rate of increase for IHS hospitals has been 77.9 percent as contrasted to a 257.9 percent increase in contract hospital admissions.

NUMBER OF ADMISSIONS TO PHS INDIAN AND CONTRACT HOSPITALS, FISCAL YEARS 1955–72

Fiscal year	Total	PHS Indian hospitals	Contract hospitals
1972	102,472	76,054	26,418
1971	94,945	70,729	24,216
1970	92,710	67,877	24,833
1969	94,490	69,560	24,930
1968	92,186	68,086	24,100
1967	89,556	65,456	24,100
1966	91,799	67,049	24,750
1965	91,744	67,744	24,000
1964	89,934	65,934	24,000
1963	87,549	64,749	22,800
1962	81,476	59,976	21,500
1961	74,313	54,313	20,000
1960	76,754	56,874	19,880
1959	73,268	54,568	18,700
1958	71,859	55,649	16,210
1957	66,455	53,160	13,295
1956	57,975	46,218	11,757
1955	50,143	42,762	7,381

OUTPATIENT VISITS

Outpatient visits to IHS Hospitals, Health Centers, and Field Stations have increased each year since fiscal year 1955. Total outpatient visits in fiscal year 1972 was 2,235,881. This is five times as many visits as reported in 1955. Outpatient visits to field clinics have increased almost tenfold during the period 1955–1972.

NUMBER OF OUTPATIENT MEDICAL VISITS [1] TO PHS INDIAN HOSPITALS AND FIELD HEALTH CLINICS, FISCAL YEARS 1955–72

Fiscal year	Total	Hospitals	Field clinics
1972	2,235,881	1,275,726	[3] 960,155
1971	2,195,240	1,202,030	993,210
1970	1,786,920	1,068,820	718,100
1969	1,661,500	982,300	679,200
1968	1,575,440	926,640	648,800
1967	1,494,600	849,800	644,800
1966	1,367,000	788,500	578,500
1965	1,325,400	757,700	567,700
1964	1,295,000	742,400	552,600
1963	1,271,400	721,700	549,700
1962	1,142,300	673,200	469,100
1961	1,022,600	628,700	393,900

Fiscal year	Total	Hospitals	Field clinics
1960	989,500	585,100	404,400
1959	957,900	546,900	411,000
1958	900,000	533,440	366,500
1957	650,000	510,000	140,000
1956 [2]	540,860	415,860	125,000
1955 [2]	455,000	355,000	100,000

[1] Excludes visits for dental services.
[2] Estimate.
[3] Decreased because of underreporting of grouped services.

TUBERCULOSIS MORBIDITY

The incidence rate for tuberculosis for the Indian and Alaska Native has declined 79 percent since 1955. The U.S. All Races rate has declined 72 percent during the same period. The Indian and Alaska Native rate in 1971 was 9.3 times the U.S. All Races rate. The 1955 ratio was 12.6.

The rates shown prior to 1962 include some newly reported inactive cases while the later years are for newly reported active cases only. However, the trends mentioned are not affected.

TUBERCULOSOS MORBIDITY

[Rates per 100,000 population]

Calendar year	Indian and Alaska Natives	Indian	Alaska Native	United States all races
1971	157.4	152.0	200.3	[1] 17.0
1970	154.1	154.1	154.0	18.3
1969	140.8	141.6	134.3	19.1
1968	133.8	128.0	179.1	21.3
1967	155.8	152.7	179.8	23.0
1966	141.7	127.8	247.8	24.4
1965	201.5	160.5	507.8	25.3
1964	237.8	184.1	630.2	26.6
1963	234.0	192.3	534.9	28.7
1962	257.7	209.4	604.7	28.9
1961	318.8	284.8	562.8	37.0
1960	322.4	292.3	547.5	39.4
1959	418.0	338.2	1,048.0	42.6
1958	485.0	421.8	978.7	47.5
1957	565.2	426.9	1,649.7	51.0
1956	680.6	474.3	2,283.8	54.1
1955	758.1	563.2	2,225.7	60.1

[1] Provisional.

Mr. FANNIN. Mr. President, I am pleased to join with my distinguished colleagues, Senator JACKSON and Senator BARTLETT, in introducing this vital piece of legislation. The health of our Indian citizens has long been of concern to me and this legislation will, I believe, mark a new beginning in our Indian health programs. It also represents a renewal of our long-standing commitment to the Indian people to provide a program of quality health services.

This legislation is significant because its objective is to redraw the legislative authority of the Indian Health Service so that it can meet the contemporary needs of the Indian people. It has become increasingly clear that the existing authority of the Indian Health Service is no longer capable of meeting the ever pressing health problems of its clients and clearly needs new tools, resources, and innovative programs to meet those needs. That is the basic purpose of this bill.

In addition, this legislation seeks to meet the objective of Indian self-determination by developing a program which will serve to increase the number of Indian health personnel. Earlier this week the Senate Interior and Insular Affairs Committee ordered reported S. 1017, The Indian Self-Determination and Educational Reform Act, which provides authority to the Secretary of the Department of Health, Education, and Welfare to contract the services and programs of the Indian Health Service to tribal organizations. But if we are to realize, to the fullest, the opportunity which exists under the contracting provisions of S. 1017, we must develop Indian personnel who can manage such programs and individuals who can serve those who are in need of health services.

President Nixon, in his Indian message of July 8, 1970, reminded us of the problem facing Indian control of health programs and facilities when he noted:

These and other Indian health programs will be most effective if more Indians are involved in running them. Yet—almost unbelievably—we are presently able to identify in this country only 30 physicians and fewer than 400 nurses of Indian descent.

It is my personal hope that through this legislation we will reverse such depressing statistics and report by the end of the decade a substantial increase in the number of Indian doctors, nurses, administrators, and other allied health personnel serving our Indian people.

Yet beyond the long range effort to develop Indian health personnel there is the immediate need to ease the shortage in doctors and other trained personnel. When the military draft was in existence, the Indian Health Service found itself with a number of young health professionals wanting to serve reservation health facilities. In 1969, for example, over 3,000 medical students sought Public Health Service jobs with many indicating that they would serve in the Indian Health Service program. In 1973, however, with the elimination of the draft, the number of applications had dropped to 500 with 525 slots available in the Indian Health Service facilities. What makes the situation even worse is that many of the current professionals will be ending their 2-year commitment in 1974, thus causing even further shortages. This problem is a critical one, especially when one considers that there were 2.2 million outpatient visits in 1972 alone. Without replacements valuable health services may need to be cut. Thus, this legislation has an immediate problem to solve; one that will not be easily resolved, but which cannot be ignored.

Another basic objective of this legislation is to provide increased resources to meet the backlog in construction of health facilities. While the Federal Government has made a major effort to meet the physical plant needs of the Indian Health Service, there are still many facilities which need substantial renovation and expansion. There is also a need for new facilities, not only hospitals, but outpatient clinics as well. The need for quality facilities is becoming increasingly critical as the Joint Committee on Accreditation of Hospitals has reported that of the 51 IHS facilities, only 22 percent are accredited. Clearly there is need to correct such a deficiency and it is the objective of this bill that such deficiencies be removed.

Since the organization of the Indian Health Service in 1955 a number of serious health problems have been resolved. According to Dr. Emery Johnson, the Director of the Indian Health Service:

The decline in deaths from tuberculosis, diseases of infancy, influenza, pneumonia and gastro-intestinal illnesses has been dramatic. Strides also have been made in correcting environmental deficiencies such as inadequate housing and water and sewage disposal facilities, that give rise to a high incidence of disease and premature deaths.

But Dr. Johnson also notes that:

Although the gap has narrowed between the Indian and Alaska Native state of health and that of the rest of the Nation, it is still far below national standards. Infant death rates are 1.4 times higher than the U.S. all races rate, gastroenteric death rate is 4 times higher, and the incidence of tuberculosis is 8 times as high.

There are obviously still many challenges confronting the Indian Health Service. There is a need to combat a wide range of serious diseases such as otitis media, alcoholism, mental illness, and nutritional problems. In addition, there is also a need for expanded sanitation programs and other endeavors to build a lasting preventive health care program so that our Indian citizens can be relieved of the afflictions of disease and illness.

It is in this context that the IHS appears as the chief instrument through which a whole range of health services can be delivered. Yet, the time has come to redesign that instrument to give it the strength to meet the continuing challenges of providing an environment and a system which will promote better health and better health care.

I am pleased to join in this major legislative endeavor, and our goal must be the goal that Dr. Johnson set out during his testimony on the 1974 IHS appropriations request when he stated that:

The future of the Indian Health Service lies in expanded Indian community development, increased meaningful involvement of Indian people, and a responsive high quality comprehensive health care system.

Our commitment is to identify and mobilize all available Federal, State and private resources, and through effective management processes to develop those resources to maximum potential. As we continue to evolve in this direction, we look forward to a significantly improved health status for Indian and Alaska Native people.

By Mr. DOMENICI:

S. 2939. A bill to authorize the Comptroller General of the United States to acquire and make available to the Congress, the President, and the public certain information and data relating to energy supplies and shortages. Referred to the Committee on Government Operations.

Mr. DOMENICI. Mr. President, the bill I am introducing today arises directly from face-to-face contact with my own constituents.

Thus, it seems to me a striking example of the best workings of this great Republic, in which citizens can be heard and action can be taken, here at the Federal legislative level, because they have spoken.

I returned to Washington from my native State after our most recent recess with a series of impressions, based upon almost every private conversation I had and almost every group meeting I attended.

The first is that our people are confused about the extent—perhaps even the reality—of the Nation's worsening situation in regard to energy sources.

The second is that these same people have great resources of good will, even an ability to take on a program of sharp sacrifice, on an entirely voluntary basis, if they are convinced that it is in the country's best interests for them to do so.

What these people lack is information—that information which, if they had it, would first of all define the true parameters of our problem and secondly motivate them to act wisely for the good of us all.

It is not a pleasant task to face those citizens, as I am sure most Members of this body experience for themselves, and admit frankly that their own Government does not have the information for which they hunger. It is even more difficult to have to admit that neither the legislative nor the executive branch have the kind of information required for appropriate action and informed decisions. This is an intolerable situation and it must be corrected.

Hence the purpose of this bill: to begin to collect, immediately and vigorously, all available information, from whatever source, on current inventories, supplies and reserves—first on the American petroleum industry and then, on a longer term basis, on all potential sources of energy.

There will be resistance to this step. But crises make demands which everyday life does not make, and the fact is that we appear to be in such a crisis now.

The paradox is that, until such traditionally private information has been made available for thorough analysis, we cannot even know the extent of our crisis.

So I would say by this bill to all those who plead the privacy of business information: "This may once have rightfully been only yours to know; now it is the business of the American people to be used by their leaders for vital decisions for the common good."

I will also call the attention of our Members to one other feature of this bill, the fact that it vests the power and the responsibility to gather this information in the Office of the Comptroller General.

My reasoning here is a double one.

First of all, this is an existing office, so no new levels of bureacracy will need to be created—an approach which I earnestly wish we had taken in other of our efforts to solve these pressing problems.

Second, I remind our Members that this office is an arm of the Congress and hence most responsive to its wishes. It appears to me to be the single body most likely to respond to the needs of Congress by supplying it the factual bases for its legislation, while at the same time cooperating with Federal executive agencies, State and local governments, and our citizens at large.

Mechanically, this bill is very simple in that it sets out as its purpose the acquisition, analysis, and dissemination of information essential to adequately inform the public about our true energy situation and allow the Nation's leaders to make informed decisions in accordance with that true situation.

The Comptroller General is authorized and directed to take all steps necessary to carry out that broad and important purpose and to establish whatever procedures are required to do so.

The bill would specifically require the Comptroller General to acquire information and report to the Congress, the President, and the public within 25 days after enactment on the total quantity of crude oil and petroleum products controlled by oil interests engaged in interstate or foreign commerce. This is necessary to define the dimensions of the immediate petroleum shortage and allow intelligent actions by governments, businesses, and private citizens. Based on that initial inventory of the petroleum industry, the Comptroller General would develop an information acquisition, analysis, and dissemination system necessary to the intelligent management and conservation of all energy sources. This would then be the wide-ranging energy information function other legislative initiatives before the Congress would assign to an Energy Information Center either as a separate agency or as part of the Federal Energy Office.

I have already elaborated on my basic reasons for choosing the General Accounting Office for the performance of this vital function. I realize that the collection and verification of information of this kind has been traditionally assigned to the executive branch and that the function of the General Accounting Office has been limited in most cases to monitoring and reporting to the Congress. As I said before, the situation we face today is one so severe, so unusual that we need to at least consider whether we want to handle it as we do "in most cases."

The unusual aspect of the current situation to which I refer, of course, is the widespread skepticism about the very existence of any "energy crisis," not to mention legitimate questions by many about its magnitude. We simply have not had good information and yet we have tried to move ahead. As a result, Government credibility has suffered, due in part—whether justified or not—to the fact that regulatory functions and information functions are presently performed by the same Federal agency. We can help eliminate that credibility problem by separating these functions as proposed in this bill. I think the need to do so offsets the difficulties associated with a nontraditional approach under these rather unique circumstances. Accordingly, I have chosen this route and urge my colleagues to seriously consider it as the best means both to obtain the required information and rebuild credibility that we seriously lack at this point.

Mr. President, you will not fail to note the urgency which the bill expresses. That returns me to my original thesis: our people need to know, candidly and completely, what our situation really is—and they need such knowledge as quickly as is consonant with accuracy and completeness. Only when they know the whole truth will they act wisely and well. Unless they act in this manner, there is nothing but deepening gloom ahead. Consequently, I hope this bill will be considered along with other relevant legislation in hearings soon to be held by appropriate committees.

I request unanimous consent that the text of the bill be printed at this point in the RECORD.

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

S. 2939

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, for the purpose of keeping the Congress, the President, and the public fully apprised concerning the status and impact of energy shortages, the extent and location of available supplies and shortages of crude oil, petroleum products, natural gas, and coal, the nature, extent, and projected duration of shortages of energy supplies, and for the purpose of supplying to the Congress, the President, and the public information and other data related to the management and conservation of energy, including, but not limited to, information and data related to energy costs, transportation, equipment, facilities, supplies, reserves, demand, industry structure, and environmental impacts, the Comptroller General of the United States is authorized and directed to establish and carry out, on a continuing basis, such programs and procedures for gathering, analyzing, interpreting, and disseminating to the Congress, the President, and the public, such energy statistics, data, and other information as he determines necessary to enable the Comptroller General to carry out the purposes of this Act.

(b) The procedures provided for under subsection (a) of this section, shall include, among others, procedures for determining and reporting to the Congress, the President, and the public—

(1) as to the total aggregate inventory of crude oil and petroleum products held, owned, or controlled by oil producers, refiners, distributors, and pipeline entities, engaged in interstate or foreign commerce, on the twenty-fifth day following the date of the enactment of this Act; and

(2) on a periodic basis, as to the total aggregate amount of such crude oil and petroleum products so held, owned, or controlled by such producers, refiners, distributors, and pipeline entities during the period covered by each such report.

(c) In carrying out his responsibilities under this Act, the Comptroller General or his authorized representative shall have access to such information from any public or private source whatever, notwithstanding any other provision of law, as is necessary to carry out his responsibilities under this Act.

(d) The Comptroller General, or any of his authorized representatives, in carrying out his responsibilities under this section shall have access to any books, documents, papers, statistics, data, information and records of any public or private organization necessary to enable the Comptroller General to carry out such responsibilities.

(e) The Comptroller General may sign and issue subpoenas requiring the production of such books, documents, papers, statistics, data, information, and records as may be necessary to enable the Comptroller General to carry out his responsibilities under this Act. In case of disobedience to a subpoena issued pursuant to this section, the Comptroller General may invoke the aid of any United States district court in requiring the production of such books, documents, papers, statistics, data, information, and records. Any United States district court within the jurisdiction in which the public or private organization is found or transacts business may, in the case of contumacy or refusal to obey a subpoena issued by the Comptroller General, issue an order requiring such organization to produce the books, documents, papers,

statistics, data, information, or records; and any failure to obey such order of the court shall be punished by the court as a contempt thereof.

SEC. 2. The Comptroller General of the United States shall have the authority, when he determines it necessary in order to carry out his responsibilities under this Act, to make any investigation, and in connection therewith, he may, at reasonable times, enter places of business and inspect such records and accounts and question such persons as he may deem necessary to enable him to determine the facts relative thereto.

SEC. 3. The Comptroller General shall, from time to time, but not less than on a quarterly basis, report to the Congress and the President of the United States with respect to the information and other data obtained by the Comptroller General in carrying out his responsibilities under this Act. Copies of such reports shall be made available by the Comptroller General to the public at reasonable costs and upon identifiable request, except that the Comptroller General may not disclose to the public, under this Act, any information which could not be disclosed under other provisions of Federal law.

SEC. 4. The Comptroller General of the United States is authorized to issue such rules, regulations, and orders as he may determine necessary to enable him to carry out the provisions of this Act.

SEC. 5. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

SEC. 6. Whoever willfully fails to comply with any rule, regulation, or order issued by the Comptroller General of the United States pursuant to this Act, or whoever, while complying with such rule, regulation, or order, willfully submits false or misleading information, shall be imprisoned for not more than three months, or fined not more than $10,000, or both.

By Mr. BAYH (for himself, Mr. BENNETT, Mr. BIBLE, Mr. DOLE, Mr. GRAVEL, Mr. HART, Mr. HATHAWAY, Mr. HUMPHREY, Mr. JAVITS, Mr. MCGEE, Mr. MCGOVERN, Mr. MOSS, Mr. PERCY, Mr. RANDOLPH, Mr. TAFT, Mr. THURMOND, and Mr. WILLIAMS):

S. 2941. A bill to amend title XVIII of the Social Security Act to provide for coverage under part B of medicare for routine Papanicolaou tests for the diagnosis of uterine cancer. Referred to the Committee on Finance.

Mr. BAYH. Mr. President, today I am introducing a bill to include the "Pap" test for uterine cancer as a covered service under part B of medicare. Data from the National Cancer Institute's most recent national cancer survey indicate that the various types and stages of uterine cancer account for 25 percent of all cases of cancer among women in the United States, rivaling even breast cancer in the number of women struck.

The most common form of uterine cancer is cancer of the cervix which accounts for about 75 percent of all cases. Current estimates are that about 13,000 women die each year in the United States from cervical cancer. Like other forms of this disease, cervical cancer progresses in stages and is easier to control at its early stages than when it becomes more advanced and has invaded surrounding tissue. But the most impressive thing about the treatment of cervical cancer, Mr. President, is that when it is discovered at its earliest stage, it is just about 100 percent curable. Unlike some other types of cancer, a cervical cancer which is caught and arrested when it is just beginning is extremely unlikely to recur in later years. A woman who is discovered to have early cervical cancer—cancer in situ or stage 0 of this disease—if she has appropriate medical treatment at that point, is expected to live just about as long as women in her age group who have not had this type of cancer. This is a remarkable record, Mr. President, but it depends entirely on the cancer being at an early stage when it is discovered. If the cancer is not discovered until it is at a more advanced stage, the survival rates of women affected with it decrease each year, even if they have what we believe to be appropriate medical treatment.

Dr. Eleanor Macdonald and her colleagues recently published a comprehensive study of "The Incidence and Curability of Cancer of the Uterine Cervix in El Paso County 1944–67," in the January 1973 issue of the Journal of the American Medical Women's Association. This study shows that if this disease is caught not at stage 0 but at the later stage 1, less than 80 percent of the women affected will still be alive 5 years later, whereas in a group of similar age without uterine cancer, we would usually find almost all alive 5 years later. As the disease progresses further, survival becomes less likely, even when treatment is given. If it is not discovered until stage 4, less than 20 percent of the women affected can be expected to be alive only 2 years later. Mr. President, I recite these grim statistics to point out the critical importance of discovering cervical cancer early, when it is virtually completely curable.

Given a disease that has such a good prognosis at its earliest stage and is so difficult to cure later, it seems that a full scale effort would be in effect to discover a simple diagnostic test to uncover cervical cancer as early as possible and to get every adult woman in this country to take this test as often as the medical profession thinks is necessary. If this were the case, we could insure that every single case of cervical cancer discovered will be at the earliest stage where it is more easily curable.

In this respect, Mr. President, there is good news and bad news. The good news is that such a test is available and has been available for two decades. This is the well known Pap smear, invented by the late Dr. George N. Papanicolaou, who received many well-deserved honors for his immensely important work in this area. The test is simple, requires just a few minutes of the patient's time, is painless, and is inexpensive. Mr. President, 13 years ago, Dr. C. J. Lund, writing in a January 1961 issue of the Journal of the American Medical Association, said:

> The epitaph for cervical cancer has been inscribed. The methods, skills, and techniques are available to destroy it. The date of death remains unwritten in the hands of the practicing physicians and their patients.

Mr. President, the date of death of this type of cancer depends almost entirely on the extent to which we can get women to take this simple test which will identify the cancer when it is at the early, curable stage.

This brings me to the bad news: Since that optimistic statement was written 13 years ago, approximately 169,000 women in this country have died of cervical cancer. Their dates of death were written before the date of death of cervical cancer because we have not made the decision to somehow get each and every woman in this country to take this test on an annual or semiannual basis. In spite of tremendous efforts by the American Cancer Society and various public health groups over the last 15 or so years, there are still very large numbers of women who have never taken a Pap test in their lives, to say nothing of taking one at the recommended interval of once a year for women under 35 and twice a year for women over 35.

But whether a woman has a Pap smear or does not is not random. Medical researchers have identified specific groups of women who are less likely than others to have this test done. One group whose members are quite unlikely to have this test done are older women. Another group is poorly educated and poor women. Thus, the tremendous advances in control of cervical cancer over the last two decades, insofar as they depend on the Pap test, have been mainly among young and better educated women whom we are more likely to reach with public education programs and who are more likely to realize the tremendous benefits of taking this test regularly. But particularly among the elderly, it is difficult to get this message across. In one comprehensive study in the State of Connecticut, "Cancer of the Cervix in Connecticut," by Dr. Barbara W. Christine and her colleagues, reported in Connecticut Medicine of December 1972, it was found that while approximately 40 percent of women in the 20 to 29 age group had received a Pap smear, only 9 percent of women 60 or over had done so. Yet it is in this older group that the mortality rate due to cervical cancer is highest. This is at least partially because a cancer discovered in an older woman is more likely to be at a later stage for the very reason that the older woman is unlikely to have had the simple test which would have discovered the disease when it was curable. This means that we must do everything possible to encourage the more widespread use of the Pap test among women in the older age groups.

Mr. President, eventually I would hope that this test will be available free of charge, on a walk in basis, to every woman in this country. In the meantime, we must find a way to make a start in this direction. I believe the legislation I am introducing does this. We have a vehicle to encourage women to take Pap tests, and that is the medicare program. The medicare program is, of course, restricted to the disabled and those in the older age groups. But since it is older women who are least likely to take the Pap test, the medicare program is a natural place to begin. If the medicare program were to cover the Pap test as part of their coverage of diagnostic laboratory tests, there is no doubt in my mind that we could raise dramatically the proportion of women in the older age groups who would avail themselves of the opportunity to take this test. The only reason I can discover why this test is not

now covered is the exclusion from the medicare program of "routine physical checkups." But a test to discover uterine cancer should not be placed in the same class as a routine checkup. A woman has no possible way to observe her uterus, to check up herself on whether there is possibly something wrong with it, until it is too late. The early stages of this disease are not painful and frequently present no physical symptoms which would cause a woman to have a complaint and go to her doctor for this complaint. If we wait for that complaint to develop—in which case the Pap smear would be covered by medicare because it would then be nonroutine—it may very well be too late for this woman to be in the group which can expect to be completely cured of this disease. What we need is to do everything possible to have this test done on a routine basis. The Congress has already recognized the importance of general preventive health care through recent legislation on Health Maintenance Organizations. The proposed legislation is another effort in this direction. Preventive medicine makes particularly good sense in an area such as uterine cancer where there is little possibility of a disease being discovered in a curable stage when one waits for symptoms to develop.

The Connecticut study to which I referred earlier documents very clearly the need for a preventive approach to uterine cancer through the routine application of diagnostic tests. In the oldest group of women studied in the Connecticut report—age 50 and over—who would be most comparable to the women enrolled in the medicare program, 60 percent of the cases of early cervical cancer—cancer in situ or stage 0—were discovered on strictly routine office calls or calls involving a nongynecological complaint. The remaining 40 percent of the cases of early cervical cancer were discovered after the woman made a gynecological complaint. In strong contrast, 85 percent of advanced stage cervical cancer was diagnosed after a specific complaint was made. Only 15 percent of the cases of advanced cervical cancer were discovered through examinations which were strictly routine or initiated after a nongynecological complaint. Of the women over age 50 who ultimately proved to have cervical cancer and waited until they had a gynecological complaint to have the Pap test taken, 88 percent already had advanced stages of the disease when cure is most difficult. Of the women in this age group who ultimately proved to have cervical cancer but who took the Pap test on a routine basis, only 46 percent had an advanced stage of the disease, and 54 percent had the earliest stage of the disease which is almost always curable. These data make crystal clear that if we are to find cervical cancers in their early stages, we must rely on routine use of the Pap test rather than wait until symptoms are felt. If we wait for complaints to develop, we are waiting too long to expect that the cases of cervical cancer which are discovered will be in the early curable stages.

A number of public health efforts to control uterine cancer through encouraging more widespread pap testing have been undertaken. An intensive program was begun in 1967, for example, in El Paso, Tex. The results of this program were reported in the study by Dr. Macdonald. She estimates that between 70 and 80 percent of all women in El Paso were reached by the program, which provided a free Pap test on a walk-in basis. Most impressive is their finding that the rates of cervical cancer for the 3 years following the inception of this program show marked increases in the incidence of early in situ cervical cancer and corresponding marked decreases in the incidence of advanced stages of the disease. Dr. Macdonald points out that the increased rate of early stage cancer means that cancers are being discovered that ordinarily would be undetected until later stages. Because of this, the incidence of later stage cancers becomes lower. The prognostic implications of this are clear: the women who are discovered to have early stage cervical cancer through this type of program can be given prompt treatment and can expect to enjoy just about a normal lifespan. If their cancers had remained undetected until later, the story would not have such a happy ending. Similar programs, with similarly good results, have been carried out in Louisville, Ky., where the death rate from cervical cancer was cut in half in 15 years, and in other cities in the United States and other countries. In New York State, a Pap test must now be offered to all women who are admitted to a hospital for any reason unless they have had such a test in the previous 3 years. But we still need to do much more to get to older women in all cities and counties of the country so that the benefits of this remarkable test are not denied to anyone.

Mr. President, some Senators may feel that this amendment would provide services to people who are not in financial need and who could very well afford to pay for these tests themselves. Since the Pap test is not an expensive one, at the same time that the program would not be prohibitive for the medicare program to undertake, some may feel that it is also not prohibitive for individuals to pay for it themselves. This is not an unreasonable argument. Certainly it is a good bargain to be able to pay $5 twice a year for a test that could diagnose a cancer when it is just about 100 percent curable instead of skipping this test and taking the risk that one will not discover a cancer at that stage but that it might show up later when the chances of cure are much less. I think that would be a bargain and I am sure that the millions of women who take this test religiously once or twice a year also think it is a great bargain. The problem, Mr. President, is not only that many of our elderly are also poor, but more importantly that many of our elderly women do not know about this test, or do not realize its importance. Thus, they do not avail themselves of the opportunity of getting this tremendous bargain. As I mentioned before, every study that I have seen of the use of the Pap test has shown that most tests are performed on young women and that elderly women are least likely to have this test done. All this in spite of the fact that deaths from invasive uterine cancer are highest among elderly women. Thus, Mr. President, my concern is that we find a way to encourage the use of this test, hopefully among all women, but at the very least among our aged citizens who are least likely to know about it, and to whom we have made a national commitment, through medicare, of assisting them with their health problems.

What I would hope is that every time a medicare recipient goes to a doctor's office, a clinic, or a hospital, regardless of the reason she is there, the doctor who attends her, knowing that the Pap smear is covered by medicare, will inquire whether she has had this test in the last 6 months, and if not, would encourage her to have one done. For every doctor that is successful in that regard, Mr. President, and causes us to spend a few dollars from the medicare program to pay for that test, we will be saving the Federal Government and the people of this country approximately nine times as much in what they would eventually have to pay out for treatment of advanced cases of cervical cancer. This is true, Mr. President, because programs for early diagnosis and prevention of uterine cancer are the most cost-effective programs in the cancer area. A study by the Public Health Service estimates that for every $1 spent on early diagnosis and prevention of uterine cancer, the taxpayer saves $9. This is because treatment of advanced cases is extremely expensive, to say nothing of the fact that it is less likely to be effective than the treatment in the early stages. Thus, we can spend less money and save numerous lives by endorsing this program.

One dramatic example of the cost-effectiveness of routine screening programs was found in the Louisville, Ky., program to which I referred before. Before this project, the Louisville General Hospital devoted almost one-third of all of its beds to cases of advanced uterine cancer, requiring many days of hospitalization and treatment. Today they hardly ever see a case of this type. Thus, enormous amounts of hospital expenses are avoided and hospital facilities are freed to care for persons with illnesses for which we have yet to find as effective screening and early cure programs as we have here.

Furthermore, knowing that the test is covered by medicare will encourage women to go to their doctor to get it, even if they are feeling fine and would not otherwise go. This has a secondary benefit, too, Mr. President, because many doctors have noted that going for routine Pap tests is of tremendous importance in increasing discoveries of other diseases in their early stages because the patient then is likely to have a routine physical as long as she is there for the Pap test. And I do not believe there is any illness or disease that cannot be helped to a somewhat greater extent when it is discovered at an early

stage than when it goes undetected until it is far advanced. Thus, encouragement to routine administration of the Pap test would have three important advantages:

First, it would enable discovery of cervical and other uterine cancers at the earliest stages of the disease when they are much more easily curable, thus avoiding unnecessary deaths from this disease;

Second, it is a cost-effective program which would save the people of this country approximately $9 for every $1 spent in early detection;

Third, it will encourage routine physical examinations during which other serious illnesses may be discovered in their early stages when cure or treatment is more effective, thus reducing deaths, incapacities, and financial costs due to those diseases.

Mr. President, in the interests of the health and welfare of every elderly woman in this country, and therefore of all our citizens, I urge the passage of this legislation.

By Mr. BAYH:

S. 2942. A bill to authorize and direct the Administrator of the Federal Energy Office to establish an inventory of the total aggregate amount of crude oil, and other petroleum products currently held by certain oil producers, refiners, distributors, and pipeline corporations, and users. Referred to the Committee on Interior and Insular Affairs.

Mr. BAYH. Mr. President, I introduce for referral to the appropriate committee a bill to authorize and direct the Administrator of the Federal Energy Office to conduct a national inventory of crude oil and petroleum products within 45 days. This bill is not intended to substitute for more far-reaching energy data gathering legislation already introduced, but rather is designed to complement those proposals and fill an immediate need for reliable information on available crude oil and refined products.

There is wide agreement that the executive branch has been derelict in not assembling independent data on available fuel supplies. William Simon, the Government's top energy official, has said:

> We have never had what one might call an adequate reporting system for this industry.

Several different times in recent weeks, in testimony before congressional committees and in the media, Mr. Simon and his assistant, Mr. Sawhill, have repeated the essence of the problem—we have relied for too long on oil industry statistics of available fuel supplies.

Yet, Mr. Simon has yet to respond to a letter I sent him almost 2 months ago urging that he use his existing authority to conduct a national fuels inventory. In view of Mr. Simon's refusal to couple positive action with his admission of the inadequacy of the data available to him, I am introducing this bill to direct him to conduct such a fuels inventory.

It is folly to think we can effectively manage the national energy problem without solid information on who has what oil and where that oil is in the refining, distribution, and marketing system. We need an immediate inventory for short-term crisis management. It is not sufficient to rely on piecemeal reports from the oil companies.

Such reports, which are done voluntarily, are not necessarily complete. There is no assurance that all supplies will be reported, that the reports will show specific supplies of various refined products, nor that the reports will show where the stocks are located. Moreover, with some companies not reporting at all, and with the reporting companies following whatever system they want, it is impossible to assemble the data to provide a coherent national inventory.

The bill I am introducing today would require the FEO Administrator to publish in the Federal Register, within 15 days of enactment, regulations requiring all oil producers, refiners, distributors, pipeline companies, and petroleum users with storage capacity of 10,000 gallons or more to report all crude oil and refined petroleum products on hand 10 days following publication of the regulations.

Such an inventory would go far beyond anything previously suggested in that it would require the major oil companies to provide specific data on what crude oil or refined stocks they have, where those stocks are located—whether in the United States or not, and, quite importantly, the inventory would also include large petroluem users who may be maintaining higher inventories than usual. This provision, reaching to those with the capacity to store 10,000 gallons or more, is a key element in any successful inventory. This is important since there have been repeated reports that large petroleum users are maintaining high inventories so as to avoid getting caught short during the fuel shortage. Obviously, a significant amount of the Nation's available fuel at any given moment is in the tanks of such large users.

In order to accomplish the inventory quickly, the responsibility is placed on the oil companies and large users to report directly to the FEO, with appropriate civil and criminal penalties for failure to report or for willfully providing false information.

Initial reports under this plan would have to be filed in ample time for FEO to pass this information to Congress within 45 days of the bill's enactment, with periodic updates thereafter. In order to prevent the FEO from providing only partial information to the Congress, the bill specifies that the reports to Congress includes specific data for each reporting entity, including the precise data on available stocks of crude, residual and refined petroleum.

I realize there are those who suggest that making such data public would somehow violate a basic right to corporate privacy. It is my judgment that there is an overwhelming national interest to be served by such a detailed inventory and that must supersede the private interests of any firm.

Mr. President, I have deliberately drafted this legislation to meet an immediate need for this inventory of crude oil and refined products. It is designed to provide the data for short-term decisions on what products should receive priority in the refining process, what regions of the country have too much or too little fuel in relation to other regions, what large users are stockpiling fuel, whether allocation rules need to be revised, and whether end-use rationing has become necessary.

Such an approach is a first step in correcting the grave failure of the administration to establish independent means for gathering relevant energy data. It is not intended to serve as the basis of a longer term program to get the Government into the business of gathering comprehensive independent data on all energy reserve and supplies.

Since I wrote to Mr. Simon on December 5 suggesting such a fuels inventory, the FEO has tried to collect scattered information from oil companies and some large fuel users. However, this incomplete program and selected reporting by some oil companies have not provided the comprehensive overview of available crude oil and refined product stocks that is essential to successful management of the energy problem.

Mr. President, the American people have received many varied reports on the magnitude of the energy problem since the Arab oil embargo was imposed in October. Those reports, from the Government and private interests, have repeatedly contradicted each other and pointed to the inadequacy of current information gathering.

It is unfair and inappropriate to expect the American people to vest their confidence in an energy program that is itself based on incomplete and inexact information. An inventory would bridge this information gap and prove a crucial element in maintaining public support for energy conservation and allocation programs.

I hope and urge that this bill receive prompt consideration so we can make certain the FEO does the job it should have done months ago. Otherwise we will continue to be in the untenable position of making energy policy without the basic information that is necessary to the development of sound policy.

Finally, Mr. President, I think it important to emphasize that in no other area of such national importance does the government conduct its business based on data collected solely by the very industry whose own political interests are at stake in government policy. As long as we continue to rely on oil company data, as long as we get our information from those who the public believes helped created the energy problem and who are reaping record profits as a result, we will be doing a serious disservice to the American public—and the public in turn, will continue to express doubts about the existence of an energy shortage.

No energy program can survive these inherent disabilities.

Mr. President, I request unanimous consent to include a copy of the bill in the RECORD at this point.

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

S. 2942

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, within fifteen days following the date of the enactment of this Act, the Administrator of the Federal Energy Office shall, without regard to any other provision of law, issue and publish in the Federal Register such regulations as may be necessary for the purpose of requiring each oil producer, refiner, distributor, and pipeline company, engaged in commerce, to submit to the Administrator, in such form as he may by regulation prescribe, reports, information, or answers in writing to specific questions as may be necessary to enable the Administrator to report to the Congress, not later than forty-five days following the date of the enactment of this Act, as to the total aggregate amount of crude oil, residual fuel oil, and all refined and other petroleum products held, owned, or controlled by such producers, refiners, distributors, and pipeline companies, without regard to whether such oil or petroleum products are located within or outside of the United States, on the tenth day following the publication of such regulations in the Federal Register. Such regulations shall further provide for such subsequent reports, information, or answers, on a periodic basis, as may be necessary to enable the Administrator to keep the Congress fully informed as to the total aggregate amount of such crude oil, residual fuel oil, and refined and other petroleum products so held, owned, or controlled by such producers, refiners, distributors, and pipeline companies at a prescribed time during the period with respect to which such report, information, or answer is submitted.

SEC. 2. Within fifteen days following the date of the enactment of this Act, the Administrator of the Federal Energy Office shall, without regard to any other law, issue and publish in the Federal Register such regulations as may be necessary for the purpose of requiring each user of petroleum products having storage facilities capable of storing 10,000 or more gallons of petroleum products, to submit to the Administrator, in such form as he may by regulation prescribe, reports, information, or answers in writing to specific questions as may be necessary to enable the Administrator to report to the Congress, not later than forty-five days following the date of the enactment of this Act, as to the total aggregate amount of petroleum products held, owned, or controlled by such users, without regard to whether such petroleum products are located within or outside of the United States, on the tenth day following the publication of such regulations in the Federal Register. Such regulations shall further provide for such subsequent reports, information, or answers, on a periodic basis, as may be necessary to enable the Administrator to keep the Congress fully informed as to the total aggregate amount of such petroleum products so held, owned, or controlled by such users at a prescribed time during the period with respect to which such report, information, or answer is submitted.

SEC. 3. All reports to the Congress by the Administrator under the provisions of this Act shall include specific information for each entity reporting to the Administrator under Sections 1 and 2 of this Act. Such reports to the Congress should further indicate the total amount of each fuel controlled by a reporting entity and the location of stocks on the reporting date.

SEC. 4. (a) Any person who fails to comply with any of the reporting requirements under any regulation issued pursuant to this Act shall be subject to a civil penalty of not more than $2,500 for each day he fails to so comply.

(b) Any person who submits false or misleading information or other data in connection with any reporting requirements under regulations issued pursuant to this Act shall be subject to a civil penalty of not more than $2,500 for each such violation.

(c) Any person who willfully fails to comply with any such reporting requirements or who willfully submits false or misleading information or other data in connection with such reporting requirements shall be subject to imprisonment for not more than six months, or fined not more than $5,000, or both.

ADDITIONAL COSPONSORS OF BILLS

S. 1844

At the request of Mr. ABOUREZK, the Senator from Michigan (Mr. HART) was added as a cosponsor of S. 1844, the American Folklife Preservation Act.

S. 2495

At the request of Mr. MANSFIELD (for Mr. MAGNUSON) the Senator from Arizona (Mr. GOLDWATER) was added as a cosponsor of S. 2495, to amend the National Aeronautics and Space Act of 1958 to apply the scientific and technological expertise of the National Aeronautics and Space Administration to the solution of domestic problems, and for other purposes.

S. 2747

At the request of Mr. WILLIAMS, the Senator from Connecticut (Mr. RIBICOFF) was added as a cosponsor of S. 2747, the minimum wage bill.

S. 2861

At the request of Mr. BEALL, the Senator from Nevada (Mr. BIBLE), the Senator from Oregon (Mr. PACKWOOD), and the Senator from Kansas (Mr. DOLE) were added as cosponsors of S. 2861, to authorize the Administrator of the Federal Energy Office to obtain certain information with respect to current supplies of crude oil and petroleum products.

SENATE CONCURRENT RESOLUTION 66—SUBMISSION OF A CONCURRENT RESOLUTION RELATING TO IMPRISONMENT OF A SEAMAN

(Referred to the Committee on Foreign Relations.)

Mr. PERCY. Mr. President, on November 23, 1970, the Lithuanian seaman Simas Kudirka jumped from a Soviet fishing trawler on to the Coast Guard cutter *Vigilant,* in U.S. territorial waters, seeking political asylum in the United States.

As we all remember with deep chagrin and sorrow, crew members of the Soviet ship were allowed to board the *Vigilant,* seize Kudirka and remove him to the Soviet ship. Soon thereafter Kudirka was tried in the U.S.S.R. and sent to prison. We have no official word on his welfare or that of his family since that time.

When the events of November 23, 1970, became known through the media, there was a great outpouring of shock and indignation. Even the President of the United States expressed his dismay over the grave misjudgment which had made it possible for Kudirka to be returned to Soviet custody when he had sought haven in our country.

Because Kudirka's momentary freedom was abruptly abrogated by the unfortunate actions of a few Americans, I feel that we have a continuing moral responsibility for him and his well being.

I have personally discussed my own concern with the very able and influential ambassador from the U.S.S.R., Anatoly Dobrynin.

Today I am introducing a concurrent resolution intended to encourage official efforts to seek freedom for Simas Kudirka.

The resolution, which is cosponsored by Senators HART, HUMPHREY, JACKSON, STEVENSON, and DOMINICK asks the President to direct the State Department to bring to the attention of the Soviet Government the deep concern among U.S. citizens over the plight of Simas Kudirka and to urge his release from imprisonment. It also asks the President to forward a copy of the resolution to the U.S. Representative to the United Nations for transmission to the UN Commission on Human Rights.

The same resolution is being introduced in the House by Congressman ROBERT HANRAHAN of Illinois and 50 other sponsors.

The concurrent resolution reads as follows:

S. CON. RES. 66

Whereas, Simas Kudirka, a Lithuanian seaman, attempted to seek asylum in the United States while his ship was moored beside a United States Coast Guard vessel in United States territorial waters; and

Whereas, Simas Kudirka was forcibly seized from the United States Coast Guard vessel and returned by Soviet authorities to a Soviet vessel, and subsequently imprisoned in the Soviet Union; and

Whereas, American citizens are increasingly concerned about this flagrant violation of human rights; and

Whereas, his continued imprisonment and the inability to learn of his welfare raise among American citizens an impediment to the improvement of relations between the Soviet Union and the United States:

Resolved by the Senate (the House of Representatives concurring), That it is the sense of the Congress that the President direct the Secretary of State to bring to the immediate attention of the Soviet Government the deep and growing concern among citizens of the United States over the plight of Simas Kudirka and to urge his release from imprisonment and his return to his family.

SEC. 2. It is the sense of the Congress that the President of the United States forward a copy of this resolution to the United States Representative to the United Nations for transmission to the Commission on Human Rights of the United Nations.

ADDITIONAL COSPONSORS OF A CONCURRENT RESOLUTION

SENATE CONCURRENT RESOLUTION 63

At the request of Mr. PERCY, the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Minnesota (Mr. HUMPHREY), and the Senator from Indiana (Mr. BAYH) were added as cosponsors of Senate Concurrent Resolution 63, to seek new efforts to obtain compliance with the terms of the Paris peace agreement as they apply to prisoners of war and personnel missing in action.

SENATE RESOLUTION 270—ORIGINAL RESOLUTION REPORTED AUTHORIZING ADDITIONAL EXPENDITURES BY THE COMMITTEE ON ARMED SERVICES

(Referred to the Committee on Rules and Administration.)

Mr. STENNIS, from the Committee on Armed Services, reported the following original resolution:

S. RES. 270

Resolution authorizing additional expenditures by the Committee on Armed Services 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 Armed Services, 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 Armed Services is authorized from March 1, 1974, through February 28, 1975, to expend not to exceed $25,000, 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 Armed Service, or any subcommittee thereof, is authorized from March 1, 1974, through February 28, 1975, to expend not to exceed $495,000, to examine, investigate, and make a complete study of any and all matters pertaining to each of the subjects set forth below in succeeding sections of this resolution, said funds to be allocated to the respective specific inquiries in accordance with such succeeding sections of this resolution.

SEC. 4. Not to exceed $346,000 shall be available for a general study or investigation of—

(1) the common defense generally;

(2) the Department of Defense, the Department of the Army, the Department of the Navy, and the Department of the Air Force generally;

(3) soldiers' and sailors' homes;

(4) pay, promotion, retirement, and other benefits and privileges of members of the Armed Forces;

(5) selective service;

(6) the size and composition of the Army, Navy, and Air Force;

(7) forts, arsenals, military reservations, and navy yards;

(8) ammunition depots;

(9) the maintenance and operation of the Panama Canal, including the administration, sanitation, and government of the Canal Zone.

(10) conservation, development, and use of naval petroleum and oil shale reserves;

(11) strategic and critical materials necessary for the common defense; and

(12) aeronautical and space activities peculiar to or primarily associated with the development of weapons systems or military operations.

SEC. 5. Not to exceed $149,000 shall be available for studies and investigations pertaining to military readiness and preparedness for the common defense generally.

SEC. 6. The committee shall report its findings, together with such recommendations for legislation as it deems advisable with respect to each study or investigation for which expenditure is authorized by this resolution, to the Senate at the earliest practicable date, but not later than February 28, 1975.

SEC. 7. Expenses of the committee under this resolution, which shall not exceed in the aggregate $520,000, shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee.

NOTICE OF HEARING ON A NOMINATION

Mr. JACKSON. Mr. President, I wish to announce for the information of the Members of the Senate and other interested persons that the Committee on Interior and Insular Affairs has scheduled open hearings for February 8 on the nomination by President Nixon of Thomas V. Falkie, of Pennsylvania, to be Director of the Bureau of Mines.

The hearings will be held in room 3110 of the Dirksen Senate Office Building and will begin at 10 a.m.

Persons wishing to testify or submit statements for the hearing record should so advise the staff of the Interior Committee.

Mr. President, I ask unanimous consent that a biographical sketch on Mr. Falkie be printed in the RECORD at this point in my remarks.

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

BIOGRAPHICAL SKETCH OF THOMAS V. FALKIE

HOME ADDRESS

1454 Park Hills Avenue, State College, Pennsylvania 16801, Area Code 814–237–9038.

BUSINESS ADDRESS

Department of Mineral Engineering, Pennsylvania State University, 118 Mineral Industries Building, University Park, Pennsylvania 16801, Area Code 814–865–3437.

PERSONAL DATA

Born September 5, 1934; 5'10"; 180 lbs.; Married, five children; U.S. Citizen.

EDUCATION

Ph.D. 1961—Mining Engineering (Minor in Industrial Engineering/Operations Research); M.S. 1958—Mining Engineering (Minor in Mineral Preparation); and B.S. 1956—Mining Engineering (with Honors). All at the Pennsylvania State University, University Park, Pennsylvania 16802.

EMPLOYMENT SUMMARY

Sept. 1969—Present: Head Professor, Mineral Engineering Department, Pennsylvania State University, University Park, Pennsylvania. Chairman of Interdisciplinary Graduate Program in Mineral Engineering Management.

Jan. 1963—Aug. 1969: International Minerals & Chemical Corporation, Bartow, Florida.

Mar. 1968—Aug. 1969: Noralyn/Clear Springs Production Superintendent—Directed the mining, beneficiation, preparation and shipping activities of two phosphate operations producing 6 million product tons per year.

Dec. 1966—Mar. 1968: Minerals Planning and Production Control Manager—Directed all technical, staff and support activities including capital planning, production planning, profit planning, mining engineering, mine planning, production control, traffic, property, earthmoving, prospecting, geology, metallurgical laboratory, civil engineering, dam building, land reclamation and process engineering.

July 1965–Dec. 1966: Assistant Manager of Special Projects—Directed and participated in exploration, geology, metallurgy and evaluation activities in several reserves acquisition projects ranging from the southeastern United States to the Spanish Sahara.

June 1964–July 1965: Chief of Minerals Operations Planning—Directed all planning and administrative activities.

Jan. 1963–June 1964: Operations Research Engineer—Performed economic studies using operations research techniques; developed computerized management information systems; conducted feasibility studies and venture analyses.

June 1961–Dec. 1962: Operations Research Consultant, Corporate Industrial Engineering Department, International Minerals & Chemical Corporation, Skokie, Illinois—Internal Corporate Consulting on sales, production, farm management, exploration and a variety of other kinds of projects.

July 1956–June 1961: Fellow, 3 years; Research Assistant, 2 years—Department of Mining, Pennsylvania State University, University Park, Pennsylvania—Pioneered the application of computers and operations research techniques to mining and exploration problems.

RESEARCH PROJECTS

Simulation of Underground Mine Haulage (Completed).

Mathematical Programming Applications in the Crushed Stone Industry (Completed).

Simulation of an Open-Pit Mine with Wheel Excavators and Associated Transport Systems (Completed).

Systems Evaluation and Simulation Models of Mining Systems (In Progress).

Economic Study of Tunneling for Peru Irrigation Tunnel (Completed).

Application of Geostatistics and Other Methods of Computing Ore Reserves for Venezuela Nickel Deposit (Completed).

Comparison of LHD vs Conventional Methods for Mining Canadian Uranium Deposit (Completed).

Determination of the Optimum Production Rate for a Mineral Property (Completed).

Study of Effect of Fringe Benefits on Mining Costs (Completed).

Development of Economic Minability Models for Multi-Seam Surface Mining (Completed).

Determination and Description of Characteristics Affecting Performance of the Loading Function in Underground Coal Mining (Completed).

Survey of Capital Investment Procedures Actually Used by the Mining Industry (Completed).

Developing Ways to Design Land Reclamation Into the Mining Cycle (Proposed and in progress).

Development of Master Design Simulator for Underground Coal Mining (In progress).

Analysis of Bulk Transportation of Miners (Completed).

Risk and Sensitivity Analysis in Mineral Property Evaluation (Completed).

MAJOR RESEARCH INTERESTS

Management Theory and Practice Applied to Mining.

Mineral Resource Management.

Surface and Underground Mining.

Mine Systems Engineering.

Management Science/Operations Research as Applied to Mining and Mineral Management.

Land Reclamation, Waste Disposal and Other Phases of Mine Environmental Control.

Planning and Control of Mineral Operations.

Industrial Engineering as Applied to Mineral Operations.

Economic Analysis.

PROFESSIONAL ACTIVITIES

American Institute of Mining, Metallurgical and Petroleum Engineers (Member Board of Directors of SME, Chairman-Elect M&E Division, also several national committee assignments including nominating, program, stature, education committees).

American Institute of Industrial Engineers.

American Society for Engineering Education (Chairman-Elect of Minerals Division 1972–73).

Operations Research Society of America (1961–1972).

Coal Mining Institute of America.

Listings: American Men and Women of Science (1971 Edition); Engineers of Distinction (1973 Edition).

Member, National Academy of Sciences, National Academy of Engineering, Committee on Feasibility of Disposal of Mine Wastes Underground (1973/74).

Neutral Chairman, Joint Industry Health and Safety Committee—Bituminous Coal Operators Association and United Mine Workers of America (1973).

Chairman, Engineering Foundation Research Conference on Coal Mine Safety and Survival (1972).

Member, National Academy of Engineering Commission on Mineral Engineering Education (1972).

American Mining Congress, National Program Committee (1971–72).

Member, Graduate School Committee on Operations Research and Management Science (Penn State University) (1970 to present).

Member, Earth and Mineral Science College Committee on Rules and Procedures (1970 to present).

Consultant to United Nations on Mining and the Environment (1971).

Participant, Conference on Mineral Science and Technology Education Policy—Washington, D.C., March 1971—Sponsored by National Academy of Engineering and U.S. Bureau of Mines.

U.S. Delegate to OECD (Organization for Economic Cooperation and Development), International Advisory Conference on Tunnelling, June 1970, Washington, D.C.

Industrial Advisory Committee to the College of Engineering, University of South Florida, Tampa, Florida (1965–1969).

Adjunct Professor of Industrial Engineering—University of Florida/University of South Florida (1966) (Taught off-campus graduate course in economic evaluation).

Florida Phosphate Council (Industry-wide trade organization): Chairman of Sub-Committee on Dam Specifications and Construction (1966–68); Water Resources Committee (1967); Negotiating Committee on Manatee Country Mining, Waste Disposal and Land Reclamation Ordinance (1966–67).

Consultants to Florida State Board of Regents (1966–67).

U.S. Steel Foundation Fellow in Mining, Pennsylvania State University (1958–60).

International Minerals and Chemical Corporation—Fellow in Mining, Penn State University (1960–61).

Sigma Gamma Epsilon—Mineral Industries Honorary Society.

Tau Beta Pi Honorary Society (Engineering).

Phi Kappa Phi Honorary Society (Scholastic).

Theta Delta Chi Social Fraternity.

Taggart Memorial Scholarship (from Reading Anthracite Company) in Mining Engineering—Pennsylvania State University (1952–56).

PUBLICATIONS AND SPEECHES

"Volute Separator for Solid-Fluid Systems"—M.S. Thesis, Pennsylvania State University, 1958.

"Operations Research and Statistical Applications for Mineral Exploration"—Discussion Summary, Ninth Drilling Symposium, Pennsylvania State University, Bulletin 72, 1962.

"An Operations Research Approach to Mine Haulage"—Ph.D. Thesis, Pennsylvania State University, 1961.

"Probability Simulation in Mine Haulage," with D. R. Mitchell—presented at National AIME Meeting in Dallas, 1963. Also appears in AIME Transactions, September, 1964.

"Economic Analysis and Justification"—presented to Region IV Conference of AIIE in Augusta, Georgia, on October 31, 1964. Also appears in conference proceedings.

"Down to Earth Economic Analysis"—presented to Central Florida Chapter of AIChE on January 19, 1965.

"Economic Alternatives"—presented at Fourth Annual Management-Engineering Conference of the Florida West Coast Chapter of AIIE in Tampa on March 6, 1965.

"Taught graduate course in Engineering Economics"—University of Florida off-campus program—1965.

"Economic Analysis—Some Practical Aspects"—presented to AIIE in Nashville, Tennessee, on October 5, 1965.

"Operations Research and Computer Applications in Mining and Exploration—1966" Mining Engineering, February, 1967.

"A Review of the State of the Art of Operations Research as Applied to the Mining Industry"—presented at the 1967 Annual AIME meeting in Los Angeles on February 21, 1967.

"Florida's Mineral Resources"—presented to Conference on Conservation and Resource Use Education in the Space Age at Florida Southern College, Lakeland, June 23, 1967.

"Production Systems Engineering"—presented as a chapter in *Surface Mining*, a book sponsored by AIME, 1968.

"Computer Applications in Mining and Exploration"—presented to Florida Section of AIME on March 4, 1968, at Winter Haven, Florida.

"Phosphate Wastes," with J. L. Cox—presented at Mineral Waste Utilization Symposium IIT Research Institute, Chicago, Illinois, March 27–28, 1968.

"A Survey of Current Open it Practices in Florida Phosphate"—presented at SME Annual Fall Meeting (II International Surface Mining Conference) in Minneapolis in September, 1968. Published in book, *Case Studies of Surface Mining*, AIME, 1969.

"The Phosphate Industry in Florida"—presented to graduate-faculty colloquium at Pennsylvania State University, University Park, Pennsylvania, June 13, 1969.

"Computerized Planning and Control for Mining Operations," presented at Mineral Engineering management Seminar at Pennsylvania State University, November 10–14, 1969.

"The Future Role of the Mineral Engineer in Management Science and Systems Engineering," presented as opening remarks at a session of the same name at the 9th International Symposium on Techniques for Decision Making in the Mineral Industries, Montreal, June 14, 1970.

"Operations Research, or Quantified Common Sense in Mine Production—an Aid to Managers," presented at the 9th International Symposium on Techniques for Decision Making in the Mineral Industries, Montreal, June 16, 1970.

"Land Reclamation for the Mining Industry," with L. W. Saperstein, *Earth and Mineral Sciences*, V. 4, N. 2, November 1970.

"A Positive Approach for Recruiting and Training People for the Mining Industry," presented at the 25th Annual Off-the-Record try," with L. W. Saperstein, *Earth and* November 6, 1970.

"Applications of Managerial Economics and Management Science," presented at the Pennsylvania Water Well Contractors' Conference, Penn State University, February 5, 1971.

"Image and Manpower—Related Problems and How to Solve Them," presented at 1971 American Mining Congress Coal Convention, May 18, 1971, Pittsburgh, Pennsylvania, and published—*Mining Congress Journal*, June 1971.

"Land Reclamation for the Mining Industry—An Overview," with L. W. Saperstein, Preprint Volume AIME Environmental Quality Conference, June 7–9, 1971, Washington, D.C., pp. 119–126.

"Mathematical Programming Applications in Crushed Stone Industry," with R. Venkataramani and C. B. Manula, presented at the AIME Annual Meeting in New York, March 1–4, 1971, and published in AIME Transactions, J. 250, December 1971, pp. 322–328.

"The Power Line," editor with R. Stefanko—series of monthly Coal Division articles in *Mining Engineering* on wide ranging topics.

"Trends in Mineral Industry Management," *Earth and Mineral Sciences*, V. 41, N. 4, January 1972.

"Mining and Exploration—1971," introduction to annual Mining and Exploration review, *Mining Engineering*, V. 24, N. 2, February 1972.

"An Analysis of Blue Collar Wages and Fringe Benefits in the Mining Industry," with Thomas H. Parker, *Mining Congress Journal*, V. 58, N. 2, February 1972.

"Professional Encroachment and Mineral Engineering," presented at 1972 Annual AIME Meeting, February 20, 1972, San Francisco, California.

"Economic Surface Mining of Multiple Seams," with William E. Porter, presented at 10th International Symposium on the Application of Computer Methods in the Mineral Industry, Johannesburg, South Africa, April 1972; to be published in Symposium Proceedings.

"Trends and Prognostications in Mineral Engineering Professionalism and Education," presented at Spring Technical Meeting, Upper Peninsula Section, AIME, Hougton, Michigan, May 18, 1972.

"Economic Aspects of Solid Wastes from Mining," presented at Annual Meeting, American Society for Engineering Education, Lubbock, Texas, June 21, 1972.

"The Role of Higher Education for the Coal Industry in the 1970's," presented at Conference on Coal Industry—Implications of Image and Awareness to Industry Education and Community in the 1970's, Lebanon, Virginia, June 15–16, 1972.

"Determination of a Rate Generating Equation for Continuous Miners," with R. V. Ramani and T. E. Wilson, presented at Annual Meeting, AIME, Chicago, Illinois, February 1973.

"OMPHS—A Total Systems Simulator for Open Pit Mining," with C. B. Manula and Y. L. Su, presented at 11th International Symposium on Computer Applications in the Mineral Industry, Tucson, Arizona, April 16–20, 1973. Also published in Proceedings.

"Coal Mining Research Today," with Robert Stefanko, *Earth and Mineral Sciences*, V. 42, N. 9, June 1973.

"Status of Education and Training for the Mineral Industry," presented to Florida Section of AIME, June 4, 1973, Bartow, Florida.

"Coal Utilization, Present and Future," invited lecture at Roundtable on Energy Policy, Brookings Institution, Advanced Study Program, Washington, D.C., October 16, 1973.

"Overview of Outside Training for the Coal Industry," presented at Annual Meeting of Coal Mining Institute of America, Pittsburgh, Pennsylvania, December 14, 1973.

Keynote speaker for APCOM, Colorado School of Mines, April 1974. Speech will deal with Application of Computers in the Mineral Industry.

"An Application of a Weighted Moving Average Model for Coal, of Coal Reserves and Coal Seam Characteristics," with P.M.T. White and R. V. Ramani. To be presented at APCOM, Colorado School of Mines, April 1974.

"General Purpose Simulator for Coal Mining," with C. B. Manula and R. V. Ramani. To be presented at American Mining Congress meeting, Pittsburgh, Pennsylvania, May 1974.

ADDITIONAL STATEMENTS

SMOKING AND HEALTH— 10 YEARS LATER

Mr. MOSS. Mr. President, recently, the Federal Trade Commission suggested to the Congress that the familiar "Warning: The Surgeon General Has Determined That Cigarette Smoking Is Dangerous to Your Health" does not seem to be the deterrent which we intended it to be. Nevertheless, that is a better warning than the one which we imposed in the original cigarette legislation.

Whether or not the Congress will act to change this warning at any time in the near future is not a critical matter.

However, a speech recently delivered at the Nonsmokers Bill of Rights Congress, on January 11, 1974, by Luther L. Terry, M.D. former Surgeon General of the U.S. Public Health Service, charts a course which we should review in considering for the future of the smoking and health problem.

Mr. President, I ask unanimous consent that the speech by Luther L. Terry be printed in the RECORD.

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

REFLECTIONS 10 YEARS AFTER ADVISORY COMMITTEE'S REPORT ON SMOKING AND HEALTH

(By Luther L. Terry, M.D.)

Today we celebrate the 10th Anniversary of the report of the Surgeon General's Advisory Committee on Smoking and Health. Most of us can remember the sensation it caused and the wide publicity which it received at the time it was released on January 11, 1964. It was truly a dramatic event which has been rarely equalled in this Nation's recent history. At the time of the report all of us were pleased by the tremendous response of the news media, the health professions and the general public. We had made a significant beginning and we looked forward toward a continued response on the part of the public and a gradual elimination of smoking as a major health problem. In light of this beginning it seems quite appropriate today for us to review the events of the last 10 years and to project a course for the future.

In the first place, let me say that I am proud of the work of the Advisory Committee and the responsibility of their excellent report. The Committee was composed of 11 of the most outstanding biomedical scientists in this country and I am proud of the scientific responsibility with which they studied the subject and rendered their report. In my opinion their report was one of the most outstanding medical documents produced in this Nation's history. Furthermore, we should all be proud of the manner in which this document has stood the test of time. During these 10 years the report has not only been reaffirmed time and again, but it also pointed the way for subsequent scientific studies which have explained underlying biomedical mechanisms to confirm and extend the observations of this outstanding group. We are deeply indebted to each and every member of the Advisory Committee, both living and dead, and I would suggest that at this time we observe a standing moment of silent appreciation for their outstanding work!

In spite of our tremendous beginning and subsequent developments, smoking today remains as our single most preventable cause of disability and death in this country. Mr. Lane W. Adams, Executive Vice President of the American Cancer Society has recently expressed its importance when he said "Smoking remains as one of our major health problems and I think that history will reveal that it is one of the most important programs of the American Cancer Society." Many other leaders of our National Volunteer health organizations attribute similar significance to the subject. In other words, much has been done but much more remains to be done, and I think it is the responsibility of those of us who represent the concerns and interests of those who are supporting this battle to provide leadership in planning and developing our future course of action. No more appropriated time could be found than this the 10th Anniversary of the Surgeon General's Advisory Committee Report.

Before we proceed to a discussion of our future course I think it would be well for us to review the highlights of the most significant developments on the subject since January 1964. If I may, I would like to enumerate briefly the events which I feel have been most significant and then I would like to point out to you some of the major directions toward which I feel we should direct our activities. Here is a brief chronological arrangement of the most significant developments to date:

1) The immediate response of the federal regulatory agencies, especially the Federal Trade Commission under the chairmanship of Mr. Paul Rand Dixon, to determine the role and responsibility of those agencies in relation to the problem. In retrospect, there is no question but that the proposed regulations of the FTC immediately after the report goaded the Congress into taking action as early as it did.

2) The establishment of the National Clearinghouse on Smoking and Health in the Public Health Service as the official unit of the federal government to gather and analyze scientific information on the subject and to compile the annual reports to the Congress which have been required by law.

3) The organization of the National Interagency Council on Smoking and Health to represent the civilian segment of the population on a national basis and to support the formation of a similar voluntary group on a state, regional and local basis.

4) The passage of "The Cigarette Labelling Act of 1965". This action not only represented the first official acknowledgement of Congress of the problem but required the first health warning on cigarette packs and provided for annual reports from HEW and the FTC to the Congress.

5) The ruling of the Federal Communications Commission in 1967 that the "Fairness Doctrine", hitherto applied only to political issues, should be operative also in the cigarette smoking controversy. This opened the way for the great anti-smoking messages prepared by the voluntary health organizations and the PHS.

6) In 1969 the National Association of Broadcasters proposed a plan for the step-by-step phase-out of radio and televised cigarettee commercials culminating in their complete elimination in 1973. Three days later the FTC called upon the Congress to ban all cigarette advertising from the electronic media.

7) The passage of the Public Health Smoking Act of 1970 which strengthened the wordage of the warning on packages and banned the advertising of cigarettes on the electronic media effective January 2, 1971.

8) After much discussion in the public sector, as well as in the Congress, the FTC announced hearings on the subject of listing the tar and nicotine content in the printed advertising of cigarettes. When the hearings were announced the tobacco industry offered voluntarily to list tar and nicotine contents in advertisements though there is still no provision for such a listing on the cigarette packs.

9) Over the past 2–3 years there has been a rising appreciation of the rights of the non-smoker. The regulatory agencies responsible for buses, trains and airplanes in interstate travel have taken a more positive position and are now requiring non-smoking areas for those who desire it and are imposing severe penalties for those not observing those regulations. Many of our National Medical and other types of organizations have banned smoking at their meetings and many governmental agencies have banned smoking in its meeting and conference rooms.

10) Finally, the Congress passed into law an Act preventing the advertising of "small cigars" on the electronic media. This had been a matter of serious contention for many months. Of the three manufacturers of "small cigars," two had voluntarily agreed to cease advertising on radio and television but since the 3rd would not agree the Congress felt that it was necessary to prohibit such advertising by law. Such an Act was passed and signed into law by the President in September 1973.

One can see from this brief review that there have been many actions taken since 1964 but what has all this legislation, regulation and education accomplished? I believe there is a tide running for us and that with diligence and devotion we can continue to reduce cigarette smoking as a causative agent in disability and death. Just look at what we have accomplished thus far:

1) Though the total consumption of cigarettes has remained high, the per capita consumption has never reached the all-time high of 1963, the year before the report. This is in contrast to a consistent increase each year in the per capita consumption up to that date. As a matter of fact, the per capita consumption for 1972 more nearly equals the rate for 1958, 5 years before the report was issued.

2) The per capita consumption of both cigarette tobacco and all tobacco products in 1972 was 18.1% lower in pounds of cigarette tobacco and 18.85% lower in total tobacco products than in 1963.

3) Since 1964, more than 10,000,000 smokers have given up cigarettes, making a total today of 29,000,000 ex-smokers in our population.

4) Between 1965 and 1970 (the latest figures available) the percentage of smokers in our adult population (18 years of age and older) has decreased from 41.6% to 36.7%. It is believed that the current figure is no higher than 35%.

5) The cigarette smoked today is a much less potent weapon than that of 15 years ago. In 1954, 95% of cigarettes sold fell in a range between 35 and 53 mg. of tar per cigarette, whereas in 1972, 90% of all cigarettes sold yielded between 14 and 29 mg. In general, the nicotine content has roughly paralleled the tar content. With these facts in mind, Dr. Cuyler Hammond has estimated that even among current smokers the health risk has been significantly decreased. Mind you, no one has intimated that the current cigarette is harmless, just that it is less harmful than its predecessor of 10–15 years ago.

6) Recent surveys have indicated that a vast majority of the public, both smokers and non-smokers, are aware that smoking is harmful to health and that more than 75% of the current smokers have tried to quit on one or more occasions. In general, we are assured that our general educational information is getting across.

7) However, there is evidence to indicate that our youth, especially girls, are starting to smoke at a younger age and possibly in an increasing incidence. Somehow, our edu-

cational activities do not appear to be heeded as well by youth as by adults.

In light of the above facts it is important at this time for us to chart a course for the future, giving attention to all elements but emphasizing those efforts of higher priority. I shall now attempt to give you my evaluation of the direction in which we should go.

1) Education and informational campaigns should not only be continued but should be intensified. There is special need for us to adapt our educational approaches so that they would be better appreciated and accepted by our youth. Special attention should be directed toward young girls.

2) Health workers, especially physicians and dentists, have been most personally responsive to the dangers of smoking. Recent studies have indicated that nurses are less so. It should be appreciated that health workers at all levels are not only looked upon as exemplars but they are expected to speak out strongly on matters relating to health and disease. They should be urged to fulfill that important role in a responsible manner.

3) To assist that smoker who wishes to quit, more cessation clinics should be established. It is important to have such units located in Medical Care institutions where they not only have the support of medical care personnel, but also, so that they may operate on a continuing basis. Every community should have a cessation clinic in continuous operation.

4) The loss of anti-smoking messages from radio and television was a serious blow. Local and National broadcast media should be urged to resume the use of these messages as an important public service.

5) Efforts should be continued to obtain further reductions in the tar and nicotine content of marketed cigarettes. The preferable way would be the enactment of National laws and regulations limiting the maximum limits permissable. If and until this is accomplished we should strongly support differential taxation based on tar and nicotine content. In addition, these facts should be required on cigarette packs as well as in printed advertising.

6) Though the Congress did improve the nature of the health warning in 1970, it is still far from adequate. We should continue to urge Congress to require a warning which specifically refers to cancer, heart disease, emphysema and chronic bronchitis and that the warning be in larger print and more prominently displayed on the face of the pack (front or back).

7) The public and Congress must deplore the devious actions of the cigarette industry to gain reentry to television advertising by sponsoring sporting and other events with large television audiences. The current actions are not only in violation of the voluntary code of the tobacco industry of 1964 but they are obvious circumventions of the will of the Congress. Furthermore, I believe that the Congress should not only act to prevent these circumventions but that they should enact a law to prohibit all advertising of cigarettes. You really can not expect a manufacturer of a death dealing substance to advertise it in a light which is truly honest and fair to the consumer.

And, finally, to the theme of our National Education Week which is being opened here today on the 10th Anniversary of the Advisory Committee's Report—*"Non-Smokers Have Rights Too"*.

There has been in recent years a rising concern, and even indignation, on the part of large segments of our population at the discomfort and sometimes abuse heaped on the non-smoker by his smoking associates. The reaction has risen to the level that is now strongly felt and often evident.

Today approximately one-third of our adult population are smokers. This should be borne in mind when one considers the rights of the smokers and of the non-smokers. A few non-smokers are genuinely sensitive to tobacco smoke and can be made very uncomfortable or even ill by exposure to significant amounts of smoke. There is, additionally, a segment of our population which has chronic disease such as sinusitis; emphysema and bronchitis, or heart disease that can suffer deleterious effects from exposure to significant concentrations of tobacco smoke. Recent studies have shown that exposure of the non-smoker can result in a rise in the carbon monoxide content of the blood and thus compromise the oxygen carrying capacity of the blood. This could be serious to a person with a disease in which the oxygen carrying capacity of the blood is already pushed to its maximum.

However, the vast majority of non-smokers simply find intense tobacco smoke to be unpleasant or obnoxious. And even though they may not face any health dangers, they do have a right to be protected from such unpleasantness. It is in this light that we are observing an increased concern in the rights of the non-smoker.

I am happy to note that many organizations, especially medical and scientific groups, have been responsive to this problem and have largely banned smoking from their meetings and conferences. Others have passed resolutions disapproving smoking in meetings but have not attempted to apply an absolute ban. Either way, it emphasizes to the smoker that his actions may be unpleasant to others and that he should respect their rights.

An encouraging and pleasant observation has been the more attention given to non-smokers on public transportation. No doubt we owe a great debt to Mr. Warren Burger, Chief Justice of the United States. All of you will remember his strong protest of the unpleasant experience he and his wife suffered aboard a metroliner traveling between New York to Washington. His esteemed position as well as his forthright protest resulted in a much more comfortable ride for many of us who use Amtrak facilities regularly. Not only do we have enforced non-smoking cars on the Metroliner but instead of one such car out of six, there are now 4 of the 6 cars which are designated non-smoking cars.

In addition, as a result of action by the Civil Aeronautics Board one is able to get a seat on commercial planes in a favorable section of the plane in a non-smoking area. Even interstate buses have begun to provide non-smoking areas and to enforce the regulations. Though many cities and states have such regulations relating to intrastate buses, I am told that their regulations are still not well enforced.

There are many other examples which could be cited of rising respect for the right of the non-smoker but they need not be mentioned to carry the point. The majority of the population does consist of non-smokers! And that majority has the obligation to speak up strongly for our rights to live and work in a clean environment with unpolluted air. Not that we should ignore the rights of the smoker even though he is a member of the minority group. Rather, we should work to try to make his group a smaller and smaller minority and we should work to reconcile his personal habits and rights with a reasonable consideration for the rights of every other individual.

I am happy to be a part of a group which is endorsing another "Bill of Rights". And what could be more fitting than to have the "Non-Smokers Bill of Rights" adopted in the very building where our nation was born and where the Bill of Rights which has made this country the leading Nation of the World was also adopted. It certainly offers great inspiration to all of us to move strongly ahead with the task before us.

ADDRESS OF VICE PRESIDENT FORD BEFORE ANTI-DEFAMATION LEAGUE OF B'NAI B'RITH

Mr. JAVITS. Mr. President, on January 26 Vice President Ford delivered his first major address as Vice President on the Middle East situation. The Vice President reviewed the administration's policies in the area which culminated with the negotiations of Secretary of State Kissinger resulting in the disengagement of Israeli and Egyptian forces. And he also quite properly stressed the importance of resolution of the prisoner of war issue with respect to negotiations between Israel and Syria.

The Vice President drew a conclusion which has universal application when he stated:

Our enemies are not other nations or groups of humanity different from ourselves. Our enemies are hunger, disease, poverty, ignorance, hopelessness, fear, and hatred. Our great challenge is not in military confrontation but in harnessing the natural resources and industrial genius of humanity to assure better lives for all Americans and the entire family of man.

A Jewish sage made the beautiful prophecy that Israel will be rebuilt only through peace. This applies to the Arab states and to our own country as well.

I ask unanimous consent that the full text of Vice President FORD's address be printed as part of my remarks.

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

ADDRESS OF VICE PRESIDENT GERALD R. FORD BEFORE THE ANTI-DEFAMATION LEAGUE OF THE B'NAI B'RITH

Today I want to talk about peace.

It was with a dream of peace that Albert Einstein came to America from Germany. Einstein brought more than the genius that introduced the nuclear age. He also brought the insight that we must evolve a new consciousness in which all mankind ascends to higher levels of human compassion, imagination, and cooperation.

Einstein said that peace cannot be kept by force. It can only be achieved by understanding.

Another visionary came to the United States from Germany. He is Henry Kissinger, whose diplomatic skills are helping to bring fulfillment to Albert Einstein's dream.

There were those whose eyebrows lifted in surprise—yes even skepticism—when President Nixon announced that Henry Kissinger as his choice for the Secretary of State's office. The doubters wondered whether the office might limit the marvelous persuasive powers which helped open the long-closed door to China and accomplished other major changes in the way we looked at the world and in the way the world looked at us.

But now I think it is obvious, even to those skeptics, that the President's action strengthened rather than weakened Henry Kissinger's influence on diplomacy.

Now, Henry Kissinger speaks as the Chief Foreign Policy officer for our government with the full weight of the Presidency behind him. This, I believe, was a positive factor in Henry Kissinger's successful effort to achieve a settlement in the Middle East.

But before going into more detail about the remarkable diplomacy of Henry Kissinger, I want to refer to the President who established the policies that the Secretary of State implements. So much attention has been focused on controversial events in Washington I fear we are losing sight of the

Nixon Administration's creative relationship with the rest of the world.

The fact is that President Nixon's Middle East policy is a study in credibility, integrity, and consistency. The President's 1968 address before the B'nai B'rith organization clearly outlined his views of the Arab-Israeli impasse, his commitments, and his visionary concept of the dangers and hopeful possibilities for that vital region.

The Nixon doctrine emerged in 1969. It was a concept of the world that would lead America to listen more and lecture less, inclining us toward partnership rather than paternalism. The State of Israel was concerned at that time lest unilateral concessions be demanded of her and an arbitrary settlement imposed. The President pledged that the United States would only use its good offices to assist the parties to the conflict to fashion their own settlement. He kept his word.

Mr. Nixon made a commitment to help Israel maintain an arms balance to provide the necessary defense capapability. He was mindful of the massive flow of Soviet arms to Egypt and Syria. He kept his word.

There was no credibility gap when the U.S. Air Force rushed transport after transport loaded with arms to Israel during and after the October war. This was done to replace Israeli losses and maintain the balance in the face of the heavy shipments of Soviet arms to the area. To finance the airlift and other assistance, the Administration sponsored a $2.2 billion emergency aid bill. Mr. Nixon kept his word.

The President was forced to order a military alert in October to avert the possibility of unilateral direct intervention by an outside power in the Middle East conflict. Some in Washington saw a credibility gap. But there was no question that the alert was necessary and there was no credibility pay in the nations directly concerned. They knew what was happening. Again, the President was consistent with our stated policies.

In recent years there was great concern over the plight of Soviet Jewish citizens who wanted to emigrate to Israel. President Nixon said he would intercede. He did. There is no credibility gap among the many thousands of Soviet Jews who continue to find new homes in Israel.

Secretary Kissinger's recent mission profited from the new climate that exists in the world. This is the climate that ensued from the President's historic initiatives in visiting Moscow and Peking and from the understandings reached there and in subsequent exchanges. This is the climate that flows from the President's extricating our nation from the war in Vietnam, his terminating the draft, and other accomplishments.

I am convinced that prejudice and hatred between Arabs and Israelis can be transcended just as we have moved forward in our own relations with the People's Republic of China. Accordingly, we look toward the continued momentum of Arab-Israeli settlement. Both sides now have much to gain by not permitting the situation to stagnate where it is, but to translate it into steady progress toward further agreements encompassing the remaining issues, resulting in a just and durable peace in the Middle East.

This is a test for the parties directly involved as well as for all powers with interests in the area and, in addition for the United Nations forces entrusted with peacekeeping on behalf of the parties and the world community.

Secretary Kissinger's handiwork has relieved a dangerous global pressure point. The Israeli and Egyptian forces are physically disengaging themselves, with the U.N. forces in between acting as a buffer. Each side now has the opportunity to carry out this agreement in such a manner as to instill confidence in the other side that agreements between them can succeed and can contribute to the building of peace.

All of the credit does not belong to American diplomacy. A large share accrues to the courage, goodwill, and vision of leaders in both Egypt and Israel. I salute the statesmanship of President Sadat of Egypt and Prime Minister Golda Meir of Israel.

Secretary Kissinger's genius was in narrowing the distance between the parties without imposing a formula from outside. He acted as a go-between for the two sides. This is far better than coercion. It enhances America's moral standing with both parties, increases our influence, and decreases the chances of American military embroilment.

I wish to reaffirm that Israel will not be expected to negotiate from a position of weakness. We are continuing our policy of appropriate arms supply to Israel. We are carefully observing developments to ascertain that redeployment of Israeli troops strengthens the mutual desire to pursue peace and lessens the chances for a renewal of hostilities.

We are continuing to work with the Soviet Union in efforts to minimize regional friction.

We have felt that the oil embargo imposed by some nations against the nations of the industrialized world and particularly against us was ill-advised. Its implications for the world's economic stability are far reaching. I share Secretary Kissinger's stated view that failure to end the embargo in a reasonable time would be highly inappropriate and would raise serious questions of confidence with respect to the nations with whom we have dealt on this issue.

Meanwhile, we must proceed with our own energy development. Exploitation of domestic petroleum and natural gas potentialities, along with nuclear, solar, geothermal, and non-fossil fuels is vital. We will never again permit any foreign nation to have Uncle Sam over a barrel of oil.

Cooperation by consumers has reduced energy demands to the point where we will get through the winter without serious hardship in American homes. We have been able to defer gasoline rationing and hope we will be able to avoid it entirely. But this depends on continued conservation by the public and industry.

While I am more optimistic now about a lifting of the Arab embargo, even this will not solve the basic shortage. Our American living standard continues to improve with an ever-expanding need for energy.

President Nixon has invited other oil-consuming nations to meet in Washington next month to discuss the energy shortage. Control of inflation is linked with the price of oil. The President has said that the energy shortage "threatens to unleash political and economic forces that could cause severe and irreparable damage to the prosperity and stability of the world."

Against this background, it is particularly encouraging that peace is becoming popular. A first step toward a permanent settlement has been taken in the agreement on military disengagement.

A logical next step would involve disengagement along the Syrian-Israeli lines. Any such move, of course, would also have to address the issue of Israeli prisoners of war. I recall all too vividly the torment of Americans over the unknown fate of our P.O.W.'s in North Vietnam.

Secretary Kissinger judged very astutely the moment when Egypt and Israel were equally ready to go from a state of permanent hostility to a state of possible accommodation. He converted that readiness into a formula that both countries could accept. We pray that this can now likewise be done with regard to the confrontation on the Syrian-Israeli front.

A process of awakening has started in the region where fear and death have stalked frontiers for over a quarter of a century. It has come at a terrible cost. The United States will continue to work in every way to encourage a permanent settlement acceptable to both sides. It is my fervent hope that from such a peace will flow a spirit of greater cooperation not only between the Arabs and Israelis but among all peoples.

Our enemies are not other nations or groups of humanity different from ourselves. Our enemies are hunger, disease, poverty, ignorance, hopelessness, fear and hatred. Our great challenge is not in military confrontation but in harnessing the natural resources and industrial genius of humanity to assure better lives for all Americans and the entire family of man.

A Jewish sage made the beautiful prophecy that Israel will be rebuilt only through peace. This applies to the Arab states and to our own country as well.

The great religions of the Western world, Christianity and Judaism, emerged in that holy land which is at long last on the threshold of peace. That land is also sacred to the believers in the Koran, the faith of Islam. All of us—Christian, Jew, and Moslem—share the same supreme Creator.

In that spirit, I pray that God will bless our country, that it may ever be a stronghold of peace, and its advocate in the council of nations. May He strengthen the bonds of friendship and fellowship among the inhabitants of all lands.

LAW ENFORCEMENT AND QUALITY CONTROL

Mr. MOSS. Mr. President, in an article in the February 1974 issue of the FBI Law Enforcement Bulletin, Joseph L. Smith, Salt Lake City's assistant chief of police, discusses the usefulness of police inspection procedures. Chief Smith says:

Quality control has been used by industry for many years to insure that their products meet specified minimum standards during each phase of production. It is a concept that law enforcement agencies would do well to adopt. Many already have, but they call it inspection.

I congratulate Chief Smith on his excellent article, and the Salt Lake City Police Department for their farsighted approach to maintaining the high quality of their law enforcement efforts. I am sure that Chief Smith's report on this subject will be of great interest and assistance to police officers and police departments throughout the country.

Mr. President, I ask unanimous consent that Chief Smith's article be printed in the RECORD.

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

POLICE INSPECTION AND COMPLAINT RECEPTION PROCEDURES

(By Joseph L. Smith)

Quality control has been used by industry for many years to insure that their products meet specified minimum standards during each phase of production. It is a concept that law enforcement agencies would do well to adopt. Many already have, but they call it *inspection*.

The modern concept of inspection had its beginning for the Salt Lake City Police Department in the fall of 1963. Capt. Calvin C. Whitehead, who commanded the combined traffic and patrol divisions, issued instructions to his lieutenants to collect a random

sampling of field activity reports and traffic citations. They were to interview involved citizens concerning their impression of the officer who contacted them and of the police department.

Captain Whitehead reasoned that the contacts might accomplish these purposes: (1) The public would be made aware that the department was concerned with the conduct of its officers. (2) The approach of officers to traffic violators, victims, and witnesses would improve. (3) The number of complaints against officers would be reduced.

Naturally, the lieutenants were cautioned to evaluate carefully remarks made by citizens who were contacted. A few might harbor extreme negative feelings, and use the interview as an opportunity to "get back" at the officer.

The program met with only limited success—limited because it remained in effect less than 6 months. When it was ended, there were fewer complaints against officers, but the results were not quantified.

The inspection program was dormant until February 1970 when Captain Whitehead was named chief of police. One of his first acts was the creation of an inspections and complaint reception unit within the department's administrative services division.

AN ADMINISTRATIVE TOOL

To head the new unit, Capt. Edgar A. Bryan, Jr., was appointed an assistant chief of police. Two lieutenants and a sergeant were assigned to conduct inspections on a regular basis, and to receive complaints and conduct investigations.

Inspections. It was anticipated that an inspections program would meet resistance. To minimize it, until the program proved its value, all police personnel were informed that the new unit had been formed, and what its purpose was. The department's weekly newsletter printed several articles explaining inspections.

The articles pointed out that inspection is a necessary administrative tool intended to promote efficiency, assure economy of operations, maintain an acceptable level of service, and standardize operations. All personnel could expect to be subject to inspection at least once each year.

Our present inspections program is patterned after the original. The inspector selects at random from several different kinds of police activity. On a typical day, an inspector might interview a burglary victim, a homicide witness, a juvenile arrested for shoplifting, and a citizen who was cited following a traffic accident. Each person contacted will have one thing in common—his life was in some way affected by the same officer.

Our inspection form lists the officer's name and division, the citizen interviewed, and the date. It shows the type of police contact: robbery victim, field interrogation, initial report, etc. It lists specific questions to be answered concerning the officer's attitude, emotional control, personal appearance, and other factors. Completed inspection forms are maintained in a file separate from the officer's personnel file.

It is important to note that the majority of citizens contacted are positive in their comments about police officers. However, there are some serious negative observations made, and when this happens the inspector selects at least five more citizens to interview. This is done to test the validity of the complaint. Ultimately, the officer is counseled, or the complaint is identified as possible hostility on the part of the citizen.

Inspections are not limited to uniformed officers. Supplementary reports filed by plainclothes detectives are pulled, and victims, witnesses, and offenders are contacted.

Each officer is informed by letter of the results of his inspection. He is informed of his strong and weak points, and of the general image he is projecting to the public. Inperson counseling is done only when serious problems are noted.

After the program was in effect for more than 1 year, Assistant Chief Bryan made the observation that "Inspection is one of the best public relations tools this department has ever had. Complaints against officers dropped from about five a day to an average of five a month."

Since inspection was adopted as a regular function, the administration of the department has changed. The present chief of police, J. Earl Jones, changed the name of the unit to *police standards*, and has placed it in the administrative services division under the command of Capt. David C. Campbell.

RESULTANT CHANGES

Chief Jones supports the concept of inspection and has added to it. For example, he may direct the unit to inspect for proper utilization and acceptance of new programs such as the misdemeanor citation.

Another addition is a policy of at least two surprise inspections each year of the department's evidence room. Case files are opened at random so that the inspector can make sure that all items of evidence listed, such as drugs, money, and property, are actually stored in the evidence room—not just on paper. The inspector must certify that evidence custodians are following all accounting safeguards built into the evidence handling and storage system.

Complaint reception. Law enforcement agencies normally exert more control over employee conduct than private business. It has been said that law enforcement functions within a fish bowl. It is subject to constant scrutiny, especially by the news media. Therefore, misconduct improperly handled, or attempts to whitewash or cover up, are usually discovered and made known to the public.

A better way is to let the public know that the department is constantly alert for misconduct, and that reported cases will receive a prompt and fair investigation. A law enforcement agency should not discourage the reception of complaints. Without them, problems would quickly multiply.

Any complaint reception or inspection program will be more acceptable to officers and employees by encouraging their input. They may have valuable suggestions concerning rules of conduct and the operation of the program itself. Input can be formal through the formation of committees, or informal via the suggestion box or group discussion.

When complaints are received, the department should make sure that the person complaining is free from any fear of reprisal. Complainants should also be notified of the final disposition of their complaint.

This department makes a full complaint report and notates a separate log for quick reference. Before an investigation is started, the investigator informs the officer and his commanding officer of the complaint, unless doing so would positively jeopardize a successful and impartial investigation.

Most complaints are resolved by skillful and understanding interviews with all parties. Frequently, it is necessary to check dispatch tapes and logs to establish or verify times, places, names, and circumstances.

When all other methods fail, the officer may be asked to submit to a polygraph examination; however, the complainant must be willing to take the examination first to establish the validity of the complaint.

Whatever methods are used for complaint reception, and whatever policy is established for regular inspections, the public must be informed frequently that these functions are an ongoing part of the department's operating procedures.

It is vital that officers be given every opportunity to present their side of an issue when a complaint is made against them. Their confidence in the internal investigative system should be established in the beginning. They must know, without question, that if they are innocent, they will have complete support from the chief of police or sheriff. Conversely, if they are guilty, they should be confident that discipline will be as consistent and fair as it is swift and sure.

HUGH SIDEY'S COMMENTS ON PROFITS

Mr. STEVENS. Mr. President, as I was driving home the other day, I heard the views of a man I have known and respected for many years, Mr. Hugh Sidey, on a "WTOP Commentary." Many Members of the Senate, I believe, know Hugh Sidey's background with Time magazine and also as a participant in well-known television and radio programs.

As Hugh Sidey remarked "Several things need saying." It is my opinion that Hugh Sidey succinctly stated a point of view that deserves our attention as we proceed to review the question of profits in this period of crisis. I ask your unanimous consent to place Mr. Sidey's "WTOP Commentary" in the RECORD.

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

COMMENTARY

The profits of the big oil companies do look suspiciously high. Considering their well-deserved reputations from previous decades for greed and rapaciousness it is perhaps no wonder Senator Jackson and a lot of other people seem a bit angry and more than a bit skeptical about the behavior of these firms in the current crisis. But there is developing not only on the Hill but in the press a strident and indiscriminate attack on the entire industry and on their profits.

Several things need saying. Profits of many, many industries, including sections of the press, have jumped remarkably in the last months because they were depressed prior to that time. Some of the same certainly is true for the oil firms.

More important, the enticement of high profits, sometimes excessive profits, has been and probably always will be a distinct feature of our system. Our railroads, steel mills, farms and oil fields were not developed entirely out of our noble concepts of liberty. There was the idea around among a lot of men of daring, imagination and ability (with a good share of rascality) that they could get rich.

That idea persists and should. If we are going to have people come up with the courage and ingenuity to develop practical solar energy, thermal energy and shale oil, that old, often maligned idea of getting rich—real rich—and getting rich quick has got to be lurking there in the background. That is as American as apple pie or another congressional hearing.

One more point. For all of this century we have been provided by the oil industry an abundance of cheap energy for fuel and heat. That achievement has been spectacular, despite some rather dark chapters of greed and arrogance and ignorance. It deserves remembering as the debate goes on.

What we need now is not the repeal of the profit motive, but a molding of that incentive to get rich with a profound awareness of the public well being. That seems entirely possible. This is Hugh Sidey.

OIL: THE DATA SHORTAGE

Mr. NELSON. Mr. President, the Senate Committee on Interior and Insular Affairs will begin hearings next Tuesday, February 5, on S. 2782, the "Energy Information Act," which I introduced on December 6 for myself and Senator JACKSON.

To date, 18 other Senators have cosponsored the bill: Senators EAGLETON, MUSKIE, CANNON, KENNEDY, CLARK, NUNN, MONDALE, HATHAWAY, MOSS, STEVENSON, PROXMIRE, BIBLE, MCGOVERN, PELL, HUMPHREY, MCGEE, HUGHES and MONTOYA.

An excellent article appeared in the current—February 1974—issue of The Progressive concerning the problem to which this legislation is addressed. Written by Julius Duscha, it is entitled "Oil: The Data Shortage."

I ask unanimous consent to print that article, and also a recent editorial on the same subject from the Washington Star-News, in the RECORD.

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

OIL: THE DATA SHORTAGE

(By Julius Duscha)

THE BASIC FIGURES ON SUPPLY OF OIL AND GAS REMAIN THE BEST KEPT SECRETS OF THE ENERGY CRISIS

Last October 12, when the Arab-Israeli war was beginning to raise fears of an Arab boycott of oil sales to the United States, White House petroleum expert Charles Di Bona said American imports of Arab oil had been averaging 1.2 million barrels a day. Eight days later, on October 20, the Nixon Administration was talking about U.S. dependence on Arab oil totaling 1.6 million barrels daily. Four more days passed, and on October 24 the Administration estimate escalated to two million barrels. By October 30 the figure was up to 2.5 million barrels, and then, early in November, the Defense Department, never to be outdone even by the White House, proclaimed a three-million-barrel-a-day U.S. dependence on Arab oil.

When estimates varied within a month all the way from 1.2 million to three million barrels, it was obvious that no one in the Federal Government knew with any accuracy how much Arab oil was being used in the United States. The problem isn't that Federal oil economists and statisticians can't count; it is rather that there are no reliable figures for them to count.

The statisticians do know that last September shipments of oil directly from the Middle East to the United States averaged 1.2 million barrels a day. However, U.S. petroleum experts believe—but have no way of knowing for certain—that as much or more Arab oil also got here after being transshipped or processed somewhere along the way, usually in the Caribbean.

Once crude oil from the Middle East or from any other area enters world commerce, its route is difficult to follow; oil bears no serial numbers or other distinguishing marks of manufactured goods. The Federal Government could be forgiven the wide variances in its estimates of Arab oil imports were it not for the fact that the Arab import statistics are symptomatic of the problem with most petroleum figures.

As everyone concerned wih the oil crisis, from energy czar William Simon to Senator Henry M. Jackson, has quickly come to realize, the United States has all too few solid figures on oil and natural gas, and for what statistics are available the Government is almost wholly dependent on the oil industry itself.

Just as Arab import figures have jumped all over the place, so have Administration estimates of the dimensions of the overall U.S. oil shortage this winter. Early in November, when President Nixon first talked about a serious shortage, he put the likely daily shortfall at 3.5 million barrels. Since then estimates by experts within the Administration and on Capitol Hill have ranged all the way down to 1.6 million barrels; Simon came out at 2.7 million barrels at the news conference late in December at which he outlined the Administration's standby gasoline rationing plans.

Whether the oil statistics are proclaimed by Simon's Federal Energy Office or by Jackson's Senate Interior Committee, almost all of the figures originate with the American Petroleum Institute, the trade association of the major U.S. oil producers.

The API's basic statistical document is its *Weekly Statistical Bulletin*, which purports to keep track of the output of U.S. refineries, available supplies of refined petroleum products, exports and imports, production of domestic oil wells, and gasoline consumption. Of these figures, the only up-to-the-minute ones are for refinery production and available supplies, and even these must be viewed with some skepticism.

They are, first of all, industry figures supplied on a voluntary basis, with no independent check on their accuracy.

Every Wednesday, refinery production and available-supply figures are made public for the previous week, and even oil industry critics agree that the statistics could hardly be produced much faster and still be put together with reasonable accuracy and cost.

Import and export statistics are based on U.S. Customs Bureau figures, with which no one quarrels much, except that the figures give no hint of the country where the crude oil was produced, or any indication of U.S. oil being exported and then re-imported under more favorable prices.

As for the domestic crude oil production figures, they are estimates based on the most recent statistics from the Texas Railroad Commission and the other regulatory agencies that monitor production in the thirty-one oil-producing states. The official state figures lag months behind, as do accurate gasoline consumption figures based on state and Federal tax figures.

Once fuel oil, gasoline, and other petroleum products have left refineries, bulk terminals, and pipelines, neither the API nor any Government agency keeps track of the products. How much gasoline is generally in the supply pipelines beyond the primary storage facilities of the refiners, the bulk terminals, and the big pipelines? How much No. 2 heating oil is in supply lines? How much oil and gasoline is kept in storage, or perhaps being hoarded, by large corporations and other heavy users of petroleum products? A recent *New York Times* survey indicated that major users of oil products have been building up their supplies, but there is no reliable statistical information available.

Oil pricing information is even scarcer. Not until last fall did the U.S. Bureau of Labor Statistics start collecting enough information on retail gasoline prices to come up with reasonably accurate figures on gasoline price trends throughout the nation. And there simply are no reliable figures on crude oil production costs, refinery costs, and costs on down the petroleum supply pipelines. There is more information on natural gas because most of its production and prices at the wellhead are still regulated by the Federal Power Commission, but the Nixon Administration has called for ending such regulation. And even data published by the FPC on natural gas production are heavily dependent on unaudited reports from the industry.

What government oil statistics there are come largely from the Interior Department's Bureau of Mines and Office of Oil and Gas. These are unchecked industry figures issued only monthly. To keep up with the fast-moving oil and gasoline situation, energy director Simon and his aides rely, however, not on the ponderous Bureau of Mines and Office of Oil and Gas, but rather on the API weekly bulletins. For it is true, as John E. Hodges, director of API's Division of Statistics and Economics, says, that "if the Government didn't have our weekly statistical bulletin, it wouldn't have anything." Oil is by no means the only industry for which audited statistics are hard to come by. American corporations jealously guard their figures—in part because of fears that competitors will use them to exploit market situations and in part because of the traditional feeling that the Government (and the public) have no right to pry into the affairs of private corporations, no matter how big or dominant they may be. Most Census Bureau figures, as well as statistics compiled by other government agencies, are based on unchecked material submitted by industry sources. BLS and population figures are, of course, the Government's own.

But if oil production and supply statistics cause problems, figures on oil and natural gas reserves are even more difficult to weigh and interpret. The API and the American Gas Association are the only sources for systematic compilations of what oilmen call proved reserves. Such reserves are defined as oil and gas in the ground that can be efficiently recovered under current economic conditions in the industry, which means that reserves increase as oil prices go up.

Every spring API, AGA, and the Canadian Petroleum Association jointly publish a detailed compilation of crude oil and natural gas reserves in the United States and Canada. The figures are based on surveys made by geologists and others employed by oil and natural gas companies. It is generally assumed that the industry has a vested interest in underestimating reserves, but government oil experts cannot even agree on that. A recent Federal Trade Commission study concluded that natural gas reserves were overestimated, while an FPC study showed that gas reserves were being underestimated in at least one rich field.

"I wouldn't argue one way or another about the reliability of the oil and natural gas reserve figures," a Senate staff aide who has been immersed in the quarrels over oil statistics observes. "There's just too much guesswork in estimating reserves. The only thing that's clear to me is that we still have an awful lot of oil in the world, and are likely to find a lot more."

However unreliable figures on U.S. oil and natural gas reserves may be, there is general agreement even among oil industry economists that statistics on foreign reserves are hopeless. API's Hodges says flatly that there are no good figures on overseas reserves.

The United States thus finds itself groping for facts as it faces what appears to be the most serious fuel shortage in its history. But are things as bad as the Nixon Administration has made them seem? There is wide skepticism in Washington and elsewhere in the country—not only because of Nixon's personal credibility crisis, but also because of the uneasy feeling so many people have that the oil companies and not the Nixon Administration are in charge of whatever crisis there may be.

The oil industry certainly is in charge of whatever statistical evidence there is to back up the crisis atmosphere. And the industry obviously does not want the Government to get into the information-gathering business. Industry lobbyists fought against inclusion of a Government fact-gathering clause in the energy legislation that was shoved aside in the pre-Christmas Congressional adjournment rush. But Simon's energy office has set up a committee to review oil and gasoline

statistics, and Simon himself told reporters at his late December news conference: "You're darn right we're going to get better figures."

Senator Gaylord Nelson has presented the Senate with a plan to establish a Bureau of National Energy Information in the Commerce Department to collect and verify statistics involving all aspects to energy. "We have failed to manage energy because we have failed to manage energy information," Nelson says. "We are sitting in the dark because we have been making our energy policy in the dark.

"Beyond the energy crisis," Nelson continues, "the basic premises of this legislation are, first, that the power of giant corporations over the quality of life has become so great that such corporations must now be regarded as if they were governments, for govern they do; second, that governments—including corporate governments—derive their just powers from the consent of the governed; third, that consent, to be meaningful, even to be real, must be informed consent; fourth, that the free exchange and availability of industrial as well as political information are therefore the lifeblood of a free society; and fifth, that the Congress has no higher duty than to provide channels and mechanisms for the exchange and availability of information about the holders and uses of governing power."

It seems all but certain that out of the energy crisis will emerge audited government figures on the facts of oil and natural gas. It would be useful to know as much about the oil industry as advertisers know, for example, about television audiences. The fact that more information is available about how to influence television viewers than about oil says much about the haphazard ways of the American economy and the relationship of the Government to it.

Getting the Energy Facts

By far the most frustrating aspect of the energy crisis is that nobody knows enough to take its measurement. The government's information about oil supply comes mainly from the petroleum industry, and projections have gone up and down like a roller-coaster during the past year. One day the fuel outlook is horrific, the next day things seem to look much brighter, then the next week brings scary prophecies again. No wonder the public takes a cynical view of the whole affair.

Obviously, the information-gathering system, which always has been a loose and poorly coordinated effort, must be perfected if the energy dilemma is to be coped with, and if the government hopes to generate public confidence. Too many people still question the reality of a critical oil shortage, which undoubtedly is real in spite of the variations in estimating its size. The Federal Energy Office, under the new directorship of William E. Simon, has tried to estimate for the worst eventualities, but only time will tell whether enough margin has been left for error. Admittedly, the FEO is waiting to see if intolerable car backups develop at service stations before it decides on gasoline rationing. This is what the early aviators referred to as flying by the seat of one's pants.

Of course the big oil companies, upon which the government depends for its data, have been all too secretive about their operations. Simon now is launching the first mission to pry the essential facts from them—about their supplies, prices and profits. Using his own investigators, and agents of the Internal Revenue Service, he proposes to audit every petroleum refinery in the nation, to get a clear picture of total inventories and test the fairness of price hikes. It's a bold stroke, long overdue, but more is needed. This short-term process should be institutionalized in law and expanded for the years of energy insufficiency that lie ahead.

And that would be achieved through legislation offered by Senators Henry M. Jackson of Washington and Gaylord Nelson of Wisconsin. Their full-disclosure bill calls for creation of a federal Bureau of Energy Information, empowered to collect all needed facts from every element of the energy industry. No less important than acquiring this vast information is having such a central, separate agency to coordinate and analyze it.

Some beneficial alterations in the bill may be proposed, in hearings to be held soon, but the concept is right. For energy, as we all finally have realized, is the key element in our economic life, and shocking surprises of supply and demand must be avoided in the future. The country could be brought to great grief if a big enough shortage shock should come along.

SENATOR ERVIN HONORED

Mr. HELMS. Mr. President, on January 24, the Farmers Cooperative Council of North Carolina honored my distinguished colleague (Mr. ERVIN) in recognition of his service to agriculture.

Senator ERVIN is, indeed, worthy of this latest recognition that has come to him, and I personally am grateful to the council for taking note of my colleague's distinguished service.

I ask unanimous consent that the text of the citation honoring Senator ERVIN be printed in the RECORD.

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

CITATION: SAMUEL JAMES ERVIN, JR.

For his conspicuous, sustained interest in the welfare of farmers of this State and Nation, the Farmers Cooperative Council of North Carolina salutes the Honorable Samuel James Ervin, Jr., a distinguished member of the Senate of the United States for the past 20 years.

Let all know that it is to his credit that he has never failed to respond to petitions and requests on behalf of the agricultural community, and for this sympathic understanding and appreciation of farmers' problems, this Council is duly grateful.

In a day and time when agriculture is beset on all sides, it is heartening to know that farmers have a strong and trusted advocate in the person of this wise representative of the people and that his voice carries weight and authority when he speaks. Furthermore, he has not been afraid to protect and defend the position and rights of agriculture in any place and at any time, regardless of personal consequences.

In like manner, the distinguished Senator has well represented all other segments of our complicated society, but particularly has he given of his best to the common man and to the constitutionally-guaranteed liberties of these individuals.

It is with regret that we learn he is retiring from the United States Senate at the end of his present term, but his brilliant attainments and his folksy wit and wisdom will cause him to be long remembered in the minds and hearts of good people everywhere.

The Council and the people it represents are proud of Senator Ervin and the record he has made in a lifetime of dedicated service to his community, his State and his Nation. He is truly one of the great men of his time, and there can be no doubt that historians will accord him a place of honor reserved only for our most respected Americans.

He has our best wishes and gratitude as he nears the end of his public career. With sincere affection, we can say, "Well done, good and faithful servant."

This 24th day of January, 1974, at Durham, North Carolina.

PERMANENT STATUS FOR THE SPECIAL COMMITTEE ON AGING

Mr. WILLIAMS. Mr. President, I join the distinguished Senator from Idaho (Mr. CHURCH) in his resolution to authorize permanent status for the Senate Committee on Aging.

To my way of thinking, it is now time for the Senate Committee on Aging to be made permanent, rather than being continued on a year-to-year basis.

The committee has already been in existence for 13 years. During that time, it has performed magnificently in its factfinding mission concerning the problems and challenges of aged and aging Americans.

Moreover, it has provided valuable assistance to Senate standing committees which develop legislation for older Americans.

As chairman of the Labor and Public Welfare Committee, I have been especially impressed by the superb cooperation of the Senate Committee on Aging.

Their assistance has always been professional and of the highest caliber.

This same degree of cooperation is also readily apparent on another standing committee on which I serve—the Banking, Housing and Urban Affairs Committee.

There are now 17 standing committees in the Senate. And, at least 13 of them have some jurisdiction over proposals affecting the elderly. Consequently, it is reassuring to know that the Senate has this built-in resource to provide complete and factual information on issues affecting aged and aging Americans.

For these reasons, I urge early and favorable approval of this resolution.

REASONS FOR SUPPORTING THE LEGAL SERVICES CORPORATION BILL

Mr. DOMENICI. Mr. President, there has been a great deal of controversy regarding the Legal Services Corporation bill as illustrated by the lengthy debate and numerous amendments before it finally passed the Senate. This bill generally will remove Legal Services from the OEO—Office of Economic Opportunity—and place it within the jurisdiction of a new national Legal Services Corporation to be governed by an 11-member Board of Directors appointed by the President of the United States.

I have followed the floor debate and considered various alternatives and proposed amendments very carefully and I have taken into account opinions expressed by concerned and interested citizens and organizations. I have sought the advice and guidance of attorneys in New Mexico who have firsthand experience in providing legal services for New Mexicans unable to afford those services.

From all of this I have determined in my own mind that there is one relatively simple question involved in the Legal Services Corporation bill. That question is: Should the Federal Government continue to provide basic legal assistance to those who cannot afford to pay for basic services? Feeling as I do that the

people of this Nation are committed to a goal of "equal access for all to our system of justice," as provided for in this bill, I must answer that question in the affirmative. I take very seriously, as I believe the American people do, those noble words chiseled in stone above the great white columns of the U.S. Supreme Court: "Equal Justice Under Law."

Accordingly, Mr. President, I determined a long time ago to support this bill unless I found either a better alternative with a realistic chance of enactment or unless I found this bill to be so full of unacceptable deficiencies that I felt it could not achieve its main purpose—the delivery of basic legal assistance to poor people. My evaluation of these issues is that there is no better alternative measure with a chance of enactment and although not perfect by any means, this bill has great potential for promoting equal justice under the law—a principle to which we all ought to be committed. Consequently, I voted with the overwhelming majority of this body when it passed the Legal Services Corporation bill.

I have already mentioned that this bill contains provisions with which I do not agree and I supported some of the amendments I felt would have improved the bill. I would be remiss if I did not also mention several of the outstanding features which this bill contains.

First, in this era of constant confrontation between the Congress and the President, this bill represented the culmination of a long series of negotiations between the proponents of this bill and the administration. In fact, the bill as reported by the Labor and Public Welfare Committee was consistent in all essential respects with the principles spelled out in the President's message requesting the enactment of legislation creating a Legal Services Corporation.

One of the major concerns of many New Mexico attorneys whose judgment I respect was that this bill was not flexible enough regarding the means of delivery of legal assistance and that it would "lock in" the existing staff attorney system and organizations completely. Sharing their concern, I raised these issues with the distinguished floor manager of the bill for the minority (Mr. JAVITS) which is detailed in the following excerpt from pages 1684–1685 of CONGRESSIONAL RECORD of January 31, 1974:

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).

Based on such direct expressions of this kind, I was convinced that the bill contains sufficient flexibility to allow for approaches that might improve the delivery of services to the poor. I am sure that appropriate officials and interested citizens and organizations will avail themselves of this flexibility to address unique situations that may exist in New Mexico.

I was also aware, Mr. President, that the House had previously passed a bill for this same purpose with many of its basic provisions, but which also contined some further restrictions on the activities of attorneys in their legal assistance roles. Some of these restrictions are quite justified, I feel, while others probably hinder rather than enhance this bill's effectiveness. I am confident that the conference committee will produce a bill that has the best of both versions.

I am also pleased that the President will be able to appoint the 11 members of the corporation's board of directors with the advice and consent of the Senate. This will help insure, I feel, that the flexibility to depart from past practices envisioned in the bill will in fact become a reality.

Finally, Mr. President, I am relieved that we now have a vehicle, acceptable to the President, which will insure the continued delivery of legal assistance to those people who would not have it otherwise. We have an excellent foundation on which to build, to improve, and progress toward that ultimate goal of equal justice under the law. I urge all who deal with this bill and all who are affected by it to join together for realization of that goal.

MO AREL: COURAGE, DIGNITY, AND COMPASSION

Mr. McINTYRE. Mr. President, all of us are well aware of the hard work and long hours associated with our jobs here in the U.S. Senate, but I sometimes wonder if the men and women who work in local government do not face a tougher task.

One such worker is Maurice Arel, a longtime friend of mine from Nashua, N.H.

"Mo" Arel has been president of the Nashua City Board of Aldermen for many years, and that job and others he has taken on voluntarily have gobbled up what most people would cherish as leisure time.

It is no easy job for any man or woman. Faced with staff and money resources far more limited than those we encounter, men like Mo Arel must answer the challenge of leadership on issues which directly affect their friends and neighbors.

Over the years, Mo Arel has met that challenge with courage, dignity, and compassion. Here is one man whose integrity has never been questioned and whose progressive outlook should be a model for local leaders not only in our State, but throughout the Nation.

Sometimes—unlike us—those who serve the public on a local level fail to get the recognition they merit. Happily, the friends and coworkers of Mo Arel have seen to it he receives the honor he deserves at a testimonial on February 6 when he retires as president of the board of aldermen.

Mr. President, I do not want to give the impression that anyone expects Mo Arel to retire from public service after this testimonial. He is a young man and I am confident we will be hearing more, not less, about him in the months and years ahead. But I do want to take this opportunity to join with his other friends in congratulating him on a job well done and encourage him to stick with it. If there were more Mo Arels around, the people of this country would have much more confidence in their government.

CHAMPION McDOWELL DAVIS

Mr. HELMS. Mr. President, I rise on this occasion to call to the attention of my colleagues the inspiring service rendered the people of my State—and, indeed, our Nation—by Mr. Champion McDowell Davis, one of the truly great citizens of North Carolina.

Mr. Davis recently was named "Citizen of the Year" in New Hanover County for 1973, an honor which he richly deserves. On a personal note, Mr. President, Mr. Davis has had a profound influence on my life. I shall not attempt to recount either that influence or the highlights of his outstanding business career except to say that his multiple accomplishments reflect the vision, enterprise, faith, and human qualities that are so characteristic of this man.

At the age of 14, he served as a messenger boy for the Atlantic Coast Line Railroad; and through determination and hard work he subsequently became president of that same railroad in 1942. Despite the success of his career, Mr. Davis has never been too busy to take time for another's problems and to take a personal interest in their resolution.

Mr. President, Champion McDowell Davis retired in 1957 at the age of 77. Most men would have contented themselves with the joy of a relaxed schedule, but not Mr. Davis. In 1963, at the age of 83, he founded the Cornelia Nixon Davis Nursing Home, one of the finest

institutions to be found anywhere in the Nation. The success of this nursing home is due largely to his dedicated determination and perseverance in the cause of aiding senior citizens.

When I think of Champion McDowell Davis, I recall the words found on a cellar wall in Cologne, Germany, after World War II:

I believe in the sun even when it is not shining; I believe in love even when I feel it not; I believe in God even when He is silent.

Mr. President, such is the deep and abiding faith of Champion McDowell Davis. He is truly a giant among men. I am proud to call him friend, and I am particularly grateful that his efforts have been recognized by the folks of New Hanover County.

Mr. President, the Wilmington Sunday Star-News of January 13, 1974, announced the selection of Mr. Davis; and 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:

[From the Wilmington (N.C.) Star-News, Jan. 13, 1974]

DAVIS CHOSEN CITIZEN OF YEAR FOR 1973

Champion McDowell Davis, retired railroad president, has been named as the Star-News Newspapers' Citizen of the Year in New Hanover County for 1973.

His election was made by an anonymous committee of local citizens and was based on his long record of public service and on his leadership in 1973 in the planning, financing and construction of a new addition to the Cornelia Nixon Davis Nursing Home.

Announcement of Davis' selection as Man of the Year was made Saturday after the committee completed its deliberations. The award, which is in the form of the traditional engraved sterling silver ash tray, was presented to Davis by Rye B. Page, publisher of the Star-News.

In citing the accomplishments of Davis, the committee said:

"Champion McDowell Davis has long been a devoted public citizen; his accomplishments are many and they have meant much to the community.

"During the past year he served as the prime mover in the program to expand the Nursing Home and to increase its service to the aged citizens in need of nursing care.

"His foresight and determination were the major factors in the decision to proceed with the construction of the two new 40-bed annexes at the Nursing Home, thus climaxing the 10-year building program conceived in the original planning.

"This culmination of a most difficult project is typical of the leadership and drive exhibited by the person selected by this committee as the Man of the Year of 1973.

"His public service starts with the Nursing Home program and extends through many facets of community life. Much of his work is anonymous, and will never be known. But the respect and admiration in which he is held by the citizens from all walks of life offer silent tribute to his concern for his fellow man and his willingness and determination to be involved in service to others, particularly the senior citizens.

"In the fields of religion and education, Mr. Davis has compiled outstanding records of service, again demonstrating his devotion to public service.

"And particularly noteworthy is the fact that at a time of life when most men would be inclined to rest, relax and savor their past accomplishments, Mr. Davis is still exerting dynamic leadership."

Davis, who is 94, retired in 1957 as the president of the Atlantic Coast Line Railroad. He started his career as a 14-year-old messenger boy and became president in 1942.

His retirement enabled him to concentrate on a life-long dream—to establish a charitable foundation what would build and operate a nursing home.

Founded in 1963, the foundation planned and broke ground for the Cornelia Nixon Davis Nursing Home in 1965 and the facility today has more than 100 resident-guests.

The home, since its inception, has received close and personal attention from Davis. The latest expansion program, costing approximately $900,000, was the direct result of his personal and determined leadership.

Davis has had an active interest in the Episcopal Church and was chairman of the Finance Department of the church's National Council and a former trustee of the Protestant Episcopal Theological Seminary in Virginia.

His educational work included service as a trustee of Wilmington college and trustee emeritus of the Cape Fear Technical Institute.

He has served as a director of the U.S. Chamber of Commerce and as a member of the governing boards of a number of national corporations.

Davis, who is a bachelor, makes his home at Porter's Neck Plantation.

HOUSING FOR THE ELDERLY

Mr. WILLIAMS. Mr. President, during the recent recess I took my Subcommittee on Housing for the Elderly to New Jersey for hearings in Trenton, Atlantic City, and East Orange. The testimony we received was not encouraging. In fact, I am convinced that the chronic housing shortage facing our older generation is becoming worse, not better. The housing moratorium declared by the present administration a year ago has ground to a halt the building of new housing for the elderly in my home State.

The need for more and better housing for older Americans in New Jersey is compelling, and yet, New Jersey stands as only one example of a State where the need is great. More than 21,000 elderly are currently on waiting lists for housing projects in New Jersey, and that figure only represents a small percentage of the real need. Several persons testified that actual waiting lists do not reflect the true demand because many elderly persons do not bother to apply when they are told the waiting list is 3 years long. In East Orange, the Department of Housing and Urban Development—HUD—has told the local housing authority not to accept any more applications.

Even though the number of new public housing units for the elderly has increased in the last 3 years by 1,973 units in New Jersey, the number of elderly persons on waiting lists for public housing actually increased by 2,388 during that same period.

New Jersey does not face this problem alone, by any means, but the housing picture for senior citizens in my State presents an intensified example of what is truly a national disgrace.

There is simply no excuse for some of the living situations I heard about at the hearings. For example, one elderly woman in Atlantic City told my subcommittee that she is living in a small apartment which has been without hot water and without heat since last February. She has run her gas bill sky high trying to get a little heat into her rooms by leaving her stove on. She visits her sister who lives in public housing so that she can stay warm during the day.

Some other hardship cases:

A widowed homeowner pays $206 in monthly expenses to cover her mortgage, interest, and taxes. Her social security income is $234 per month.

A widower disabled from arthritis, bronchial congestion, and deafness, lives in a fourth floor apartment. The rent has just jumped to $150. His income of social security and supplemental security income—SSI—comes to only $144.

One elderly family makes its home in a storefront with only a toilet bowl and a basin for plumbing.

In city and in suburb, the story is the same: Senior citizens are caught in an ever-tightening squeeze between low incomes and the rising costs of rent, food, fuel, and property tax.

I do not need to remind my fellow Senators and Congressmen that last year we saw the end to rent controls, the highest rise in food prices in 20 years, and the emergence of an energy crisis. It takes little imagination to see that these forces can have a devastating effect on the elderly, an 11 percent increase in social security notwithstanding.

The vivid testimony we heard depicting the intolerable living conditions of so many aged was persuasive in itself. But this compelling picture was brought even closer in focus by the joyful testimony we heard from those elderly lucky enough to have found a home in subsidized housing. Without exception, the public housing and subsidized housing for the elderly in New Jersey has been an exciting success. Again and again, witnesses spoke of the new lease on life they experienced. One lady said:

It's added 20 years to my life.

Another widow wrote poems about her wonderful life in public housing.

The contrast in testimony could not have been more dramatic, or more heartrending.

Throughout the State, I received strong support for the bills I introduced last summer—S. 2179, 2180, 2181, and 2185. With some important changes, these measures have received the endorsement of the Housing Subcommittee of the Senate Banking, Housing and Urban Affairs Committee, and now await full committee action.

Several other important points were discussed in our hearings, and I would share with you some of the highlights:

Mayor Arthur J. Holland, of Trenton, testified that the most serious obstacle to construction of subsidized housing for the elderly in his city "is the moratorium imposed by the administration." He added:

The moratorium has resulted in the indefinite postponement of two very important projects for the elderly, in addition to several projects for moderate-income families.

James J. Pennestri, director of the New Jersey Office on Aging, called for the need

for supportive services as well as housing. He noted that the new Governor, Brendan Byrne, in his inaugural address 2 days before the hearing, had said:

More housing must be built: senior citizens should be given an opportunity to live in dignity.

Mrs. Vivian Carlin, consultant, housing for the elderly for the New Jersey State Office on Aging, whose testimony incorporated a wealth of valuable statistics, pointed out:

Even if we include the new supplemental security income which started January first, and the New Jersey supplements, we find a maximum annual income of $2,424 for singles and $3,240 for couples. Therefore, the number of elderly with incomes of under $5,000 remains essentially the same. These new increases have not appreciably affected their ability to compete in the private housing market.

Jack Volosin, executive secretary of the New Jersey Council of Senior Citizens, testified:

Housing needs of the elderly, the disabled and the poor can only be met with subsidies for construction and rent supplements. The 18 month freeze is a crime against the poor and elderly of this nation. Experts in housing calculate a minimum of three (3) years from ground breaking to moving in of tenants.

Mrs. Vera Weinlandt, director, New Jersey, American Association of Retired Persons, testified:

The future of the elderly housing program is of great concern to us. The level of new housing starts has dropped sharply and threatens to go still lower. Meanwhile, the vacancy rate has declined also in many places. Our older people are having increasing difficulty in finding suitable housing at rates they can afford.

Mr. John Brown, secretary-treasurer, New Jersey State AFL–CIO, stated:

I would ask you to remember that 45 to 46 percent of the elderly who live in New Jersey are sub-existing on $3,000 per year. On that type of income our retired citizen can hardly afford the luxury of having to pay 35 percent of that income for rent.

Sister Rita Margaret Chambers, O.P., Vicaress General of the Sisters of St. Dominic, was one of several witnesses representing religious communities concerned about better housing for the elderly. She spoke, in part, of an issue that recurred often at our hearings: the reluctance of many suburban communities to do their part:

If other suburban municipalities attempt to determine the needs of the aged, I am certain that many of them will find "housing" very high on the list of priorities. Prejudice, exclusionary zoning, misconceptions and lack of awareness of the need have prevented many suburban areas from responding and making a reality the desideratum of the 1949 Housing Act: a decent home and a suitable living environment for every American family.

Another frequent subject of testimony was the proposed housing allowance or cash assistance payment program now under heavy examination by the administration. Although we heard mixed reactions to this approach, weighted heavily on the negative side, my own feeling is that such a program may have its place in certain areas. But I am especially skeptical of its merits in a State such as New Jersey whose effective vacancy rate is 1.85 percent, unless there is a strong new construction element in operation with housing allowances.

I would point out that HUD's first annual report on the housing allowance program sounded a direct warning to champions of housing for the elderly. It observed that housing allowances could only offset rentals on existing housing, and therefore—

The program is unlikely to fulfill the objectives of a new housing program (1) by adding directly to the housing supply, and (2) by meeting special housing needs not adequately met by the existing supply, such as elderly units or units for large families.

Since the administration has indicated its intention to begin this program with the elderly—if it should pass final muster—I am particularly concerned that their many experiments take into account the many different ways such an approach might affect the aged.

Therefore, last month I wrote to Secretary Lynn to ask for information about the elderly participation in the various experiments underway on housing allowances. The American Association of Retired Persons—National Retired Teachers Association has made a similar request. As yet, there has been no response.

Many important issues lie before us as we begin the second session of the 93d Congress, and to my mind, there is no more compelling need than better housing for senior citizens. I would urge my colleagues to take note of the well-documented story that has emerged from our hearings in New Jersey as the issues of housing and community development come before them in the months to come.

The record is there for everyone to see, and I sincerely hope that our efforts this year will bring a program of housing worthy of our older generation, and more importantly, one that will rekindle hope in the hearts of so many elderly who have given up on the chance to live in dignity.

Mr. President, I ask unanimous consent to have printed at the close of my statement my letter and the letter from AARP–NRTA to Secretary Lynn, the testimony of Mrs. Vivian Carlin, and a list of case histories submitted by Mr. Leroy Smith of East Orange.

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

DECEMBER 21, 1973.

Hon. JAMES T. LYNN,
Secretary, Department of Housing and Urban Development, HUD Building, Washington, D.C.

DEAR MR. LYNN: Much has been said in recent months about the value and viability of housing allowances as a major means of providing assistance to low income persons to enable them to find better shelter.

The President's Message of September 19, 1973, said that direct cash assistance, in his judgment, appears to be the most promising way to achieve decent housing for all of our families.

It is my understanding that your Department will be continuing extensive experiments in the coming months to determine whether a policy of direct cash assistance can be put into practical operation. I also understand that first priority under this approach would be directed at the elderly poor.

My purpose in writing is just exactly that—my concern over direct cash assistance as it relates to the elderly. Many elderly groups, including the major national organizations, have expressed deep concern over the viability of housing allowances for older adults. Without going into all their concerns, let me just say that the major point expressed is that housing as well as cash is scarce, and cash cannot buy a commodity that does not exist.

In addition, even assuming an adequate supply of housing did exist in a given market, the elderly person faces many other obstacles. In many instances, the older person will be hampered in his search for better housing. He is more tied to his neighborhood, and has more difficulty simply getting around to search for new quarters.

Services such as transportation, nearby shopping areas, close proximity to places of worship and health facilities, are especially vital to the everyday needs of the elderly.

In short, I have serious reservations about the appropriatness of direct cash assistance for the aged, when not accompanied by production subsidy where needed. Taking into consideration the particular problems that will be faced by the elderly under such an approach, and realizing the extra counseling and assistance that may be needed, I would sincerely hope that the large number of experiments now under way to test the feasibility of this approach are, in some way, accurately measuring the effects of this system on the older person. Testing results, in a general way, referring to the population as a whole, will in no way convince me, nor I dare say the major organizations representing the interests of the elderly, that such an approach will be worth their support.

Therefore, I would appreciate it if you would let me know as soon as possible to what extent special efforts are being made to assess the effects that direct cash assistance will have on older persons.

Thank you for your assistance.

Sincerely,

HARRISON A. WILLIAMS, Jr.,
Chairman, Subcommittee on Housing for the Elderly.

AMERICAN ASSOCIATION OF RETIRED PERSONS, NATIONAL RETIRED TEACHERS ASSOCIATION,
Washington, D.C., December 6, 1973.

Hon. JAMES LYNN,
Department of Housing and Urban Development, Washington, D.C.

DEAR SECRETARY LYNN: The American Association of Retired Persons and the National Retired Teachers Association are in the process of formalizing their legislative objectives for 1974. We have a natural concern with the progress being made by the several demonstration projects now underway to test the validity of the cash allowance as a means of providing adequate housing for the elderly.

This leads us to inquire as to whether the demonstration projects now begun or contemplated include representative numbers of the elderly and are designed to test whether an income allowance for the elderly is a feasible means of providing housing for them. It is all the more important that the demonstrations now in operation propose to first initiate the cash allowance program with the elderly.

We need to know whether more limited mobility, less capable bargaining ability, greater financial insecurity and more limited education will make ineffective the use of a cash allowance for the elderly.

We would appreciate your advice as to the numbers of elderly in or planned to be in such demonstration projects and how the Department is attempting to assess the impact of cash allowances on the elderly.

Sincerely,

CYRIL F. BRICKFIELD,
Legislative Counsel.

TESTIMONY BEFORE THE U.S. SENATE SUBCOMMITTEE ON HOUSING FOR THE ELDERLY

(By Mrs. Vivian F. Carlin)

I am Vivian F. Carlin, Consultant, Housing for the Elderly of the New Jersey State Office on Aging. I appreciate the opportunity to appear before you to comment on the housing needs of New Jersey's elderly population.

Many of the witnesses today have touched on the reasons why the elderly have a housing problem. The most important reasons, in my opinion, are:

(1) Older people are on limited fixed incomes and cannot compete in the private housing market. Many, therefore, are living in unsuitable or too expensive quarters.

(2) The present housing market has the greatest scarcity of low and moderate income units and an extremely low vacancy rate.

(3) Due to changes in life styles and size of family, and physical and psychological needs, many elderly require specially designed housing, which can be best provided under some form of government-sponsored programs.

(4) The January, 1973 federal moratorium on housing funds has virtually brought to a halt the efforts to provide adequate housing for the elderly at prices they can afford.

(5) The bureaucracy and enormous amount of paper work plus local municipal obstacles in the form of zoning and building code restrictions and property taxes, and community resistance to low and moderate multi-unit developments has caused delays as long as 10 years in building suitable housing projects for the elderly.

An analysis of the reasons which I have just given indicate that the solution lies in a major federal commitment. The states and municipalities do not have, and are not likely to have, revenue sources adequate to provide more than limited support in housing for the elderly.

Now, let us go back and look at the supporting data for each of my points.

(1) Limited income of elderly—In 1970, the 65 plus population constituted approximately 10% of the total population in New Jersey, but the households with the head 65 plus were 18% of the total households in New Jersey. If we look at income distribution in New Jersey we see that in 1970, 125,824 elderly or 18.1% were at or below the poverty level. In that year, poverty was defined as $1,749 maximum income for singles and $2,194 for couples. 46.3% of elderly households had total incomes of below $3,000 and 15.8% were between $3,000 and $4,999 or more than three-fifths of all elderly had incomes under $5,000. The poorest group were those living with children or other younger heads, since almost 88% of them had less than $3,000 income a year. Of the 65 plus renters with incomes below $3,000, almost 76% were paying more than 35% of their income for rent.

Since there have been three substantial social security increases since 1970, the last of which becomes effective with the June, 1974 check, I took the average social security check paid in New Jersey in 1970 of $128.33 and found that the *average* older recipient in June, 1974 would be getting $188.50 a month or $2,262 a year. Since in July, 1973 the poverty level was defined as $2,200 for single persons and $2,900 for a couple, the *average* social security recipient is still near or below the poverty level. This is especially true, since approximately 84% of all persons 65 plus in New Jersey were receiving social security payments and these payments are a major source of income for most elderly.

Even if we include the new supplemental security income which started January 1st, and the New Jersey supplements, we find a maximum annual income of $2,424 for singles and $3,240 for couples. Therefore, the numbers of elderly with incomes of under $5,000 remains essentially the same. These new increases have not appreciably affected their ability to compete in the private housing market.

In addition to looking at income and percent of income spent for housing, I want to comment briefly on the government subsidized special units for the elderly. A survey of all elderly state and federal units completed by this Office in January, 1973, showed that there were 15,619 units designed for and occupied by senior citizens.

Of these, 12,439 are low rent public housing, 2,619 are other federally supported, and 451 are funded by the state. There is currently a total of 4,355 units of subsidized housing for the elderly under construction. This study revealed a total of 21,368 eligible elderly on waiting lists for these units. These lists only represent the communities where elderly housing exists, and therefore this report does not indicate the need in other municipalities. Even in the communities with subsidized housing, we feel that the figure of 21,368 represents only a minimum need, since many older people, due to the length of the waiting lists and relatively low turnover, feel it hopeless and do not even bother to apply.

(2) Scarcity of low and moderate income housing units—We know that inflation has caused the cost of land, labor and materials and interest rates to spiral, pricing homes and rental units out of range for the low and moderate income person. In New Jersey at the end of 1972, the average monthly rent for a new multi-family apartment was $224.35. On the basis of paying 25% of income for rent, this would require an annual income of $10,800. (As of 1970, only 17.6% of all elderly had incomes of over $10,000.)

In addition to the high cost of housing, the vacancy rate in New Jersey in 1970 was 1.85% and most of the cities were lower, many being below 1%. At levels such as these, one can say, in essence, that housing choice is non-existent, particularly in view of the fact that this rate incorporates substandard but habitable units which may represent between 25 and 50% of vacant units. As a result, no effective housing market can be said to function.

(3) My third point is obvious. The elderly have special housing needs due to reduction in size of family, retirement from work, physical and psychological losses, etc.

(4) As a result of the January 1973 housing moratorium, no new public housing, 236 or 101 applications have been processed. However, in addition, this moratorium has adversely affected the New Jersey Housing Finance Agency, the New Jersey State housing program, since without at least some type of 236 federal assistance, no non-profit state housing for the low and moderate income elderly can be built. Previous testimony has revealed that many such projects have been stalled or lost due to the federal housing moratorium.

(5) Bureaucracy and local resistance—Both federal and state housing programs require such enormous amounts of paper work that a great deal of time is consumed and expensive consultants are necessary. In addition, community resistance in the form of zoning and building codes which require features not applicable to elderly housing, such as size of rooms, parking space, etc., makes local acceptance difficult.

In almost every elderly project, it is necessary to apply for zoning variances. In many of these cases, I have been asked to testify on behalf of the housing sponsor re the need for such housing in the community and in every case there has been tremendous opposition due to fears that the housing will cause an influx of out-of-towners, will open the door to multi-unit family housing with school children and adversely affect property taxes, too.

Because of the magnitude of the problems briefly outlined above, I feel that it is necessary for the federal government to provide the resources for building the specially designed housing required. Due to the low vacancy rate, a housing allowance program alone will not help elderly to find suitable housing. In May, 1973, the New Jersey State Office on Aging estimated a housing need of 73,721 units of low and moderate income housing for the elderly by 1980. Since the number of units needed is obviously so much greater than can be built, it is necessary to also provide some form of federal assistance to the homeowner to enable him to stay in his own home.

Housing takes a long time to build. The moratorium has caused further delays. Many of the elderly will not live long enough to get an apartment.

CASE HISTORIES SUBMITTED FOR THE RECORD BY MR. LEROY SMITH, OUTREACH AIDE, EAST ORANGE, N.J.

Mrs. A. Age 76—SS $192.10—Rent $150, has terrible fear that she cannot maintain apartment and has no place to go. Needs low income housing.

Mrs. B. Lives in one room on top floor—was disabled from mugging (coming along fine now) SS $160.—Rent $100. Needs housing badly—cannot climb the stairs.

Mrs. C. Lives over drugstore on third floor—building in bad condition—tried very hard to find place, but cannot—SS $158.60. Rent $100. Needs low-income housing.

Mrs. D. Rent going up constantly—private apartment building. Needs middle income housing—no application to be had. SS $174.-10. Rent. $175.

Mrs. F. Scared, want to move but has no place to go. Mail boxes broken into several times. SS $139.—Rent $112.—rent going up. Needs low income housing.

Mrs. G. Lived here for several years—rents going up constantly—has part-time job to maintain home. SS $214. Rent $200—Needs low income housing.

Mrs. H. Rent always rising—now $159. Needs low income housing but nowhere to go—SS $150—works part time to keep up. Doesn't know how long she can keep up.

Mrs. J. Lives on 2nd floor—has a heart condition—is in hospital approximately every 3 months—rent too high $136. SS $187. has no family—no place to go. Needs low income housing.

Mr. & Mrs. K. Live in one room on top floor—family owned house. No other place to go—combination SS $201.40. Rent $60. Want a place of their own—wife a diabetic—need low income housing.

Mrs. L. Very much in need of clothes and food because rent so high—Rent $175.—SS $189. plus a veteran's pension. Little left for medicine—cannot afford a telephone. Needs low income housing.

Mrs. O. On disability age 54—receives $100—had to move in with daughter temporarily who doesn't have room. Has asked for low income housing, but there doesn't seem to be a chance. Doesn't know where to go.

Mrs. MB Age 78—she has become a burden to her son and daughter-in-law with whom she lives due to the forced retirement of son because of severe heart trouble which will force a move to smaller quarters. Soc. Sec. under $130—needs low income housing.

Mrs. EB Age 68—lives in dark cramped one room apt. Poor health SS $131.50 Rent $100. needs low income housing.

Mrs. CB Age 72. Attic apartment, very steep stairs and poorly maintained. Has arthritis in knees—SS under $130. Rent now $80 but is going up—needs low income housing.

Mr. & Mrs. J.B. Ages 62 and 64—First floor of 2 family house in terrible condition—hole in bathroom ceiling through which water pours every time upstairs toilet is flushed. Rent was $125. just increased to $150. Combined income uncertain for future as she is collecting unemployment insurance for limited time and he is on disability—SS $148.—Refused my offer to report conditions to proper city department because of fear of landlord. Needs low income housing.

Mrs. HD Age 92—lives in large rooming house called hotel in poor repair—pays weekly—approx. $120 per month SS $135.80. Needs low income housing.

Mrs. MG Age under 65—Multiple sclerosis patient on disability. Has 5 room apartment which she cannot take care of—rent $128. SS $166.

Mrs. RK Age 66—severe arthritis—lives in 1 room with hot plate for cooking—has lavatory—needs decent housing desperately SS $165—rent $100.

Mrs. L. R. Age 62—she has been declared legally blind but cares for herself very well. Needs services of 4 specialists SS under $130—Rent $100—Needs low income housing.

Mrs. S. Age 72—Very bad conditions. Lives with wife and children of deceased son—is not wanted—Daughter-in-law is re-marrying and has no room in her life for Mrs. S. SS $67.60—VA pension $78.81—total income $146.41—needs housing desperately.

Miss LT Age 46—on total disability—SS $192—rent now $115 but house has been sold and she anticipates a raise—no relatives—completely alone—no resources—needs low income housing.

Miss JW Age 40—is on total disability due to crippling arthritis—has steep stairs to climb—SS $139.70—Rent $95. Needs housing.

Note: It should be noted that with the exception of those who live in rooming houses, gas and electric plus a necessary telephone must be added to fixed expenses.

A Widow home owner—Husband died early 1963. Following husband's death there was a large cut in income; so large that it has created an inability to meet high medical bills. She has arthritis, high blood pressure, chest hernia and serious eye trouble. Her SS is $234. A monthly package payment of $206 includes amortization, 3% interest and taxes. This package payment was arranged thru a previous city home improvement plan. Because of this situation she feels she will have to leave East Orange where she has lived and raised her family.

B Widower Age 66 SS $106.90, SSI $36.80—4 room, top floor apartment (4th floor) roof leaks causing ceiling water leak in one room. No repairs made. Rent was $135 now increased to $150 (7 years ago rent $85) rent now higher than total income. Formerly he received disability from Essex County Welfare. He has been disabled due to arthritis, severe bronchial congestion and suffers severe deafness. He lost this assistance when he received a lump sum of money in June 1973 from Social Security for back payments. In addition he lost his food stamp allotment and, most important, his medicaid. According to all our information this medicaid was terminated illegally. As a result he discontinued medications and failed to make necessary physicians' appointments. What money he had has gone to meet rent and food needs.

C A husband, 66 and wife 57, live in an illegal apartment. They fear to report this because of the great difficulty in finding an apartment. Rent is $90 plus utilities. There was some talk of a rent increase. The apartment is created by partitions to form three rooms; There is a makeshift shower placed in what is referred to as a kitchen. This plus the usual store toilet constitutes the bathroom. The husband has very little vision in one eye none in the other. He suffers from glaucoma and is officially classified as blind. Low income housing is needed.

D Woman living alone, age 72. She was a licensed practical nurse and had raised two sons on her own. She has spent thousands on hospital bills and has depleted all her resources. She could not get Welfare Assistance but received Medicaid. Her current income is $153.20 SS. She has a room in a private home that imposes severe restrictions on her use of kitchen and bath. Rent is $75, with current talk of increase. She has been on low income housing list for 4 years. Due to a chronic urinary condition and other illnesses she needs a small apartment with a private bath.

Her doctor has stated that her very life is at stake because of the above conditions. In a letter he wrote that "She has difficult arrangements for living and eating and above all for toilet facilities which are so important for her. In addition she doesn't feel safe due to steps, lack of railing and her poor eyesight. May I urgently request that she be given some consideration before it is too late".

Since the writing of this letter in the early part of 1973, she has been mugged a second time (the first time in October 1972). She was hospitalized both times. She feels unable to continue her life under these conditions. She needs low income housing.

Case history. Mr. & Mrs. E. were tenants at one of our low income buildings-managing nicely. They both became ill. Were hospitalized and their daughter made arrangements to have them admitted to an EO Nursing home under Medicaid and gave up the low rent apartment. Since then Mrs. E. has died; Mr. E. is in very good condition but will be maintained at the nursing home at $800 per month because there are no vacancies in low rent housing where he could manage on his own Social Security.

Mrs. BD. She was in need of immediate hospitalization when we first saw her. She has now returned in reasonably good health to her apartment where she pays $165 per month in rent out of an income of $154. (her family help her pay this) The apartment is large and in poor condition—she should be in low income senior housing but there is none available. We are recommending her for middle income housing with her son co-signing the lease.

Case A.—Income $327—Client is disabled—has to spend good portion of income for hired help to maintain apartment & drugs. Needs low income or middle income housing.

Case B.—Income $234—Client has heart condition—Needs living quarters all on one floor, at present must climb 2 flights of stairs.

Case B-1.—Income O.A.A. $162—Client had neat and clean quarters on 3rd floor but no cooking facilities. Had to eat out most of the time. Has since moved out of the area.

Case G.—Income $200 plus SS. Wife chronically ill—best portion of income goes for rent. At the time of interview was receiving some help from children.

Case G-1.—Income low SS—Rooms on 3rd floor of private home. Gets about with difficulty—has arthritis—Should be in quarters without stairs.

Case H.—Income $170—Client lives with granddaughter. Very depressed due to conditions under which she lives.

Case R.—Income $171. Client presently housed in quarters that have been questioned by the health dept. Owner wants the tenants out. Furnace out of order—makeshift arrangements for heat and cooking. No room in low cost housing.

Case S.—Client was living in a luxury apartment, had his own business and took early retirement. In the meantime wife came down with cancer and completely wiped client out even to cashing in of insurance policies.

Client no longer able to maintain himself in a luxury apartment. Client applied for old age assistance but was turned down because of having one month rent in reserve. Income from SS low. Did not realize by not paying in he was hurting himself. To best of my knowledge took refuge with nephew.

Note: Rent for the above 10 cases are well over 25% of income.

ALASKA'S D–Z PROPOSALS

Mr. STEVENS. Mr. President, on December 18, 1973, Rogers Morton, Secretary of the Department of the Interior, recommended that 83.47 million acres of Federal land in Alaska be added to the national park, national wildlife refuge, national forest, and the wild and scenic rivers systems.

I am flattered that the Department of Interior has such an appreciation for the scenic beauty of Alaska. I, as well as all other Alaskans, also share this love of the majestic beauty of "The Great Land" and would not consider calling any other place home.

However, I would like to point out to my fellow Members of Congress that several factors mitigate against making my entire State a national park for the rest of the Nation to enjoy. First, over 350,000 Americans call Alaska home and should not be deprived of an economic base necessary for survival. Second, the United States is faced with an energy crisis unparalleled by our Nation before. Alaska holds the key to alleviating much of this crisis.

The Interior Department proposes that over three-quarters of the D–2 lands be relegated to a single-use classification. Mr. President, I believe that this is far too much land to be locked up. Sensible development and scenic beauty are not necessarily inherently contradictory.

Since Congress has 5 years from the date of Secretary Morton's proposals to act, I would like to make sure that the Members of Congress realize the significance of their votes.

To that end I would like unanimous permission to include a chart depiciting the possible oil and reserves invalued in the proposed Federal withdrawal in the CONGRESSIONAL RECORD. These figures were compiled by W. M. Lyle and R. M. Klein of the Alaska Department of Natural Resources, Division of Geological and Geophysical Surveys at the request of the Joint Land Use Planning Commission.

The calculations were prepared by using known recoverable reserves in the Cook Inlet and in known sedimentary basins of the world. The cubic miles of sediment were recalculated by using reasonable or known thickness of sedimentary rocks under each of the withdrawals.

The reserve figures are entirely speculative and are intentionally conservative.

Results of this evaluation are subdivided into separate calculations for each proposed withdrawal area, and are listed on the tabulation set out below. I ask unanimous consent to have the tabulation printed at this point in the RECORD.

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

POSSIBLE OIL AND GAS RESERVES INVOLVED IN PROPOSED FEDERAL WITHDRAWAL, NOVEMBER-DECEMBER 1973

Proposed withdrawal areas	Area with possible oil potential		Possible recoverable	
	Acres	Square miles	Oil, millions of barrels	Gas, trillion cubic feet
1. Gate of the Arctic National Wilderness Park	2,119,680	3,312	432.0	3.2
2. Kobuk Valley National Monument				
3. Cape Krusenstern National Monument				
4. Aniakchak Caldera National Monument	369,640	578	24.0	.175
5. Katmai National Park	2,257,920	3,528	159.0	1.138
6. Harding Ice Field—Kenai Fjords National Monument				
7. Lake Clark National Park				
8. Mount McKinley National Park	944,640	1,476	38.0	.277
9. W. angell—St. Elias National Park	1,175,040	1,836	420.0	3.000
10. Yukon—Charley National Rivers	737,280	1,152	51.1	.373
11. Yukon Flats National Wildlife Refuge	4,008,960	6,264	390.0	2.7
12. Arctic National Wildlife Range	2,304,000	3,600	340.0	2.5
13. K.yukuk National Wildlife Refuge				
14. Selawik National Wildlife Refuge	990,720	1,548	25.5	.186
15. Chukchi—Imuruk National Wildlands	921,600	1,440	42.0	.304
16. Coastal National Wildlife Refuge				
17. Yukon Delta National Wildlife Refuge	4,170,240	6,516	360.9	2.64
18. Togiak Nati nal Wildlife Refuge				
19. Noatak National Ecological Range	2,787,840	4,356	250.0	1.8
20 Iliamna National Ecological Range	3,340,800	5,250	142.0	1.04
Total	[1] 26,128,360	[1] 40,856	2,674.5	19.333

[1] Difference due to rounding.

NEW SUPPORT SEEN FOR FOREIGN SERVICE GRIEVANCE ACT

Mr. BAYH. Mr. President, on Wednesday of this week we learned of yet another instance of injustice being perpetrated against a Foreign Service officer by the State Department hierarchy.

Mr. John Cramer, of the Washington Star-News, devoted his January 30 column to the case of Col. Henry J. Schneider, a Foreign Service staff officer who returned to the State Department in 1966 after 18 years in the Army. The facts, briefly, are these. Upon his return he was assigned to the grade of FSSO–2, but 2 years later learned that he should have been given the rank of FSSO–1. He then began a 6-year struggle for justice, during which on three separate occasions the Department's personnel office rejected his appeal—with, as Cramer reports, "three essentially different explanations."

Colonel Schneider then took his case to the newly established Foreign Service Grievance Board. This agency, as Senators know, was State's answer to the Foreign Service grievance legislation which the Senate has three times passed but which is still waiting approval by the other body. The present case shows why it is an inadequate answer. For the Board very properly found that Schneider was indeed entitled to the higher rank—and to retroactive pay from 1966. But the Secretary of State thought differently. He accepted the recommendation for promotion but denied the back pay—without explanation. This was Mr. Kissinger's first decision on a Grievance Board case, and the first time in 87 cases that the Secretary has failed to accept the Board's recommendation.

That may seem a fine record of accomplishment for the Grievance Board, and indeed mathematically it is. But surely this is the exception that proves the point of our legislation, namely, the Foreign Service personnel are still subject to the exercise of arbitrary administrative power—the only career employees in the Federal Government who are so subject.

Colonel Schneider has now taken his case to the U.S. Court of Claims. No doubt we should be thankful that he has that legal option. But I point out, Mr. President, that that is a long and expensive route for a career employee to have to follow. If the State Department had to abide by procedures to which all other administrative agencies are rightly subject, that would not be necessary.

I strongly commend John Cramer for bringing this matter to our attention and I urge my colleagues to read his article and consider it carefully in advance of the time I once again ask Senate approval of the Foreign Service Grievance Act. For that reason, Mr. President, I ask unanimous consent that the text of Mr. Cramer's article be printed in the RECORD.

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

NO CHEERS FOR KISSINGER DECISION ON FSO'S CASE

(By John Cramer)

Secretary of State Henry Kissinger has a reputation as a hotshot diplomat, a renowned wit and a bachelor with a discerning eye for beautiful women.

But he'll win no cheers from State Department employes for what he did to Henry J. Schneider, a Foreign Service staff officer in communications and an Army reserve colonel.

Indeed, he'll please only the handful of personnel officers and attorneys who fought a year's-long and bitter battle to keep Schneider out of a Grade FSSO–1 rank—one to which he was entitled even by Kissinger's own tacit admission.

When Schneider returned to the Foreign Service in November 1966, after 18 years in the Army, he was assigned as an FSSO–2 (then $12,905).

But the Foreign Service Grievance Board held last Aug. 31 that he should have been assigned to FSSO–1, at the top of the staff officer career ladder. Had that been done, his present grade would be FSSO–1, step 4 ($28,380).

The board also recommended retroactive pay from 1966.

Kissinger's response was to order the promotion (here his tacit admission that the original assignment was improper), but deny the back pay without explanation.

It was his first action on a grievance board ruling and the first time since State brought the board into being 2½ years ago that a secretary of state failed to follow its recommendations—87 in all.

Schneider's case came to light in a U.S. Court of Claims suit for some $33,000 to $34,000 in back pay, filed several days ago by his attorney, Alan Raywid.

His story is a complicated one, punctuated by at least three major State Department blunders.

After two years in Foreign Service as an FSSO–9, Schneider, then a reserve major, was called to active duty in 1948. He extended his service through the Korean war after getting written advice from State that his military leave was "indefinite." That was State's Blunder No. 1.

But when he sought confirmation of his re-employment rights prior to scheduled release from the army in 1953, he erroneously was advised by State that he had forefeited his rights to re-employment. Blunder No. 2.

So he stayed in the Army until retirement in 1966, only to learn, soon after, that he had not forfeited his rights. They were specifically guaranteed by the Reservists Act.

At this point, give State credit. The Reservists Act entitled Schneider only to restoration to his FSSO–9. He had, indeed, forfeited rights under the Selective Service Act, which would have given him whatever FSSO grade he might have attained had he not returned to the Army.

But State, in effect, elected to give him something very close to SS Act rights.

It evaluated him for reemployment in several ways. But the main one was a "peer group" method, measuring the average of promotions won by his former coworkers in FSSO–9 during his 18 years in the Army.

It thus assigned him to FSSO–2.

But it wasn't until two years later, 1968, that Schneider learned about State's Blunder No. 3. Its "peer group" evaluation had been either phony or an error. It hadn't taken into account the 1956–66 promotions of his peers.

He then began a six-year battle which saw State's personnel office three times reject his grievance appeals for an FSSO–1—with three essentially different explanations.

But before his case finally went to the grievance board, State settled on a single explanation. It stimulated, in writing, that the "peer group" method was the sole one for determining his proper grade.

And on that basis, coupled with State's admission of Blunder No. 3, the board held that Schneider was the victim of administrative error, entitled to an FSSO–1 with back pay.

Kissinger's memo denying the back pay came 4½ months later, on Jan. 10.

His legal advisers, bitter-enders to the last, used the interim to try an end run. They had sat in on grievance board hearings; they were fully aware that its decision was based on State's stipulation that the "peer group" evaluation was controlling and State's admission of error on the original evaluation.

But they tried to persuade the Comptroller General that the decision involved a retroactive promotion (back pay not permitted), rather than correction of error (pay permitted).

Congress left them dangling by enacting legislation permitting back pay for certain retroactive promotions ordered by the board.

And in the wake of the Schneider case, Congress may well take a new look at Senate-approved legislation introduced by Sen. Birch Bayh, D-Ind., which would greatly strengthen Foreign Service job protection rights.

TRIBUTE TO DR. CARROLL G. BRUNTHAVER

Mr. BELLMON. Mr. President, in the interest of encouraging knowledgeable, competent, honorable men to take responsible Government jobs in the future, I would like to call the attention of the Senate to the outstanding accomplishments of Dr. Carroll G. Brunthaver as he leaves the U.S. Department of Agriculture for his return to private life. He has served 5 years as Assistant Secretary for International Affairs and Commodity Programs.

For these past 5 years, Dr. Brunthaver has rendered dedicated service to the farmers and consumers of this Nation. He has helped make it possible for the American farmer to make a fuller contribution to meeting the needs of the Nation. This country and our trading partners abroad are better off as a result.

Dr. Brunthaver was one of the first to see the impact of growing world affluence on world food demand—and on U.S. agriculture. He was one of the first to state publicly that our farm policies should be geared to the emerging world market opportunities. He accurately forecast the need to change policy to take advantage of growing world farm product demand. Dr. Brunthaver argued successfully that developing markets abroad would mean a stronger economy for the Nation, an improved balance of payments, and greater income opportunities for farmers and nonfarmers alike in the United States.

He worked tirelessly to help turn opportunity into reality. Carroll Brunthaver would be the last to say that Government officials should play a dominate role in U.S. agriculture. He feels keenly that American agriculture's greatest assets are the management ability of its farmers and the effectiveness of its competitive marketing system in directing production.

It could certainly be said, however, that Carroll Brunthaver has played a key role in making it possible for American farmers to respond to their opportunity.

Five years ago, when he came to USDA, the Government was telling millions of American farmers what they could plant, what they could market, and what they would get for it. Government farm subsidies were costing taxpayers $4 to $5 billion per year. We were paying farmers not to grow crops on some 60 million acres of cropland per year—wasting that resource—and cutting both farmers' incomes and our national economic output. Most of rural America was seriously economically depressed. Our farm exports were only $6 billion, and the dollar was in a tailspin on its way to devaluation.

Today, American farmers are gearing up for full output—responding to real market demand for farm products at home and abroad. Indications are that farm output this year will break all records by a wide margin—not because of Government price supports but because people want and can pay for more food. Farm exports are running at record levels, totaling $19 billion for fiscal 1974. Nearly one-third of our current national exports are farm products. Our farmers are almost totally responsible for the current national trade surplus, and for the fact that the dollar is recovering its strength in international money markets. Farm exports are making it possible to maintain our standard of living in the face of the oil shortage and the increasing cost of imports.

Today, the Government is no longer telling farmers what they can grow. We are no longer paying farmers not to grow crops. Economic health has returned to our rural heartland.

Agriculture—still our largest employer—today is providing additional jobs and billions of dollars in extra income both on the farm and in off-farm supporting industries.

The country owes a hearty "thank you" to Dr. Brunthaver for his role in helping make it all possible. I commend and congratulate him for his record of accomplishment as he leaves his important part in Government.

CONCLUSION OF MORNING BUSINESS

Mr. MANSFIELD. Mr. President, is there further morning business?

The ACTING PRESIDENT pro tempore. Is there further morning business? If not, morning business is concluded.

GENOCIDE CONVENTION—EXECUTIVE SESSION

The ACTING PRESIDENT pro tempore. Under a previous order, the Senate will go into executive session to consider Executive O, 81st Congress, 1st session, which the clerk will report by title.

The legislative clerk read as follows:

Executive O (81st Cong. 1st Sess.), the International Convention on the Prevention and Punishment of the Crime of Genocide.

Mr. JAVITS. Mr. President, I ask unanimous consent that I may suggest the absence of a quorum without losing my right to the floor.

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

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

Mr. President, I ask unanimous consent that in the consideration of the treaty Pat Shakow, of my staff, and Charles Warren, of my staff, may have the privilege of the floor.

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

ORDER FOR PRINTING OF RESOLUTION OF RATIFICATION TO EXECUTIVE O (81ST CONG., 1ST SESS.)

Mr. JAVITS. Mr. President, inasmuch as the reservation sponsored by Senators CHURCH, PROXMIRE, and me, has been printed and is at each Senator's desk, I ask unanimous consent that the Resolution of Ratification, to which the reservation applies, be printed as well.

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

Mr. JAVITS. 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. JAVITS. 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. JAVITS. Mr. President, we are here today on a special day to debate the Genocide Treaty, a treaty which has waited 25 years for its time to come, and of that 25 years waited about 23 for a President to ask that it be laid before the Senate, which, on February 19, 1970, President Nixon did, in a letter to the Senate. The treaty was adopted by the General Assembly of the United Nations on December 9, 1948—by a vote of 55 to 0. It entered into force in 1951, and as of now, according to our records, some 78 nations have actually adhered to the treaty.

It is a shocking fact, Mr. President, that the treaty was first submitted to the Senate by President Truman on June 16, 1949. Hearings were held by a subcommittee of the Committee on Foreign Relations in 1950. It was reported favorably to the full committee, together with recommended understandings and a declaration, but no final committee action was taken.

In 1953, Secretary of State John Foster Dulles expressed some doubt as to the solution of the problems envisaged by the treaty, and said he would not press for its ratification.

Ten years later, in 1963, Secretary of State Rusk said that the Kennedy administration would ratify the Genocide Convention if the Senate gave its advice and consent. This was repeated in the Johnson administration in 1965. But no one asked that it actually go through the Senate.

On February 19, 1970, President Nixon did exactly that. Subsequently, therefore, the committee acted over a period of time, and finally the convention was formally reported to the Senate on December 8, 1970. It then remained on the calendar, and was not brought to a vote before the close of the 92d Congress, so, a fresh start had to be made when the 92d Congress convened in 1971. On March 30, 1971, the committee again reported the convention favorably to the Senate by a vote of 10 to 4, again subject to the understandings and the declarations previously recommended. But no further action ensued. Again the treaty was referred, in the succeeding Congress, to the Foreign Relations Committee which at an executive session, February 27, 1973, considered that particular measure.

Finally, as I said before, the measure was reported favorably by the Committee on Foreign Relations to the Senate. It has taken us all this time actually to get it to a hearing before the Senate. I do not wish for a moment to place any blame for that on the leadership, which has been very cooperative in this matter. It was simply a question of finding the

right time and the right place. It was supposed to be done last year, but all of us agreed that a matter like this required a reasonable and balanced discussion and we would not want to be caught in any jam as it would have been last year. So, by common consent, it was to be called up in January 1974 and the leadership, true to its word, did call it up in January. It is here now.

Mr. President, I give this history to emphasize the fact that we have been several days on this treaty. The Senator from Wisconsin (Mr. PROXMIRE) has spoken. I have spoken. The Senator from Idaho (Mr. CHURCH) has spoken. Others may have an interest in the treaty either for or against. I most respectfully submit that the time has come for them to be heard. It takes exactly the same vote to ratify this treaty as to have a cloture vote. I hope that the treaty opponents will simply not stand mute simply awaiting the time when we have to seek a cloture vote merely by their silence, because they have done absolutely nothing. I do not think it would be the disposition of the leadership in a matter of this kind merely for all of us to sit around and wait for some of the opponents to come in with their ideas or the grounds for their opposition.

The proponents of the treaty, Senators CHURCH, PROXMIRE, and myself, have offered a reservation—reservation No. 1—now printed and before all Senators—which we will, in due course, hope to have accepted and made a part of the resolution of ratification.

This reservation, in my judgment, is not necessary to the legal impact of the treaty now. I do not believe that this resolution is essential in terms of all the proper interests of our country and its citizens which need to and should be protected.

The organic treaty itself, as we have discussed and deliberated on, plus the three understandings and the one declaration, very adequately and fully protect every American against any imposition, deprivation of rights, or extradition, et cetera.

But, Mr. President, there were these disquieting feelings expressed to us in the testimony and we think that there is a necessity for a declaration by our country upon this subject, which is probably the most barbaric manifestation of the inhumanity of man to man as we saw it in operation in Nazi Germany which recorded history showed us in its 10,000 years. But we do not want to leave any stone unturned to reassure any Member of the Senate who feels in his heart that he should vote to ratify the treaty that there is some domestic reason—criminal law, or whatever it may be—that would prevent him from doing so.

We show, by this reservation, a recognition of the fact that what we are trying to accomplish is a universal condemnation by the nations—and that must include the leading nation of all, the United States of America—of the crime of genocide, and the fact that it will be made an international crime, thereby demonstrating mankind's revulsion against it and mankind's determination that it shall not occur again.

That is really the purpose because there is no international tribunal, for example, such as is contemplated by the treaty. If there is to be one, we would have to be a party to it. And accept its jurisdiction. So we have complete control over that, as to extradition to another country, where the act of genocide may have been judged to be performed in that other country. One, the treaty itself leaves that completely to the country which is concerned—to wit, our own. Second, this reservation locks, double locks, and triple locks that proposition to the resolution of ratification.

As to the essentials of the crime, it is a unique crime because it requires a fundamental finding which is simply not present in any other crime, and that is "intent to destroy, in whole or in part, a nation, ethnic, racial, or religious group"—that is from article II of the treaty. Just to lock even that in, so that there is no question about that, we have specified that the intent must be to destroy the entire group—Dean Rusk testified to that as far back as 1950—or a substantial number of a group immediately affected in order to bring it into action. So that a few or several or a small number, relatively speaking, may not be considered as an operative act in respect of the international crime of genocide.

Then, even further to give insurance, we make it clear that the convention is not self-executing. Article 5 of the convention says so. Then, it is stipulated in the resolution that implementing legislation is required—and we will have to pass implementing legislation. We have actually attached to our report a draft of that implementing legislation which again locks in the manifold protection to which we have referred.

So, it really strains the imagination of anyone to think for one moment that this is an untoward act respecting the individual rights of citizens of the United States under the Constitution, under the extradition treaties, or in any way to deprive by any stretch of the imagination any State or the Federal Government of jurisdiction over Americans who are here.

One other point of confusion we find so very frequently in this matter is when Americans are not here, when they are somewhere else. Whether we have a Genocide Treaty or not, we cannot control what happens in other countries except by virtue of our diplomatic initiatives, whatever they may be—even if there is a treaty.

I think the most salient example is that of the terrible punishments handed out in other countries—one example is Turkey—to individual Americans who are caught carrying or dealing in narcotic substances, including marihuana. But the important point is that when someone is sentenced, as they are, to life—or even to death, as has happened in some foreign countries in respect of narcotics violations, and as Americans we cannot do anything about it unless that country is willing to cooperate with us in a diplomatic sense; hence it is completely irrelevant to argue what might happen to an American in another country if that American is "charged" with the crime of genocide. The treaty will not make that situation worse than it is now.

The treaty might even help Americans abroad if they are in a country that has ratified the treaty since a common definition of genocide would be applicable.

To use that as the feeble excuse, that straw, to prevent us from joining in an international denunciation of mass murder or mass brain transformation or mass delivery of children away from their parents, and the other crimes which have occurred by the name of genocide, simply boggles the imagination.

Senator CHURCH, Senator PROXMIRE and I have labored under the difficulty of making an argument in this case, because it just overwhelms the imagination that anybody should not understand and feel in his heart, let alone understand in his mind, the revulsion which the human race must express at this most horrible and heinous of all crimes.

Yet, for 25 years we have found it, for practical purposes, impossible to break through with that concept enough to get this treaty ratified, until, at long last, here we are in 1974, with the leadership giving us an opportunity to get this treaty ratified by the Senate.

Mr. President, as we all know, it can happen here. It can happen anywhere. The depths of man's inhumanity to man are still unfathomable, and we were given very excellent examples of situations occurring in the world. Whether it is proscribing people because of caste or some tribal identification, or because they are a part of some kind of national group, the simple elimination of all members of that group still remains a threat hanging over all mankind, and we see evidences of it even in contemporary history.

We always speak here of a development whose time has come. This development, the ratification of this treaty, is certainly a concept which almost outrages our consciences, those who feel deeply about it, who have to debate it on the elementary ground of justification.

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

Mr. JAVITS. I yield.

Mr. ABOUREZK. I should like to say to the Senator from New York that I am fully in accord with what he has said about the Genocide Convention and the need for ratification by the Senate. This matter, as I understand, was first offered in the Senate in 1948. Is that correct?

Mr. JAVITS. That is correct.

Mr. ABOUREZK. And it has been lying dormant since that time. I think it is an idea whose time is long past due.

I have had the argument raised to me that if this convention were ratified and adopted by the United States, Indian people, in whom I have an interest both as a Senator from South Dakota and as chairman of the Indian Affairs Subcommittee, would be able to charge the Government and the people of the United States with genocide because of certain acts of mistreatment accorded to the Indian people. That might have been true 100 years ago, but it is not true today. Whoever has those fears, I should like to

try to lay the fears to rest at this point, because that will not be the case; that will not happen.

As a matter of simple humanity, as a symbolic act, and as a real act of trying to enunciate the principle of humanity on the part of the United States, we ought to ratify this treaty.

I thank the Senator for yielding.

Mr. JAVITS. I thank my colleague. He has had a great deal of experience with American Indians.

As the Senator has properly said, considering the fact that the essential element is the intent to eliminate a whole group, it is inconceivable that there is anything to that now.

As to what people can charge, they often charge simple murder very quickly, many times a day. So there is no reason why they cannot include genocide. But that should not discredit such a great act of conscience on the part of the American people; because in that case, we would certainly be very simplistic if anybody could dissuade us from something we ought to do simply by making a charge.

Mr. ABOUREZK. I think it is a false argument and one that is used in an effort to stop the act itself.

Mr. JAVITS. I thank my colleague very much.

Mr. President, another thing that I think is critically important is the position which results from the fact or the showing that we have not ratified the treaty. I should like to read into the RECORD a letter dated January 21, 1974, to the chairman of the Committee on Foreign Relations (Mr. FULBRIGHT), from Dr. Henry A. Kissinger, Secretary of State:

THE SECRETARY OF STATE,
Washington, D.C., January 21, 1974.

Hon. J. W. FULBRIGHT,
Chairman, Foreign Relations Committee, U.S. Senate.

DEAR MR. CHAIRMAN: I have been gratified to learn that the Genocide Convention, which was reported favorably by your Committee, is finally due for consideration by the full Senate. Since this was brought to my attention, I would like to take this opportunity to express to you my personal view concerning the desirability of prompt United States ratification.

As is well known, the United States played an important role in the negotiation of this Convention, which was adopted in 1948 and first transmitted to the Senate in 1949. President Nixon in 1970 renewed the request that the Senate consider it and grant its advice and consent to ratification.

There can be no question that the United States is fundamentally opposed to the crime of genocide. Our failure to ratify this important Convention has been a constant source of embarrassment to us in the international community. The extensive hearings that were held in 1970 and 1971 by the Subcommittee of the Foreign Relations Committee chaired by Senator Church convincingly demonstrated the desirability of ratifying the Convention. The reports issued by your Committee, and most recently the report of March 1973, have in my view, effectively dealt with all the points that have been raised in connection with the Convention and support the conclusion that there should be no further delay in ratifying it.

The important policy reasons cited by the President in 1970 for ratifying the Convention remain as persuasive today as they were then. By giving its advice and consent to ratification of this Convention, the Senate will reaffirm our country's desire to participate in the building of an international order based on law and justice.

The letter is signed by Henry A. Kissinger.

Mr. President, so here we are, conscious of the deep religious belief of each of us—I can say that without exception; of a very gifted and brilliant new Secretary of State, who himself sees the scars of exactly this crime through the sufferings of his own kin and of the world from which he came; and of the President of the United States; and we are conscious of the international situation, on which so much depends in terms of humanity, if America's great standing in the world is to be maintained.

This is an unexplained situation on the part of our country. It has been for years; it is now. We should allow it to continue no longer, but should, at long last, ratify the treaty.

As to its opponents, there is no element of disrespect in anything I say or feel. Every man contends for his right to express his view and to challenge our judgment that the Senate ought to ratify the treaty. But I do believe that it is really only fair that these arguments be made, that they be developed on the floor of the Senate, and that they dictate what humanity demands—a vote on the treaty, up or down. Bear in mind that not a single right of our opponents is given up by not allowing us to come to a vote, because it takes the same number of votes to ratify the treaty.

To assume that some Members have a hangup about cloture who do not have a hangup about the treaty and, therefore, that someone might succeed in filibustering this resolution, as contrasted with voting it up or down, is really pressing fairness to its outermost limits; it is just too much. I hope very much that the Senate will vote on this treaty, hopefully next week.

Second, Mr. President, I hope that those who may contemplate debate in opposition come forward with their debate and whatever measures they have in the way of reservations, understandings, and declarations to deal with their particular scruples about the treaty, but that all understand the profound humanity which is involved here and, therefore, the basic fairness of coming to a vote. If that is not the case I hope that in this particular case all Members, even those who have scruples about cloture will realize that if there ever was a case which is unique in terms of demanding from the Senate basic action and from individual Senators basic fairness, it is this one; and if they do intend to be for the treaty then, in my judgment, I hope very much they will examine deeply their own consciences in this case, because they really do have to be for cloture, too.

If the Senator from Idaho is ready to proceed, I am ready to yield the floor.

The PRESIDING OFFICER. The Senator from Idaho is recognized.

Mr. CHURCH. Mr. President, first I commend the distinguished Senator from New York for the able argument he has presented this afternoon in support of the ratification of the Genocide Convention. When the treaty first was brought up for consideration, earlier in the week, it had been my intention to lay it before the Senate and make an opening argument. At the time, however, I was presiding at executive hearings with out-of-town witnesses; so it was not possible for me to come to the floor. So I would like, at this time, to make the argument I would have made then, had it been possible for me to be present. I will refer, in the course of my remarks, to a reservation to be offered which would eliminate any possible basis for concern that this treaty might somehow lead to the extradition of American citizens for trial in a foreign court on the charge of genocide where the accused would not be guaranteed his basic rights under the Constitution of the United States.

I would hope that Senators who harbor some misgivings on account of this apprehension—however tenuous it may be, as the Senator from New York has already explained—would study the reservation and take note of the fact that it is drafted in such a way as to avoid any possibility in the future that any American citizen would not be fully protected in his constitutional rights.

Having said that, I would like now to proceed on behalf of the Committee on Foreign Relations to make what I had intended to be the opening argument.

Mr. JAVITS. Mr. President, if the Senator will yield, I would like to suggest the absence of a quorum.

Mr. CHURCH. I yield.

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

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

Mr. CHURCH. Mr. President, I ask unanimous consent that throughout the debate regarding the Genocide Convention and votes relating thereto, Mr. Thomas A. Dine be permitted access to the Senate floor.

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

Mr. CHURCH. Mr. President, as chairman of the Ad Hoc Genocide Subcommittee of the Committee on Foreign Relations, it is my responsibility to present the Genocide Convention to the Senate and ask for its advice and consent to ratification. The committee recommends this action as a responsible exercise of the treaty-making power of the United States and an enlightened step in the orderly development of international law.

So much has been written and said about this treaty over the long period of time that it has been pending before us that the most useful thing I can do at this time is to try to put it into a reasonable perspective, explain the committee understandings and declaration, and then offer, on my own behalf, and on behalf of the distinguished Senator from New York (Mr. JAVITS) and the able

Senator from Wisconsin (Mr. PROXMIRE) a reservation, as a substitute for one of the understandings recommended by the committee.

First of all, let me agree that the Genocide Convention is not a work of perfection. The handiwork of many nations can never suit each one of them absolutely. This observation, however, applies to all treaties. I have never seen a perfect treaty, and I do not ever expect to see one. But have we ever in the Senate passed a perfect law? If not, I suggest we leave the notion of perfection out of our discussions.

Having said this, I believe the Genocide Convention is the best agreement that can be reached on the subject. Its imperfections depend on the eye of its beholders. For some, it does not go far enough. For others, it goes too far.

While I would not, like some witnesses have, put it in a class with the 10 Commandments or the Magna Carta, neither would I consider it the handiwork of the Devil or a conspiracy against American independence. I look upon it, and ask my colleagues to share this view, as a significant statement of human decency—a code of conduct, if you will, for nations to observe in dealing with their religious ethical, racial, or national constituent parts.

Many semantic games have been played with this treaty, but I ask my colleagues to evaluate it on the strength of its principal purpose. On that purpose we should all agree. To a man we must all deplore genocide—that is to say, the systematic and deliberate destruction of a group of people because of common religious, ethnical, racial, or national ties. That is what we subscribe to by approving the Genocide Treaty, and this is what we must not lose sight of as we debate this proposition.

The convention is short and consists of nine substantive articles. In the first article, the parties to the treaty confirm that genocide is an international crime which they undertake to prevent and to punish. Genocide, in article II, is declared to consist of certain acts which must be committed with the intent—and I stress the word intent—to destroy in whole or in part, a national, ethnical, racial, or religious group, as such. These acts include: killing of group members, causing them serious bodily or mental harm, inflicting on them conditions of life calculated to bring about the destruction of the group, imposing measures to prevent births, and the transferring of children from one group to another. Included among punishable acts in article III are conspiracy, public incitement, attempt to commit, and complicity in genocide. By article IV, rulers, public officials, and private individuals are punishable.

Article V reads as follows:

The Contracting Parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the present Convention and, in particular, to provide effective penalties for persons guilty of genocide or of any of the other acts enumerated in article III.

This article makes it clear that the treaty is not self-executing and that our ratification of the treaty does not make it ipso facto the law of the land. Implementing legislation is required and the Foreign Relations Committee has incorporated into the resolution of advice and consent a declaration that the U.S. Government will not deposit its ratification of the treaty until such legislation has been enacted. So we are concerned here principally with the broad question of joining with the international community in condemning genocide. How we shape our laws to comply with the obligation of article V is an important, but separate, question to be debated whenever the Judiciary Committee recommends such legislation, which incidentally is pending before it now as S. 1758.

By the terms of article VI of the convention, accused persons are subject to trial at the place where the crime was committed or by an international penal tribunal. However, such a tribunal has not been established nor are there any prospects of its being established.

Moreover, were such an international tribunal to be established in the future, the question of our consenting to its jurisdiction would be a separate matter that would have to come before the Senate for its consent at that time. Therefore, the ratification of this treaty would not bind the United States to the acceptance of the jurisdiction of some future international tribunal, if it were ever to be established.

There is no present prospect that this will happen nor any expectation. Nevertheless, as I have indicated, should the unexpected occur, we would, at that time, have full opportunity to then consider whether or not the United States should accept the jurisdiction of such a court.

Under article VII, the parties to the treaty pledge themselves to extradite the accused in accordance with their laws and treaties in force. The parties can, by article VIII, call on the United Nations to take such action as appropriate under the Charter for the prevention or punishment of genocidal acts. Finally, under article IX, disputes relating to the interpretation, application or fulfillment of the convention shall be submitted to the International Court of Justice at the request of any party to the dispute. All of these articles are explained in further detail in the committee report which also discusses the various questions that were raised about them and the understandings and declaration designed to take care of the questions that the committee felt had some measure of merit.

Mr. President, inasmuch as these details are pertinent, for Senators to have a full understanding of the treaty, I think it would be appropriate to have printed in the RECORD excerpts from the committee report following my remarks.

I ask unanimous consent that excerpts from the committee report be printed in the RECORD following this address.

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

(See exhibit 1.)

Mr. CHURCH. Among these questions some concerning the effects of articles VI and VII which deal with trials and extradition and I address myself to them now.

A deep-seated fear has been expressed by some witnesses and letter writers that these articles would lead to American citizens being tried in foreign lands, under alien procedures, and without the constitutional guarantees of due process of law. This, of course, is presently the case if an American citizen overseas commits a crime. He is then subject to prosecution by the foreign government, and under the laws of the country in which he has committed the crime. The word genocide, however, brings out exceptional fears of mischievous prosecution and to alleviate these fears the committee has recommended an understanding to article VI which links our interpretation of that article to the negotiating history of the convention, specifically to the explanatory text inserted in the Report of the Legal Committee of the United Nations General Assembly on the Convention which I read:

The first part of article VI contemplates the obligation of the State in whose territory acts of genocide have been committed. Thus, in particular, it does not affect the right of any State to bring to trial before its own tribunals any of its nationals for acts committed outside the State.

This is incorporation in the recommended resolution of ratification and reads as follows:

That the United States Government understands and construes Article VI of the Convention in accordance with the agreed language of the Report of the Legal Committees of the United Nations General Assembly that nothing in Article VI shall affect the right of any State to bring to trial before its own tribunals any of its nationals for acts committed outside the State.

Mr. President, at this point I wish to observe that a reservation is at the desk which the sponsors propose to substitute in place of the understanding which I have just read. At the appropriate time, the Senator will be asked to vote on substituting the reservation in place of the understanding.

The reason for this is that the reservation has binding legal effect; it becomes a condition on which the ratification of the treaty rests. It surely should eliminate any basis for argument that this convention could somehow lead to the extradition of an American citizen for trial on the charge of genocide, allegedly committed outside the United States, in a tribunal where he would not be guaranteed the rights of an accused under the Constitution of this country.

I ask unanimous consent that the corrected text of the reservation be printed in the RECORD at this point.

There being no objection, the corrected reservation and amendments were ordered to be printed in the RECORD, as follows:

RESERVATION AND AMENDMENTS

In the introductory matter preceding clause 1, strike out "and declaration" and insert in lieu thereof a comma and the following: "declaration, and reservation."

Strike out clause 3.

Strike out "4" and insert in lieu thereof "3".

Insert a new section 4, as follows:

4. That, subject to the reservation, which

is hereby made a part and condition of the resolution of ratification,

(a) nothing in article VI of the convention shall affect the right of the United States to bring to trial before its own tribunals any of its nationals for acts committed outside the United States; and

(b) the Secretary of State, in negotiating extradition treaties conventions shall reserve for the United States the right to refuse extradition of a United States national to a foreign country for any offense defined in this treaty when the offense has been committed outside the United States and

(1) where the United States is competent to prosecute before its own tribunals the person whose surrender is sought, and intends to exercise its jurisdiction; or

(2) where the person whose surrender is sought has already been or is at the time of the request being prosecuted for such an offense; or

(3) where the person whose surrender is sought would not be guaranteed all the basic rights of an accused under the United States Constitution

Mr. CHURCH. Mr. President, the reservation states in a simple and straightforward way that by ratifying the treaty "nothing in article VI of the convention shall affect the right of the United States to bring to trial before its own tribunals any of its nationals for acts committed outside the United States." This plain sentence should remove any question about the meaning of article VI.

It reserves to the United States the right to try before its own courts citizens who have committed genocide crimes outside the United States. This theory of concurrent jurisdiction over a criminal act—one based on the nationality of the alleged criminal and the other on the site of the alleged crime—is not unique. Any number of nations have asserted it and so has the United States in certain matters, such as treason, counterfeiting, hijacking, and terrorist acts against foreign officials, among other crimes.

If the United States asserts the right to try its own citizens for the crime of genocide no matter where commited, it follows, of course, that article VII on extradition will have little or no effect as far as the United States is concerned.

The article on extradition, moreover, is not self-executing. None of our laws and treaties now in force contain genocide as an extraditable crime. To give this article legal effect would require the long and tedious renegotiation of all of our extradition treaties which are generally with countries whose judicial systems contain safeguards compatible with our own.

As a further safeguard, however, I have included language in my reservation set forth in subsection (b), which reads as follows:

(b) the Secretary of State, in negotiating extradition treaties or conventions shall reserve for the United States the right to refuse extradition of a United States national to a foreign country for any offense defined in this treaty when the offense has been committed outside the United States and

(1) where the United States is competent to prosecute before its own tribunals the person whose surrender is sought, and intends to exercise its jurisdiction; or

I do not know how language could be drafted that would make the protection of the constitutional rights of our own citizens more clear.

Mr. President, I believe that this wording should remove any lingering fear of U.S. citizens being extradited to some dictatorship abroad and thus deprived of the fundamental guarantees of a fair trial.

Moreover, I point out to the Senate that we do not have to trust future Secretaries of State in order to make certain that this protective language is inserted in any future extradition treaty, inasmuch as all such treaties must be brought before the Senate for ratification, and the Senate can then determine whether or not the Secretary of State has fully complied with the provisions of this reservation.

Now let me turn to the opposite side of the coin. There are some Senators who have expressed a fear that a reservation of this kind might somehow vitiate the object and purpose of the Genocide Convention. I can assure them that they are, indeed, compatible with the objective of the treaty, and do not alter or affect its major humanitarian goal.

In this connection, I would point out that 26 other governments, presently parties to the treaty, have made reservations to various articles of the convention. Indeed, so many countries entered reservations that an advisory opinion was sought from the International Court of Justice as to their effect on the treaty. This opinion is discussed in some detail in a legal memorandum prepared for me which concludes that the reservation we are offering is consistent with the treaty under the guidelines laid down by the Court in 1957. I ask unanimous consent to have excerpts from this memorandum inserted in the RECORD at the conclusion of my statement.

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

(See exhibit 2.)

Mr. CHURCH. The reservation we propose is also consistent with the testimony of the executive branch during the hearings a copy of which is at each Senator's desk. The thrust of the testimony was that the concerns addressed by the reservation about site of trial and extradition were met implicitly in the negotiation of the treaty or would be met explicitly in future extradition treaties which, in turn, would have to be approved individually by the Senate. The executive branch, therefore, may argue that the reservation we offer is unnecessary. Nevertheless, I believe in making these matters explicit, here and now, without reference to past or future negotiations.

I have gone into some detail about these articles and the effect of the proposed reservation to demonstrate that even the most tenuous worries expressed during the hearings by some of my colleagues have not gone ignored; I have attempted to meet their concern in what I believe to be the legal, the practical and the effective way.

Why is it important then that we give our advice and consent to the ratification of this instrument? Are we engaging in a purely symbolic act? I asked this question of some of the witnesses at the hearings, pointing out that not one of the 78 nations that are now parties to the convention has ever brought a case under the treaty against anyone, nor raised an issue under the treaty in the United Nations. In response to my question, there was much talk about its "deterrent" effect, much talk about the building of international law, the importance of world public opinion, and of human rights. While I do not wish to belittle the importance of these concepts, the response reinforced my personal belief that approval of this treaty is largely a symbolic gesture.

But such gestures are at times important and I believe this is one of those times because the convention itself has acquired a status and significance totally unrelated to its actual application. It has become symbolic of the world's abhorrence of the barbarism of genocide. If it were possible to roll back time and rewrite the treaty as a simple statement of general principles for the civilized conduct of nations, perhaps that would be the easier way. But this is not possible. The very vagueness of the wording of the treaty, however, casts it in the form of a statement of principles relating to genocide to which the American people can fully subscribe.

As a symbolic act, it is not an empty gesture. As a people we abhor genocide. Why should we be so hesitant, therefore, to say so by approving this convention? In fact, by remaining outside the convention, we tend to give substance to vicious propaganda that the United States refrains from ratifying the treaty because it wishes to reserve the right to practice genocide at home and abroad. While we know this propaganda is maliciously absurd, why give it a semblance of credence in the eyes of the world?

Speaking of propaganda, the committee was fully aware that the word "genocide" has been bandied about loosely by various groups to describe acts committed by other groups. While approving the convention will not put an end to such wild charges, it will provide a definition agreed upon by the international community as to what constitutes genocide and what does not. Propaganda, I am afraid, will always be with us; but propaganda, we must remember, is far from being the same as a case in court. As a major world power, we will always be a target of malcontents, whether we approve the genocide convention or not. But our position on this issue, in the eyes of the world, would be strengthened by acting favorably on the treaty.

To conclude this opening statement, let me again stress the fact that I have omitted a detailed analysis of every word of the convention because, as I pointed out earlier, this is contained in the committee report, which now, by act of the Chair, will be made a part of this RECORD. As our debate proceeds, I will be ready to answer questions on any article that other Members of the Senate wish to raise. But the reservation we propose, if adopted by the Senate, should eliminate any basis for further doubt about safeguarding the individual rights of U.S. citizens.

Mr. President, I was a student studying law at the time this treaty was first submitted to the Senate. Whatever reasons there may have been in 1950 for deferring action on this treaty, these last 20 years of increasing domestic and international concern over human rights should lay them to rest. The time is at hand for the ratification of the Genocide Treaty.

EXHIBIT 1

EXCERPTS—INTERNATIONAL CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE

The Committee on Foreign Relations, to which was referred the International Convention on the Prevention and Punishment of the Crime of Genocide (Ex. O, 81st Cong., first sess.), having considered the same, reports favorably thereon with three understandings and one declaration and recommends that the Senate advise and consent to ratification thereof.

MAIN PURPOSE

The purpose of the treaty is to make genocide an international crime, whether committed during peace or war. To that end, the treaty defines genocide to be certain enumerated acts, which whether committed by constitutionally responsible rulers, public officials, or private individuals are punishable. Other articles deal with implementing legislation, trial of persons charged with genocide, extradition, reference to the United Nations, and settlement of disputes regarding interpretation or application of the convention. These provisions are described in detail below as are the understandings and declaration the text of which follows:

"1. That the U.S. Government understands and construes the words 'intent to destroy, in whole or in part, a national ethnical, racial, or religious group, as such' appearing in article II, to mean the intent to destroy a national, ethnical, racial, or religious group by the acts specified in article II in such manner as to affect a substantial part of the group concerned.

"2. That the U.S. Government understands and construes the words 'mental harm' appearing in article II(b) of this convention to mean permanent impairment of mental faculties.

"3. That the U.S. Government understands and construes article VI of the convention in accordance with the agreed language of the report of the Legal Committee of the United Nations General Assembly that nothing in article VI shall affect the right of any state to bring to trial before its own tribunals any of its nationals for acts committed outside the state.

"4. That the U.S. Government declares that it will not deposit its instrument of ratification until after the implementing legislation referred to in article V has been enacted."

PROVISIONS OF THE CONVENTION

Because the term "genocide" has been so loosely bandied about, the committee wishes to be quite explicit in the following analysis on what it construes the provisions of the convention to mean. Articles X to XIX are entirely procedural in nature; thus only articles I to IX are discussed below.

Genocide—An international crime

Article I

The contracting parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.

The article largely speaks for itself. It adds genocide to a number of other international crimes which nations have agreed to punish in international agreements pertaining to such matters as protection of submarine cables, pelagic sealing, oil pollution, and antisocial conduct like slave trading, and production and trade in narcotics.

In the past, the power of the United States under the Constitution to make treaties in the human rights field has been questioned on the grounds that the treatment by a state of its nationals is a matter of domestic jurisdition. This was one of the points raised in opposition to the Genocide Convention by officials of the American Bar Association and by Senator Ervin. The argument runs that the definition of crimes and prescription of punishment is a matter of purely domestic—and not international—concern and therefore the treatymaking power does not extend to this area. On both moral and practical grounds, the commission of genocide, involving as it must mass action, cannot help but be of concern to the community of nations. An indication that this is so is the fact that 76 nations have subscribed to the proposition that genocide is an international crime.

The committee also finds some merit in the argument that if the U.S. Government is conceded the power to make treaties governing the killing of seals, it is capable of acceding to a treaty on the killing of people.

Since the treaty, in article I, specifically refers to "time of war," the possible effect of the Genocide Convention on U.S. military forces abroad, especially when in combat, was carefully considered. This is particularly relevant since the word "genocide" has been loosely applied to the incidents at My Lai. However, as will be seen in the discussion of article II below where genocide is defined, whatever occurred at My Lai—and the committee does not prejudge the matter—it was not genocide, as defined in the treaty. Combat actions do not fall within the meaning of the Genocide Convention. They are subject to other international and national laws.

In the opinion of most witnesses, ratification of the Genocide Convention would not alter the situation of American military forces in peace or war in any way or create any new hazard for them. This is an essential point to bear in mind in connection with the treaty's effect on our Armed Forces.

Acts constituting genocide

Article II

In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

(a) Killing members of the group;

(b) Causing serious bodily or mental harm to members of the group;

(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

(d) Imposing measures intended to prevent births within the group;

(e) Forcibly transferring children of the group to another group.

The testimony and discussion of article II turned on the alleged vagueness of certain of its terms—"in whole or in part," "groups," "as such," and "mental harm." While the committee had no particular problem with the meaning of these words, in order to allay any misconceptions, it recommends to the Senate two understandings to this article:

(1) That the U.S. Government understands and construes the words "intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, as such" appearing in article II to mean the intent to destroy a national, ethnical, racial, or religious group by the acts specified in article II in such a manner as to affect a substantial part of the group concerned.

(2) That the U.S. Government understands and construes the words "mental harm" appearing in article II(b) to mean permanent impairment of mental faculties.

The first of these understandings serves to emphasize the importance which the committee attaches to the word "intent." Basic to any charge of genocide must be the *intent* to destroy an entire group because of the fact that it is a certain national, ethnical, racial, or religious group, in such a manner as to affect a substantial part of the group. There have been allegations that school busing, birth control clinics, lynchings, police actions with respect to the Black Panthers, and the incidents at My Lai constitute genocide. The committee wants to make clear that under the terms of article II none of these and similar acts is genocide unless the *intent* to destroy the group as a group is proven. Harassment of minority groups and racial and religious intolerance generally, no matter how much to be deplored, are not outlawed per se by the Genocide Convention. Far from outlawing discrimination, article II is so written as to make it, in fact, difficult to prove the "intent" element necessary to sustain a charge of genocide against anyone.

In its construction of article II, the committee is not only expressing its own view but also that of the Department of State in testimony presented in 1950 by then Deputy Under Secretary of State Dean Rusk:

STATEMENT OF DEAN RUSK, DEPUTY UNDER SECRETARY OF STATE, BEFORE THE GENOCIDE SUBCOMMITTEE, JANUARY 23, 1953—EXCERPT

Mr. RUSK. * * * Genocide, as defined in article II of the convention, consists of the commission of certain specified acts, such as killing or causing serious bodily harm to individuals who are members of a national, ethnical, racial, or religious group, with the intent to destroy that group. The legislative history of article II shows that the United Nations negotiators felt that it should not be necessary that an entire human group be destroyed to constitute the crime of genocide, but rather that genocide meant the partial destruction of such a group *with the intent to destroy the entire group concerned.*

Senator MCMAHON. That is important. They must have the intent to destroy the entire group.

Mr. RUSK. That is correct.

Senator MCMAHON. In other words, an action leveled against one or two of a race or religion would not be, as I understand it, the crime of genocide. They must have the intent to go through and kill them all.

Mr. RUSK. That is correct. This convention does not aim at the violent expression of prejudice which is directed against individual members of groups.

Senator LODGE. Is that the difference between genocide and homicide?

Mr. RUSK. That is the principal difference, yes. [Emphasis supplied.]

The second of the understandings was suggested by the executive branch in 1949, and while the executive branch no longer considers this understanding to be necessary, the committee thinks it will be helpful to eliminate any doubt as to what is meant by "mental harm."

These two understandings are further defined in the implementing legislation which is printed as an appendix to this report.

Some witnesses deplored the omission of "political" groups in article II. While inclusion of the word "political" might have been desirable, the difficulty of defining a "political group" would have raised further questions about the scope of the convention. In any event, the absence of this word from the treaty is no reason not to protect the groups that are covered by it.

Punishable acts

Article III

The following acts shall be punishable:

(a) Genocide;

(b) Conspiracy to commit genocide;

(c) Direct and public incitement to commit genocide;

(d) Attempt to commit genocide;

(e) Complicity in genocide.

The principal question about the meaning of article III concerned the relationship of the words "direct and public incitement to commit genocide" to the freedom of speech guarantees of the first amendment. This question was raised with Assistant Attorney General William H. Rehnquist in 1970 as follows:

Senator CHURCH. In other words, you are satisfied that such constitutional protection, as presently exists in the field of free speech, would not be adversely affected in any way by the terms of this convention?

Mr. REHNQUIST. I am satisfied, first, that they would not be and, second, that they could not be.

The 1969 case of *Brandenburg* v. *Ohio* was cited by several witnesses as the most recent reaffirmation of the line drawn by the Supreme Court between protected speech and prohibited direct and immediate incitement to action. In that case, the Court said: "* * * the constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action." (395 U.S. 444.) This is a 1969 per curiam decision of the Supreme Court and there is no reason to expect any reversal of this doctrine, with which the language of the Genocide Convention is consistent.

Among those citing this case was the witness for the American Civil Liberties Union who added: "* * * if this convention did interfere with the first amendment the American Civil Liberties Union would be the first one to be complaining, without regard to whether or not we commend the objectives of the convention. However, we do not think there is any problem under the first amendment to the Constitution."

Punishment of persons

Article IV

Persons committing genocide or any of the other acts enumerated in article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.

While most of the testimony on this article attempted to establish that governments, as well as individuals, could be held responsible for commission of genocidal acts, the committee believes that this argument is somewhat strained. The article clearly refers to "persons." The government's responsibility is to punish such persons, whether they are constitutionally responsible rulers, public officials, or private individuals. Since it is unlikely that genocide could be committed without the explicit or implicit approval of the government of the country in which it occurred, the absence of specific references to governments in article IV could be considered a drawback. However, the committee points out that there is nothing the international community could effectively do to prevent and punish government-instigated genocide in any case. To be sure, charges could be brought before the International Court of Justice and the United Nations to bring moral pressures to bear on the offenders but that is all. Thus, while on the one hand the committee believes that the convention would have been stronger for being directed at governments as well as individuals, on the other hand it recognizes that there exists no present means in international law to punish a government in power. A successor government would, of course, be obligated under the convention to bring charges against its former public officials for genocidal acts.

Implementing legislation

Article V

The Contracting Parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the present Convention and, in particular, to provide effective penalties for persons guilty of genocide or of any of the other acts enumerated in article III.

This article makes clear that the convention is construed not be self-executing and that implementing legislation is required to give effect to its provisions. Indeed, the committee regards Senate approval of the convention as the first in a two-step procedure. The Department of State is already on record as proposing to recommend to the President that the instrument of ratification of the convention not be deposited until the implementing legislation has been enacted. This statement by the Department has been incorporated into a declaration to be included on the resolution of ratification as follows:

4. That the United States Government declares that it will not deposit its instrument of ratification until after the implementing legislation referred to in Article V has been enacted.

While Senate approval constitutes the first step towards the United States becoming a party to the treaty, the committee attaches equal importance to the second step—enactment of the implementing legislation. The committee has not concerned itself directly with the implementing legislation in the belief that his should be judged on its own merits. In light of the interest expressed in this legislation, however, the committee asked the executive branch to expedite its submission to the Congress which it did. This legislation was introduced on February 16, 1972 by Senators Scott and Javits as S. 3182 and is reproduced in the appendix for the information of the Senate, inasmuch as it will be helpful in the consideration of the convention as an indication of how the domestic law is proposed to be shaped to fulfill our treaty obligations. While this bill died at the close of the 92d Congress due to lack of action, the Committee has been informed that the executive branch is prepared to resubmit the proposed legislation at an early date. The committee expects the draft of this legislation to be considered in accordance with the regular legislative procedures.

The argument made during the course of the hearings that in the absence of a treaty the Congress would have no power to enact the kind of legislation required by the treaty is discussed below in the section on "The Convention and the Constitution" but the committee notes at this point its belief that the Congress is full empowered to define certain acts as Federal crimes, as it has already done in many instances—as the killing of heads of state and other foreign officials—and is continuing to do in other categories.

Trial of persons charged with genocide

Article VI

Persons charged with genocide or any of the other acts enumerated in article III shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction.

This article provoked considerable discussion, not because of its language but because of the means suggested for its implementation. Executive branch and other testimony brought out that the negotiating history of the convention makes it clear that the courts of the country in which the accused has citizenship can likewise have jurisdiction over the crime. This theory of concurrent jurisdiction—jurisdiction based on the site of the alleged offense and jurisdiction based on the nationality of the offender—was thoroughly explored during the hearings. It was pointed out that a number of nations, particularly colonial powers, have consistently asserted the right to try their own nationals for crimes committed outside their territory. Even the United States in certain limited areas—counterfeiting, theft of Government property, treason, antitrust violations—has exercised jurisdiction over its citizens for acts committed abroad. This concept of concurrent jurisdiction no doubt will be closely examined during consideration of the implementing legislation. However, the U.S. Government should make it clear to the other contracting parties that it intends to construe article VI so as to permit it to try its own nationals for punishable genocidal acts whether committed at home or abroad. For this reason, the committee recommends to the Senate the following understanding:

(3) That the U.S. Government understands and construes article VI of the convention in accordance with the agreed language of the report of the Legal Committee of the United Nations General Assembly that nothing in article VI shall affect the right of any State to bring to trial before its own tribunals any of its nationals for acts committed outside the State.

The pertinent excerpt from the report referred to in the understanding follows:

Report of the Sixth Committee—U.N. Document A/760 and Corr. 2, 3 December 1948

[Excerpt]

24. At its 131st meeting, the Committee had agreed to insert in its report to the General Assembly the substance of an amendment to article VI submitted by the representative of India, according to which nothing in the article should affect the right of any State to bring to trial before its own tribunals any of its nationals for *acts committed outside the State*. Following this, the representative of Sweden had requested that the report should also indicate that article VI did not deprive a State of jurisdiction in the case of *crimes committed against its nationals outside national territory*. After some discussion of the questions raised in this connexion, the Committee, at its 134th meeting, adopted, by 20 votes to 8, with 6 abstentions, an explanatory text[1] for insertion in the present report. (Italics supplied.)

It should go without saying that the United States cannot exercise jurisdiction unless the accused is in U.S. territory.

Only brief reference needs to be made to the clause in article VI which provides that persons charged with genocide shall be tried "by such international penal tribunal as may have jurisdiction with respect to those contracting parties which shall have accepted its jurisdiction." No such international penal tribunal has been established and the International Court of Justice has no penal or criminal jurisdiction. That part of article VI is therefore a dead letter at this time. If a penal tribunal should be established—and there are no present plans to do so—separate action either through ratification of a treaty or enactment of a law would be required for the United States to accept its jurisdiction.

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[1] The text reads as follows:

"The first part of article VI contemplates the obligation of the State in whose territory acts of genocide have been committed. Thus, in particular, *it does not affect the right of any State to bring to trial before its own tribunals any of its nationals for acts committed outside the State.*" [Emphasis supplied.]

Extradition

Article VII

Genocide and the other acts enumerated in article III shall not be considered as political crimes for the purpose of extradition.

The Contracting Parties pledge themselves in such cases to grant extradition in accordance with their laws and treaties in force.

Article VII has no immediate effect. It does not constitute an extradition treaty in itself. It obligates the contracting parties to grant extradition in accordance with their laws and treaties in force and neither U.S. law, nor any extradition treaty to which the United States is a party, covers genocide at this time.

The question of extradition was carefully examined by the committee and subcommittee in the light of concerns that American citizens might be extradited for trial in foreign courts without the protection of U.S. constitutional guarantees. Ratification of the Genocide Convention, however, does not affect any problem which may exist in this respect. It merely opens the way for adding one more crime—genocide—to the list of crimes for which Americans may be extradited under ratified extradition treaties. Extradition treaties are carefully worded to be as explicit as possible about the definition of the crimes covered and the procedure under which a citizen will be surrendered to another nation for trial. No general sweeping accusation would suffice.

During the extensive committee discussion of the extradition article, Senator Cooper offered the following reservation:

That a U.S. Citizen in the United States charged with having committed an act outside the United States in violation of the treaty provisions shall not be subject to extradition unless the Secretary of State determines such person is guaranteed all the constitutional rights of an accused under our Federal laws.

As previously noted, the committee voted 7 to 6 to table this reservation, not so much because members were opposed to its thrust but because such policy would be more properly expressed in the implementing legislation.

In this connection, the committee calls particular attention to Sec. 3 of the implementing legislation which reads:

"SEC. 3. It is the sense of the Congress that the Secretary of State in negotiating extradition treaties or conventions shall reserve for the United States the right to refuse extradition of a United States national to a foreign country for an offense defined in chapter 50A of title 18, United States Code, when the offense has been committed outside the United States, and

"(a) where the United States is competent to prosecute the person whose surrender is sought, and intends to exercise its jurisdiction, or

"(b) where the person whose surrender is sought has already been or is at the time of the request being prosecuted for such offense."

Role of the United Nations

Article VIII

Any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in article III.

In the discussion of this article, the question was raised whether it would broaden or enlarge the powers of the United Nations. Genocide, as the term is accepted by the committee, namely, mass murder on a broad scale, would either jeopardize human rights provisions of the charter or pose a threat to world peace and therefore it would clearly be within the powers of the United Nations to discuss it. The article itself moreover refers to "action under the Charter of the United Nations" which limits its scope to that document, including the article 2(7) proscription against intervention "in matters which are essentially within the domestic jurisdiction of any state * * *."

As a practical matter, whether we are a party to the Genocide Convention or not, the United Nations can discuss alleged genocide in the United States or anywhere else any time it so chooses. The committee moreover is quite certain that for propaganda and other purposes spurious charges of this nature will continue to be made in the United Nations, whether we do or do not ratify the Genocide Convention, if only because our position in the world makes us a visible target of discontent. Indeed, we lend more color to such charges by not being a party to the Genocide Convention. This being the case, the question whether article VIII gives the United Nations greater scope to discuss genocide seems relatively immaterial. It is important, moreover, in this connection to bear in mind that such enforcement powers as the United Nations has are lodged in the Security Council, subject to the veto power, which the United States now has demonstrated it is prepared to exercise.

Settlement of disputes

Article IX

Disputes between the Contracting Parties relating to the interpretation, application or fulfillment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.

The jurisdiction of the Court will extend to disputes relating to the interpretation, application, or fulfillment of the convention, including those relating to the responsibility of a state for genocide. It must be noted that such cases will fall under article 36(1) of the Court's statute which provides:

1. The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or *in treaties and conventions in force*. [Emphasis added.]

Cases arising under the Genocide Convention will not be covered by the Connally amendment under which the United States reserves to itself the right to determine which cases it considers to be within its domestic jurisdiction and therefore outside the jurisdiction of the Court. The Connally amendment applies only to article 36(2)—the so-called compulsory jurisdiction clause.

Provisions similar to Article IX are included in many multilateral and bilateral conventions to which the United States is a party. A list of these appears on page 215 of the 1970 hearings. Prominent examples include the Japanese Peace Treaty, the Antarctic Treaty, and the Statute of the International Atomic Energy Agency.

It must also be noted that a number of countries, notably the Communist bloc, have ratified the treaty subject to the reservation that they do not consider themselves bound by article IX. Other countries have taken exception to this and other reservations. The United States is expected to do likewise. As a consequence, the United States could invoke the Communist bloc reservation in its own behalf in cases brought by members of the bloc.

The committee does not envisage any real difficulties resulting from article IX. No disputes arising from alleged violations of the Genocide Convention have been brought before the Court to date; moreover, hardly any disputes of any kind have been brought before the Court. This is not to say, of course, that the United States might not be some day charged with nonfulfillment of the treaty by another signatory and might even be found in default of its treaty obligation—though this is hard to conceive—but as a practical matter that is where it would end. The Court has no enforcement powers. It is also well to recall that only states party to the Statute can bring cases before the World Court—not individuals or groups. In the committee's view, the fears expressed about the role of a moribund court in genocide matters appear very far fetched.

THE CONVENTION AND THE CONSTITUTION

Discussion of the Genocide Convention during the hearings renewed the debate over whether a treaty can authorize what the Constitution prohibits. The Supreme Court, in its own words, "has regularly and uniformly recognized the supremacy of the Constitution over a treaty" (*Reid* v. *Covert*, 354 U.S. 1, 16–18). It is therefore fallacious to claim that the Genocide Convention will supersede or set aside the Constitution of the United States. It will not and cannot do so.

A related argument was raised by some witnesses to the effect that the Congress would have no power to enact legislation making genocide a crime if the convention were not approved. The power of Congress to do so rests on article I, section 8, clause 10, of the Constitution: "The Congress shall have the Power * * * To Define and Punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations * * *," as well as on the necessary and proper clause. The fact that the Congress enacts a statute pursuant to a treaty, as would be the case in the Genocide Convention, does not alter its competence to enact such legislation in any event.

As regards the respective jurisdiction of Federal and State governments over the crime of genocide, if the treaty is approved, the committee calls attention to Sec. 2 of the proposed implementing legislation, which provides:

SEC. 2. The remedies provided in this Act shall be the exclusive means of enforcing the rights based on it, but nothing in the Act shall be construed as indicating an intent on the part of the Congress to occupy, to the exclusion of State or local laws on the same subject matter, the field in which the provisions of the Act operate nor shall those provisions be construed to invalidate a provision of State law unless it is inconsistent with the purposes of the Act or the provisions of it.

UNDERSTANDINGS

The understandings and declaration which the committee agreed to recommend to the Senate have been discussed in the text of the report as well as reproduced at the beginning and in the resolution of ratification which is appended to this report.

There was considerable discussion as to the nature and effect of these understandings. For this reason, there follows a memorandum on this question, prepared at the committee's request by the Department of State.

DEPARTMENT OF STATE,
Washington, D.C., March 26, 1971.

Hon. J. W. FULBRIGHT,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: In the hearings on March 10, 1971, on the Genocide Convention before a subcommittee of the Senate Foreign Relations Committee, questions were raised concerning the difference between a "reservation" and an "understanding" and as to the legal effect of the latter. In response to Senator Javits' request, I enclose a memorandum on the subject, prepared in the Office of the Legal Adviser.

There was also some discussion in the hearings as to whether the understandings to the Genocide Convention recommended by the Foreign Relations Committee in Exec-

utive Report No. 91-25 were properly designated as such or whether they should more appropriately be termed reservations. I would like to take this occasion to express the view of the Department of State that the proposed understandings and declarations set forth in the report are properly designated. We feel that it is neither necessary nor desirable to redesignate any of them as reservations.

The first of these understandings merely serves to emphasize that the element of "intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such" is basic in proving a charge of genocide, and consequently proof would be required that the genocidal acts charged had been committed "in such a manner as to affect a substantial part of the group concerned."

The second proposed understanding construes the words "mental harm" in article II to mean "permanent impairment of mental faculties." This construction is in keeping with the generally understood meaning of the term in the context of article II. It would make clear that the term could not be construed as applying to various lesser forms of mental harassment toward minority groups. This construction is consistent with the negotiating history of the convention.

The third proposed understanding is explicitly based on the negotiating record of the convention, which clearly adopts the interpretation that nothing in Article VI shall affect the right of any state to bring to trial before its own tribunals any of its nationals for acts committed outside the state. The possibility of concurrent jurisdiction thus created is supported not only by the negotiating record but by the practice of other states.

The Department regards all three of these understandings as consistent with the terms of the convention and as not excluding or modifying their legal effect.

We trust that this information will be useful in answering the questions raised in the subcommittee hearings, but if we can be of any further assistance, please let us know.

We are looking forward to prompt and favorable action on the Genocide Convention by the committee and the Senate as a whole.

Sincerely yours,

DAVID M. ABSHIRE.

[From the Office of the Legal Adviser, Department of State, March 22, 1971]

MEMORANDUM CONCERNING RESERVATIONS AND UNDERSTANDINGS TO TREATIES

A statement made in or accompanying the ratification of a treaty constitutes a reservation when it would exclude or vary the legal effect of one or more of the provisions of the treaty in their application to the reserving State.

A statement made in or accompanying the ratification of a treaty which merely explains or clarifies the meaning of the provisions of the treaty but does not exclude or vary their legal effect would constitute an understanding.

A statement intended by a ratifying State to exclude or to modify the legal effect of one or more provisions of a treaty as applied to that State should be designated by that State as a "reservation". Where a State wishes to set forth its interpretation of the provisions of a treaty without intending to change their legal effect as understood by it, the statement should be designated as an "understanding".

The designation by the ratifying State is not controlling. Whether the statement modifies the legal effect of the treaty or merely expresses its true intent depends on the substance of the statement and is not solely within the judgment of the State making the statement.

A statement made as a condition to a State's ratification, whether designated as a "reservation" or an "understanding", is communicated by the depository to the other signatory and acceding States. Each of those States has the right to decide whether the statement modifies the legal effect of the treaty and whether it will consider itself in treaty relations with the reserving State. Failure of other States to object within a reasonable time may be regarded as acceptance by them of the reservation or understanding, which thereupon has legal effect internationally as a condition to the ratification of the State making it.

In United States law a condition placed by the Senate on its approval of a treaty—whether by reservation or by understanding—and included by the President in the instrument of ratification takes effect as domestic law along with the treaty itself. This is a necessary result of the shared constitutional role of the President and the Senate in the treaty-making process.

It is to be noted that the term "reservation" applies only when a statement accompanying ratification "would exclude or vary the legal effect of one or more of the provisions of the treaty in their application to the reserving state." None of the statements recommended by the committee, nor indeed otherwise suggested to date, falls under this definition since, in the view of the committee concurred in by the Department of State, they are consistent with the treaty, its negotiating history, and the practice of other contracting states. Indeed, it can be argued that they merely describe the tenor of the implementing legislation to be enacted which is a matter of our domestic concern. The same logic also applies to the argument that the committee-sponsored understandings somehow weaken or lessen the effect of U.S. ratification of the treaty. It is the committee's view that undertaking to explain what the convention means to the United States in no way downgrades the treaty or the obligations assumed by the U.S. under its provisions. It is a legitimate exercise of the Senate's advise and consent function. The essential point remains that ratification of the convention is worthwhile, regardless of the effect of the understandings.

A related concern that the Supreme Court would disregard the proposed understandings, reverts to the allegation that the understandings contravene the explicit language of the convention despite the committee's expressed view to the contrary. The Supreme Court can be expected to give full weight to the view of the committee and the negotiating history of the convention in any matter that might come before the Court in connection with the treaty.

WHAT THE CONVENTION DOES NOT DO

At the risk of being repetitious, the committee emphasizes again what the convention does not do.

It does not alter the rules of warfare, or the obligations of parties to the Geneva conventions on the treatment of prisoners of war and protection of civilian persons in time of war.

It does not apply to civil wars as such.

It does not apply to persecutions such as the currently headlined Soviet treatment of its Jewish population.

It does not apply to discrimination, racial slurs, and insults, and the like.

It does not apply to voluntary population control measures.

It does not apply to the past.

Charges that any or all of these actions might constitute genocide in one nation or another have been bandied about loosely over the years but here the committee again wishes to emphasize that a charge does not constitute proof of an act of genocide. In every case, the element of intent is crucial. In the 22-year history of the Genocide Convention no single prosecution has taken place in any of the nations party to it.

Illustrative of the type of charge involved here—and the kind the United States might have to contend with from time to time—is one cited by the ABA representatives. It is contained in a booklet entitled "We Charge Genocide: The historic petition to the United Nations for relief from the crime of the United States Government against the Negro People." This petition was first presented to the United Nations in 1951 and has now been reprinted with a new preface and foreword. The United Nations has done nothing with it in 22 years, even though, under the charter it can discuss anything that is brought to its attention, irrespective of adherence or nonadherence of a member to a particular treaty. The committee cites this to put such charges, past and future, in a practical perspective. Charges have been made and will no doubt be made again, even though the United States has enacted historic civil rights legislation since 1951, but the committee cannot stress enough that such charges, domestic or foreign, do not constitute genocidal acts just because someone labels them so. Genocide is what the convention says and not what crusaders for human rights, no matter how well motivated, allege.

The convention, in fact, leaves so many areas unaffected that this is, oddly enough, one of the main criticisms made by some of the opponents. The committee was told that the convention "is so full of holes" as to be worthless and that the United States should instead work to persuade the United Nations to negotiate one with teeth in it—one which would cover political groups and governments and which would correct other alleged deficiencies. Even if there was merit to this view, the practical difficulties of renegotiating a 25-year-old treaty by the now 132-member United Nations are formidable.

CONCLUSIONS

Genocide has become a word in altogether too common usage. The committee therefore has been careful in this report to narrow its meaning and not to overstate the scope of the convention. We have been concerned largely with describing what it does not do. We find no substantial merit in the arguments against the convention.

Indeed, there is a note of fear behind most arguments—as if genocide were rampant in the United States and this Nation could not afford to have its actions examined by international organs—as if our Supreme Court would lose its collective mind and make of the treaty something it is not—as if we as a people don't trust ourselves and our society. The rhetoric of the opponents, and to a degree the proponents, has obscured what a modest step the convention represents.

Philosophical, moral, and constitutional questions have been raised which go far beyond this modest step and probe man's relationship to his fellow man and the responsibilities of governments to protect the rights of their citizens. These questions appear inherent in the area of human rights treaties and legislation, and it is good that they are raised, because they serve to lift our sights to what is really at issue here, an attempt to curb the excesses of mankind. As our planet becomes more crowded, man's behavior towards his fellows must be governed by standards ever higher and more humane. This treaty seeks to set a higher standard, of international morality and should be judged on that basis.

This higher plane of viewing the convention is suggested in the following statements of our Presidents:

The words of President Truman in submitting the Genocide Convention in 1949 still hold true:

By giving its advice and consent to my ratification of this convention, which I urge, the Senate of the United States will demonstrate that the United States is prepared to take effective action on its part to contribute

to the establishment of principles of law and justice.

The words of President Kennedy, in submitting three related human rights treaties, also apply:

The day-to-day unfolding of events makes it ever clearer that our own welfare is interrelated with the rights and freedoms assured the peoples of other nations. * * * There is no society so advanced that it no longer needs periodic recommitment to human rights. The United States cannot afford to renounce responsibility for support of the very fundamentals which distinguish our concept of government from all forms of tyranny.

And, finally, the committee concurs with the words of President Nixon:

I believe we should delay no longer in taking the final convincing step which would reaffirm that the United States remains as strongly opposed to the crime of genocide as ever.

The committee, therefore, earnestly recommends to the Senate that, subject to the understandings and declarations, the Senate give its advice and consent to ratification of the Genocide Convention by an overwhelming vote. Respect for the feelings of mankind, expressed by the 76 ratifications to date, should lead to no less.

TEXT OF RESOLUTION OF RATIFICATION

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the International Convention on the Prevention and Punishment of the Crime of Genocide, adopted unanimously by the General Assembly of the United Nations in Paris on December 9, 1948, and signed on behalf of the United States on December 11, 1948 (Executive O, Eighty-first Congress, first session), subject to the following understandings and declaration:

1. That the United States Government understands and construes the words "intent to destroy, in whole or in part, a national, ethnical, racial, or religious groups as such" appearing in Article II, to mean the intent to destroy a national, ethnical, racial, or religious group by the acts specified in Article II in such manner as to affect a substantial part of the group concerned.

2. That the United States Government understands and construes the words "mental harm" appearing in Article II(b) of this Convention to mean permanent impairment of mental faculties.

3. That the United States Government understands and construes Article VI of the Convention in accordance with the agreed language of the Report of the Legal Committee of the United Nations General Assembly that nothing in Article VI shall affect the right of any State to bring to trial before its own tribunals any of its nationals for acts committed outside the State.

4. That the United States Government declares that it will not deposit its instrument of ratification until after the implementing legislation referred to in Article V has been enacted.

EXHIBIT 2

Washington, D.C., December 10, 1973.

To: Hon. Frank Church.

Subject: Genocide Convention.

Reference is made to your request concerning the above subject. Specifically, you asked for an analysis of a draft reservation to the Genocide Convention which may be offered in the Senate, and a specific finding whether the effect of this reservation would require submission to other signatory parties for approval.

Taking the latter question first, it should be noted that the "effect" of a particular reservation to a multilateral Convention does not necessarily determine whether the reservation must be submitted *per se* to other signatories for approval. "It is customary for the depositary of ratifications (either a state or the secretariat of an international organization) to call to the attention of all signatories any reservation communicated to the depositary and to request an express statement of position as to the reservation." American Law Institute, *Restatement of the Foreign Relations Law of the United States* § 128 (1965) at Comment "d." Moreover, the International Court of Justice has indicated that with respect to the Genocide Convention "each State which is a party to the Convention is entitled to appraise the validity of the reservation, and it exercises this right individually and from its own standpoint," and that "no State can be bound by a reservation to which it has not consented." *Advisory Opinion on Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, [1951] I.J.C. Reports 4, 15. Finally, Article 23(1) of the Vienna Convention on the Law of Treaties, signed by the United States on April 24, 1970, but as yet not in force, indicates that "[a] reservation, an express acceptance of a reservation and an objection to a reservation must be formulated in writing and communicated to the contracting States and other States entitled to become parties to the treaty."

A different, and somewhat more complex question, which arises after a reservation has been submitted to other contracting State for approval, concerns the effect of the reservation upon the legal position of the reserving State *vis a vis* the Convention. The traditional rule, and one which has been acknowledged by the International Court, holds that—

"It is . . . a generally recognized principle that a multilateral convention is the result of an agreement freely concluded upon its clauses and that consequently none of the contracting parties is entitled to frustrate or impair, by means of unilateral decisions or particular agreements the purpose and *raison d'etre* of the convention. To this principle was linked the notion of the integrity of the convention as adopted, a notion which in its traditional concept involved the proposition that no reservation was valid unless it was accepted by all the contracting parties without exception, as would have been the case if it had been stated during the negotiations.

"This concept, which is directly inspired by the notion of contract, is of undisputed value as a principle." [1951] I.C.J. *Reports, supra*, at 21.

The traditional rule has been modified, however, in regard to the Genocide Convention. The International Court has indicated that with respect to this Convention "it is proper to refer to a variety of circumstances which would lead to a more flexible application of this principle." [1951] I.C.J. Reports, *supra*, at 21. The Court has identified a number of factors which demonstrate that the signatory States intended participation to be as wide as possible. Among these are "the universal character of the United Nations under whose auspices the Convention was concluded," the "very wide degree of participation envisaged by Article VI of the Convention," the more recent "flexibility in international practice" as evidenced by "more general resort to reservations" and the "very great allowance made for tacit assent to reservations," and finally the "manifestly . . . humanitarian and civilizing purpose" of the Convention. *Id.*, at 21 and 23. In light of these considerations the Court has concluded that "[t]he object and purpose of the Convention thus limit both the freedom of making reservations and that of objecting to them. It follows that it is the compatibility of a reservation with the object and purpose of the Convention that must furnish the criterion for the attitude of a State in making the reservation on accession as well as for the appraisal by a State in objecting to the reservation. Such is the rule of conduct which must guide every State in the appraisal which it must make, individually and from its own standpoint, of the admissibility of any reservation." *Id.*, at 24.

Accordingly, the Court advised the General Assembly as follows:

"In so far as concerns the Convention on the Prevention and Punishment of the Crime of Genocide, in the event of a State ratifying or acceding to the Convention subject to a reservation made either on ratification or on accession, or on signature followed by ratification,

* * * * *

"A State which has made and maintained a reservation which has been objected to by one or more of the parties to the Convention but not by others, can be regarded as being a party to the Convention, if the reservation is compatible with the object and purpose of the Convention; otherwise that State cannot be regarded as being a party to the Convention;

* * * * *

"If a party to the Convention objects to a reservation which it considers to be incompatible with the object and purpose of the Convention, it can in fact consider that the reserving State is not a party to the Convention; . . . if, on the other hand, a party accepts the reservation as being compatible with the object and purpose of the Convention, it can in fact consider that the reserving State is a party to the Convention . . ." *Id.*, at 29–30.

The General Assembly noted the Court's advisory opinion and directed the Secretary-General of the United Nations to follow the advisory opinion in connection with the Genocide Convention. G.A. Res. 598, 6 U.N. GAOR Supp. 20, at 84, U.N. Doc. A/2119 (1952). The legal position of the United States, should it decide to accede to the Convention with the proposed reservation, would appear to depend, therefore, on whether its reservation is compatible with the object and purpose of the Convention. Moreover, under the Vienna Convention "a State may, when signing, ratifying, accepting, approving, or acceding to a treaty, formulate a reservation unless . . . the reservation is incompatible with the object and purpose of the treaty." Art. 19(c). The Vienna Convention further provides, in applicable part, that—

"Acceptance by another contracting State of a reservation constitutes the reserving State a party to the treaty in relation to that other State if or when the treaty is in force for those States; Art. 20(4) (a)

"An objection by another contracting State to a reservation does not preclude the entry into force of the treaty as between the objecting and reserving States unless a contrary intention is definitely expressed by the objecting State; Art. 20(4) (b).

"An act expressing a State's consent to be bound by the treaty and containing a reservation is effective as soon as at least one other contracting State has accepted the reservation." Art. 20(4) (c).

Turning to a consideration of the proposed United States reservation it should be noted that a unilateral determination of compatibility by the reserving State (i.e. the United States) is not binding upon other parties to the Convention. As previously indicated, the International Court has stated that the compatibility of a reservation with the object and purpose of the Convention is an issue not only for the reserving State but also for other party States, who are not bound by the reservation until they have given their consent thereto. Moreover, only those States which have actually "ratified" or "acceded to" the Genocide Convention are entitled to a legally effective objection to the proposed reservations of the United States:

An objection to a reservation made by a

signatory State which has not yet ratified the Convention can have legal effect . . . [with respect to the reserving State] . . . only upon ratification. Until that moment it merely serves as notice to the other State of the eventual attitude of the signatory State.

An objection to a reservation made by a State which is entitled to sign or accede but which has not yet done so, is without legal effect." [1951] I.C.J. Reports, *supra*, at 30.

Similarly, the Vienna Convention provides that acceptance of, and objection to, a reservation, is made by "contracting States" [Art. (1)(a) and (b)] which are defined as those States which have "consented to be bound by the treaty. Art. 2(1)(f). The consent to be bound by a treaty may exist by signature, ratification, accession, or by other means if the party States so agree. Art. 11. The Genocide Convention specifies that "[t]he present Convention shall be ratified . . ." and that [a]fter 1 January 1950, the present Convention may be acceded to . . ." Art. XI. It would seem, therefore, that under either the International Court's formulation or that of the Vienna Convention the compatibility of the United States reservation with the object and purpose of the Genocide Convention will be the subject of concern to both the United States, as the reserving State, and to those States which have ratified or acceded to the Convention.

Part (a) of the draft reservation to the Genocide Convention provides as follows:

"(a) nothing in Article VI shall affect the right of the United States to bring to trial before its own tribunals any of its nationals for acts committed outside the United States . . ."

This part of the reservation appears to be consistent with the object and purpose of the Convention. Article IV indicates that "persons committing genocide . . . shall be punished . . . ," and does not purport to specify the jurisdiction where such punishment must occur. Moreover, Article V, in providing that the "Contracting Parties undertake to enact . . . the necessary legislation . . . to provide effective penalties for persons guilty of genocide . . . ," also seems consistent with the trail of offenders by their national State. Article VI adds two additional forums for the trial of offenders, the first of these being "a competent tribunal of the State in the territory of which the act was committed." Under this formulation, the trial of a United States national would be permitted in the State where the act of genocide occurred. Such a procedure would be consistent with the general rule of international law that aliens (in this case, U.S. nationals) are subject to the legal regime applicable to nationals of other States. The United States would remain free to pursue a diplomatic claim against the State where the U.S. national was tried if the tribunals of that State failed to comply with minimum standards of international justice. Finally, the United States would be permitted under the Genocide Convention to try its own nationals. As noted in a recent *Report* of the Senate Foreign Relations Committee:

"Executive branch and other testimony brought out that the negotiating history of the convention makes it clear that the courts of the country in which the accused has citizenship can likewise have jurisdiction over the crime. This theory of concurrent jurisdiction—jurisdiction based on the site of the alleged offense and jurisdiction based on the nationality of the offender—was thoroughly explored during the hearings [on the Genocide Convention]. It was pointed out that a number of nations, particularly colonial powers, have consistently asserted the right to try their own nationals for crimes committed outside their territory. Even the United States in certain limited areas—counterfeiting, theft of Government property, treason, antitrust violations—has exercised jurisdiction over its citizens for acts committed abroad." Senate Executive Rept. No. 93–5, 93rd Cong., 1st Sess. 10 (1973).

During the Third Session of the U.N. General Assembly, the Sixth (Legal) Committee adopted the following explanatory text concerning Article VI:

"The first part of Article VI contemplates the obligation of the State in whose territory acts of genocide have been committed. Thus, in particular, it does not affect the right of any State to bring to trial before its own tribunals any of its nationals for acts committed outside the State." Report of the Sixth Committee, U.N. Doc. A/760 (1948).

The second forum recognized by Article VI for the trial of offenders is an "international penal tribunal." The proposed United States reservation seems consistent with this provision because the acceptance of the international tribunal's authority applies only "to those Contracting Parties which shall have accepted its jurisdiction." A possible conflict between part (a) of the proposed reservation and Article VI might arise if the United States actually accepted the jurisdiction of the international tribunal, but consideration of this matter would appear to be speculative at the present time. As noted by the *Report* of the Senate Foreign Relations Committee, "[n]o such international penal tribunal has been established and the International Court of Justice has no penal or criminal jurisdiction. That part of Article VI is therefore a dead letter at this time. If a penal tribunal should be established—and there are no plans to do so—separate action either through ratification of a treaty or enactment of a law would be required for the United States to accept its jurisdiction." Senate Executive Rept. No. 93–5 *supra*, at 11.

* * * * *

Part (b) of the proposed reservation provides that:

"(b) the Secretary of State, in negotiating extradition treaties or conventions shall reserve for the United States the right to refuse extradition of a United States national to a foreign country for any offense defined in this treaty when the offense has been committed outside the United States and

"(1) where the United States is competent to prosecute before its own tribunals the person whose surrender is sought, and intends to exercise its jurisdiction; or

"(2) where the person whose surrender is sought has already been or is at the time of the request being prosecuted for such an offense; or

"(3) where the person whose surrender is sought would not be guaranteed all the basic rights of an accused under the United States Constitution."

This part seems consistent with the object and purpose of the Genocide Convention. Article VII of the Convention provides that "[g]enocide and the other acts enumerated in Article III shall not be considered as political crimes for the purpose of extradition." This part of the proposed reservation is consistent with Article VII because no attempt is made to limit the extradition of political criminals.

The reservation is merely intended to insure that *all* United States citizens who have allegedly committed genocide are guaranteed federal constitutional rights. The reservation also appears to be in harmony with that part of Article VII of the Convention which specifies that "[t]he Contracting Parties pledge themselves in such cases to grant extradition in accordance with their laws and treaties in force." One of the "laws . . . in force" for the United States is the Constitution and specifically, the Bill of Rights, which is applicable in domestic criminal proceedings. Thus, the proposed reservation seems to fulfill the express requirements of Article VII by providing, in effect, that the Secretary of State shall not grant extradition unless he has determined that the accused will receive Bill of Rights protections in the requesting State. In this regard, the Senate Foreign Relations Committee *Report* indicates that "extradition treaties are carefully worded to be as explicit as possible about the definition of the crimes covered and the procedure under which a citizen will be surrendered to another nation for trial. No general sweeping accusation would suffice." Senate Executive Rept. No. 93–5 *supra*, at 11.

In conclusion, it may be noted that this memorandum has been limited solely to the legal questions raised by the inquiry. Nothing contained herein should be construed as a commentary upon the wisdom or necessity of the proposed reservation.

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

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

The legislative clerk proceeded to call the roll.

Mr. McCLELLAN. 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. McCLELLAN. Mr. President, few, if any, actions that the Senate of the United States could take would be more ill-advised and ill-conceived than would be the ratification of the Convention on the Prevention and Punishment of the Crime of Genocide, which is now under consideration by this body, and especially is that true with respect to the convention as reported by the Committee on Foreign Relations.

This is not because the people of the United States favor genocide or because they oppose efforts to prevent genocide. Like other civilized nations, the American people are unalterably opposed to this hideous crime in any and all of its forms and consequences. We firmly believe that such acts are contrary to moral law and are abhorrent to everyone who has a decent regard for the lives and dignity of all human beings.

Nevertheless, Mr. President, the convention before us, as reported by the Committee on Foreign Relations, and now being debated—despite the noble and humane intentions of its authors and supporters—would open a Pandora's box of complexities and uncertainties which the articles of the convention do not resolve within the framework of our Constitution and in a fashion so as to provide adequate security and protection for the American people.

The proposed treaty commits a surrender of sovereignty over vital internal affairs of our country to other nations and international tribunals.

This convention could lead to the creation of an international court to conduct trials of American citizens and members of our Armed Forces charged with the vaguely worded and poorly defined crime of "genocide" without reserving to them the constitutional safeguards and legal rights accorded to Americans charged with domestic crimes.

To illustrate: American soldiers who killed or seriously wounded North Vietnamese soldiers or civilians, members of the Vietcong, or South Vietnamese civilians while obeying the legitimate orders of their superiors might have been, under the terms of this convention, punishable by courts sitting in North or South Vietnam.

American pilots who happened to have killed North Vietnamese soldiers and civilians in bombing raids on targets in North Vietnam might well have been subject to trial and punishment in the courts of our enemies. And this is especially true of those who were captured and became prisoners of war.

They could have been tried by tribunals which have no tradition of individual freedom according to our concept of freedom and which have no regard or respect for human rights as we believe in human rights.

Our troops in Vietnam could have been tried without the basic consitutional guarantees for which they risked their lives and for which many of them died.

They could and would have been tried without the presumption of innocence and without protection in such vital matters as double jeopardy, search and seizure, and self-incrimination, which are imposed and enforced under our legal system.

This convention is so broad and all-encompassing that it could be construed to authorize any party to call upon the United Nations to take such action against the United States under the U.N. Charter as it considers "appropriate for the prevention and suppression of actions of genocide."

The legislative history of this treaty is compelling evidence of the complexities and uncertainties which surround it and of the confusion and chaos it is certain to generate in both national and international jurisprudence.

Mr. President as further evidence of this and in confirmation of what I have just said, we have only to look at our desks to find the proposed reservation and amendments which will be submitted, I assume, by the authors of the amendments—Senators CHURCH, JAVITS, and PROXMIRE. It has taken 25 years of consideration by the Committee on Foreign Relations of the Senate of the United States to report this treaty.

Mr. President, even after it is reported we find an amendment proposed here to it in reservations that obviously the Committee on Foreign Relations did not consider, or if it did, it did not act on them because this does not appear to be a committee amendment. If after 25 years of consideration we now at this late hour find that an amendment and reservation such as this that will be presented without the approval of the Committee on Foreign Relations, without its endorsement, without the Committee on Foreign Relations having considered it as such, I think we can wonder about what this original convention may contain and what it would authorize if it ever became effective.

This convention was first submitted to the Senate by President Truman on June 16, 1949, nearly 25 years ago. Since then, or for nearly a quarter century, the Senate in its wisdom has declined to consent to the Genocide Convention.

I am firmly of the opinion that this body was correct in withholding its ratification all these years, and we should not now approve it. There has been no change of circumstances or alteration of fact which has made suddenly expedient, desirable, and appropriate in 1974 that which was inappropriate and unwise in 1949.

If anything, the passage of time has confirmed the misgivings of those of us who are convinced that ratification of the Genocide Convention would have been inappropriate and unwise at anytime.

A year ago, the people of the United States were proudly hailing the return of the American prisoners of war from captivity in North Vietnam. But let us not forget that these prisoners might never have returned to their loved ones had this convention been ratified by the Senate and been fully in effect during the Vietnam war.

As Eberhard P. Deutsch, speaking in behalf of the American Bar Association, warned the Senate Foreign Relations Committee on March 10, 1971:

> The authorities in Hanoi have charged that members of armed forces of the United States have been guilty of committing genocide in the "alleged massacres of civilians in a South Vietnamese village."
>
> If the United States were a party to the Genocide Convention, she would necessarily have agreed that these soldiers would be subject to trial in Vietnam under the provisions of Article VI, and, if the United States and Vietnam should have an extradition treaty, would be subject to extradition for trial in Vietnam, even if deemed (or even found) innocent in this country.
>
> Of course, no extradition would be necessary as to our American prisoners in North Vietnam. That country, it may be assumed, would cite the Genocide Convention, if we were a party to it, as our consent to trial of those prisoners on such charges in that country, with the Nuremberg trials as a precedent sanctioning such procedure.

Let us note that Hanoi did charge members of our Armed Forces with acts—the crime—of genocide. Can anyone doubt, therefore, what action Hanoi would have taken if this treaty had been in effect? There can be no doubt about it.

Mr. Deutsch pointed out that the Foreign Relations Committee in a favorable report submitted to the 91st Congress recommended that the United States, if it ratified the Convention, should state that it "understands and construes article VI as containing nothing that would affect the right of any State to bring to trial before its own tribunals any of its nationals for acts committed outside the State."

I submit, however, that this expressed understanding and construction provides no protection whatever to the most flagrant faults and dangers of this Convention. The same language is contained in the report now before us. But as Mr. Deutsch pointed out:

> Such an understanding would under no circumstances, deprive any other country of its concurrent jurisdiction over the trial of such individuals, especially since the understanding pointedly fails to negative the obligation of the United States, under Article VII, to grant extradition of its citizens for trial in other countries with which it has extradition treaties.

In the light of these facts, Mr. President, it is noteworthy that during his 8 years in office, President Eisenhower did not urge the ratification of the Genocide Convention. Undoubtedly, his vast experience as a military commander enabled him to see clearly the potential dangers posed by this well-intentioned, but tragically misguided, agreement to America's Armed Forces and their personnel.

If the Senate were to make the grievous mistake of giving its advice and consent to the convention, it would dismantle our Constitution and demolish the entire structure that we have built up over the years to prevent the subordination of American sovereignty to the International Court of Justice.

The Connally amendment, which is designed to prevent this Court from exercising jurisdiction over the domestic affairs of the United States without our consent, would be made inapplicable to any of the matters covered by the convention. And the Vandenberg reservation to the jurisdiction of the International Court of Justice would also be nullified. Surely, the U.S. Senate is unwilling to do that.

In summary, the intentions of the proponents of this convention are well-intentioned, but they are tragically mistaken as to its full implications and the risks and dangers that are inherent therein.

I am convinced, Mr. President, that the Senate of the United States should not be persuaded, by even the noblest of sentiments, to give its advice and consent to a convention embodying the evils contained in this one—a convention that would deny our constitutional rights to American troops stationed abroad.

The full import of the meaning and the effective application of the amendment at the desk is not immediate, clear, and understandable. Even if it is to be considered, it should be considered, first, by the appropriate committee of this body. But it is presented here not as a committee amendment. It is presented here to a proposed treaty or convention that has been before this body for 25 years.

It does appear, Mr. President, that if the provisions contained in the proposed reservation and amendments have real merit and would cure the evils that are in the original convention as it appears before this body at this time, then they should have study and appropriate consideration and recommendation of the Foreign Relations Committee. I doubt if it is wise, I doubt if it is safe, in a matter of this consequence and magnitude for the Senate to undertake to place its stamp of approval on amendments of this nature that obviously have not had appropriate consideration by the Foreign Relations Committee. Or, if those provisions did have appropriate consideration by the committee, then it suggests the question why, if they are good, did the committee not approve of them and recommend them?

So, Mr. President, this is no time for haste. This is a time for thorough, careful, examination and deliberation with this 11th hour proposed reservation and the amendments.

Mr. President, in my judgment it would be the height of irony—a consummate folly—for us, by this treaty, to vitiate and abrogate the very rights of free-

dom and national sovereignty that we send American boys to war to protect and defend.

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

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

RECESS SUBJECT TO THE CALL OF THE CHAIR

Mr. CHURCH. Mr. President, I move that the Senate stand in recess subject to the call of the Chair.

The motion was agreed to; and at 1:49 p.m., the Senate took a recess subject to the call of the Chair.

The Senate reassembled at 1:51 p.m., when called to order by the Presiding Officer (Mr. CLARK).

Mr. PROXMIRE. Mr. President, next week this body will have an opportunity to vote on the Genocide Treaty after more than 20 years, almost 25 years, that the treaty has been in the Senate. It has been in the Committee on Foreign Relations since 1950, and before the Senate for a number of months.

There has been a great deal of opposition to the Genocide Treaty, concentrated opposition, from people who are badly misinformed, and who feel that there is no future or possibility in cooperation with other countries or in working with the United Nations.

Mr. President, this is a treaty that has been supported by every President since President Truman. It is a treaty that has been supported as constitutional by every Attorney General since the Truman administration. It is a treaty that has been ratified by every major country in the world except the People's Republic of China and the United States. It is a treaty which would outlaw the most monstrous crime imaginable.

Mr. President, we all know that the most hideous genocide in our time perpetrated by Hitler and the Nazis in Europe in World War II, when 6 million Jews were gassed and cremated, a hideous tragedy. We know how intensely and deeply the Jewish groups feel about it, and properly so. But I think few of us recognize how widely felt the matter is by all religious groups. The testimony in the hearings makes it clear that the Baptists, Episcopalians and others, and the National Council of Churches have gone on record.

The other day I received a telegram from one of the most distinguished Catholic clergymen in the country, the Reverend Theodore M. Hesburgh, the president of Notre Dame University. I think what he has said in his brief telegram is something that should be called to the attention of the Senate, so I would like to take this moment to read it to the Senate.

He said:

DEAR SENATOR PROXMIRE: I write in support of the United Nations convention on the prevention and punishment of the crime of genocide.

As you know, the United States took a leading role in the drafting of this convention and joined in the unanimous vote of the United Nations General Assembly which adopted it in December 1948. Every administration, Republican and Democratic alike has urged the ratification of the convention since President Truman first submitted it to the Senate in 1949. Most regrettably, however, the Senate of the United States never has taken up the convention.

The United States should without delay join the 75 other nations who already are parties to the convention. The arguments against ratification which have been loudly raised in the past have been thoroughly discredited and refuted. It is long past time for the United States to put itself on record as officially opposed to the crime of mass murder that has so marred the history of this century.

I commend you for your strong support of this convention.

Rev. THEODORE M. HESBURGH, C.S.C.,
Notre Dame, Ind.

Mr. President, there has been objection to the treaty on technical grounds, on the ground that it is not constitutional, and on grounds that it would jeopardize American citizens. The constitutionality argument has been met very effectively, as I say, by the Attorney General of the United States and by other legal experts who have appeared before the Foreign Relations Committee, but I think what many of us do is lose sight, in some of these debates, of the fundamental moral justification for taking this kind of action. I am delighted to read that anyone who wishes to get a real understanding of the necessity for this action has only to turn on his television set tonight at 7:30. The Washington Post today reviews what is going to be shown tonight on television, and I would like to read from that. The article reads:

Some lessons are worth repeating, and none more so than the one about the Nazi death camps, where millions of human beings were systematically eradicated. Nazi symbols—the swastika and all the rest—have been tossed around in an offhand or derisive way in a variety of contexts over the past decade or so.

Now may be a more appropriate time than most for a reminder of their true historical significance. If you've got the stomach for it, the "Genocide" chapter of the "World at War" series will trace the whole unholy record on Channel 9 (WTOP-TV) tonight, starting at 7:30. It just happens that the U.N. Genocide Convention, endorsed by every American President since and including Truman, is finally reaching the Senate floor for a debate on ratification this week. The program may be a help in setting the emotion-laden issue into factual perspective.

Make no mistake, this is strong stuff, for television especially. The viewer will see as graphic and explicit a documentation of the Nazi extermination camps as any ever been assembled, including, for example, shots of the bulldozing of piles of ripped, emaciated corpses. Because of the nature of the materiel, Channel 9 is televising this segment of the series without any commercials at all.

The "Genocide" installment is as expertly produced as the rest of the "World at War" series, an import from England's Thames Television with narration by Laurence Olivier. A remarkable amount of history has been skillfully and effectively compressed into an hour of screen time.

The segment makes use of captured German film and stills, newsreel footage and the live testimony of both survivors and participants, including SS officers who were eyewitnesses to some of the carnage. The Nazi campaigns against Jews, dissenters and other "undesirables" is developed against the background of the encompassing warfare and official Third Reich "justification" for its deeds.

If men are to know themselves, somewhere along the line they must confront the fact that the species which gave rise to a Mozart and a Martin Luther King Jr. also produced Hitler, Eichmann and the "final solution."

That's the reason for a program such as "Genocide," and it's more than reason enough.

Mr. President, I do hope that when Senators vote on this treaty, they will recognize our obligation to those who have died, and our obligation to do our best to set not only a moral example to the world, but to provide a legal framework so that this crime can be punished.

The Church reservation, which Senator CHURCH will offer later, meets the only argument that seems at all telling on the part of the opposition, and that is the argument that some other country might use the Genocide Convention as a basis for persecuting and punishing an American citizen. The fact is, of course, that a country can do that now if it wishes to do so, but we are in a much stronger position to defend that American citizen if we ratify the convention, especially with the Church reservation, which provides that we will not permit an American citizen to be extradited for that purpose unless the President is assured that in any trial all the rights and protections that are provided in our own courts would be provided. Obviously, a citizen who is seized in a foreign country can be tried by any kind of trumped-up charge now. There is a constituent of mine, a young lady from Grant County, Wis., who was seized in Turkey and was tried on a drug charge and sentenced to death. Fortunately, the State Department has intervened and persuaded the Turkish officials to commute that to life imprisonment and we are working hard trying to secure the young lady's release because we are convinced the trial was not fair.

But there is ample basis for any country which wants to persecute an American citizen, or any other citizen who happens to be within its borders, and there is no way—but no way—that this treaty, especially with the Church reservation applied, could be used to aggravate that situation. On the contrary, it enables us to provide protection for the American citizen.

Thus, I hope that Senators who are being swamped with mail—and I have received literally hundreds and hundreds of letters on this issue from those opposed to the Genocide Convention, from both John Birch Society members and other—will recognize the moral issue involved and the necessity for this country, at long last, to ratify the treaty.

RECESS SUBJECT TO THE CALL OF THE CHAIR

Mr. PROXMIRE. Mr. President, I have discussed with the Senator from Idaho (Mr. CHURCH) the situation on the floor. It is my understanding, under the cir-

cumstances, that he would like for the Senate to be restored to its position before I spoke. So I move that the Senate stand in recess, subject to the call of the Chair.

The motion was agreed to; and, at 2:02 p.m., the Senate took a recess, subject to the call of the Chair.

The Senate reassembled at 2:50 p.m., when called to order by the Presiding Officer (Mr. DOMENICI).

QUORUM CALL

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

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

CLOTURE MOTION

Mr. CHURCH. Mr. President, I send to the desk a cloture motion, and ask that it be read.

The PRESIDING OFFICER (Mr. DOMENICI). The cloture motion having been presented under rule XXII, the Chair, without objection, directs the clerk to read the motion.

The second assistant legislative clerk read the cloture motion, as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate upon the pending resolution of ratification to the International Convention on the Prevention and Punishment of the Crime of Genocide (Executive O. 81-1).

Mike Mansfield, Frank Church, Jacob K. Javits, Alan Cranston, Edward W. Brooke, Abraham Ribicoff, John V. Tunney, William Proxmire, Charles H. Percy, James B. Pearson, Richard S. Schweiker, Hugh Scott, Lowell P. Weicker, Jr., Gale W. McGee, Bob Packwood, Robert P. Griffin.

ADJOURNMENT UNTIL MONDAY

Mr. CHURCH. Mr. President, in accordance with the previous order, I move that the Senate stand in adjournment until Monday next.

The motion was agreed to; and at 2:53 p.m., the Senate, in executive session, adjourned until 12 o'clock noon on Monday, February 4, 1974.

NOMINATIONS

Executive nominations received by the Senate, February 1, 1974:

DEPARTMENT OF STATE

Donald B. Easum, of Virginia, a Foreign Service Officer of class 1, to be an Assistant Secretary of State.

DEPARTMENT OF JUSTICE

Robert E. Johnson, of Arkansas, to be U.S. attorney for the western district of Arkansas for the term of 4 years vice Bethel B. Larey, resigned.

Robert D. Olson, Sr., of Alaska, to be U.S. marshal for the district of Alaska for the term of 4 years (reappointment).

SECURITIES INVESTOR PROTECTION CORPORATION

Jerome W. Van Gorkom, of Illinois, to be a Director of the Securities Investor Protection Corporation for a term expiring December 31, 1975, vice George J. Stigler, term expired.

CONFIRMATIONS

Executive nominations confirmed by the Senate February 1, 1974:

IN THE COAST GUARD

Coast Guard nominations beginning Herbert A. Johnson, to be captain, and ending James L. Howard, to be captain, which nominations were received by the Senate and appeared in the Congressional Record on January 23, 1974.

Coast Guard nominations beginning Walter J. Hall, to be captain, and ending Victor J. Zoschak, Jr., to be ensign, which nominations were received by the Senate and appeared in the Congressional Record on January 28, 1974.

EXTENSIONS OF REMARKS

MIDDLE EAST, NORTH AFRICA ABOUND IN CRUDE OIL

HON. HENRY HELSTOSKI

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, January 31, 1974

Mr. HELSTOSKI. Mr. Speaker, the very distinguished Dr. Nasrollah Fatemi evaluated the oil situation in an article which appeared on January 14 in the Morning News.

Dr. Fatemi, one of the Nation's leading authorities on the Middle East, was born in Iran in 1917. He came to the United States in 1946, and served in varying capacities as a diplomat at the United Nations. He received his M.A. and Ph. D. degrees from Columbia University and the New School of Social Research, respectively. In 1960, Dr. Fatemi became a naturalized U.S. citizen.

He is an outstanding scholar who has written many books and articles, and at the present time he serves as the Director of the Graduate Institute of International Studies at Fairleigh Dickinson University in New Jersey. Professor Fatemi's reputation and popularity can be gaged by the fact that he always has more students applying to his Graduate Institute than there is space to accommodate them.

The article written by Dr. Fatemi, which I would like to call to the attention of my colleagues, discusses in a quick, lucid, and cogent fashion the outlook on the world oil situation, and suggestions on how we can solve some of the problems with which we are faced.

The article follows:

MIDDLE EAST, NORTH AFRICA ABOUND IN CRUDE OIL

(By Dr. Nasrollah Fatemi)

(EDITOR'S NOTE: Dr. Nasrollah Fatemi is the director of the Institute of International Studies at Fairleigh Dickinson University and distinguished professor of international affairs. He is one of the nation's leading authorities on the Middle East and is listed in "The International Who's Who," and "International Notables." He is the author of several books, among them: Oil Diplomacy, The Dollar Crisis, and The Contemporary Middle East.)

In current estimates the Middle East and North Africa contain about 419,000 million barrels of crude oil, around 65 per cent of the world's proven reserves of 627,000 million barrels. These figures compare with 42,000 million barrels or 6 per cent in the U.S.A. and Alaska; 91,000 million barrels or 15 per cent in the U.S.S.R.; 2,800 million barrels so far discovered in the North Sea; 5 per cent in Africa; 2 per cent in Canada; 2 per cent in Indonesia; 2 per cent in Venezuela, and 3 per cent in Mexico, the Caribbean and other South American countries.

The bulk of the combined Middle Eastern and North African reserves is found around the Persian Gulf and six states—Saudi Arabia, Iran, Kuwait, Iraq, Abu Dhabi and Qatar—possess over half of the known oil reserve of the world. Up until three months ago, the greatest part of the enormous wealth of the black gold was divided among Standard Oil of New Jersey, Shell, Texaco, Standard of California, Mobil, Gulf, British Petroleum and Compagnie Francaise des Petroles.

Of the producing states the best placed is Saudi Arabia with 23 per cent of the world's total and the world's largest oil fields—Al Mazalij, discovered in 1971; Alghawar onshore and Safaniya offshore.

Kuwait, where no official estimates of reserves have been made, is second and Iran is considered third in reserves.

North Africa with 49,000 million barrels has proved less prolific. Occidental, Marathon, Amerada, and Continental Oil Companies have been responsible for the development of Libya.

In general production costs, up to the end of 1972, both in the Middle East and North Africa were extremely low varying around the Gulf from 6 cents a barrel in Kuwait to 33 cents offshore Dhabi. This compared very well with the United States where costs average $3.50 a barrel, investment per barrel a day of production capacity in the Middle East is very low—averaging out about $100 onshore in the Gulf areas, as against $600 in Nigeria, $2,500 in the North Sea and $4,500 in the United States.

The United States heads the list with 12 million barrels; Soviet Union, 9 million barrels; Saudi Arabia—until October—8.3 million barrels; Iran, 6.3 million barrels; Kuwait, 3.5 million; Venezuela, 3.4 million; Libya, 2.3 million; Iraq, 2.2 million; Nigeria, 2.2 million; Abu Dhabi, 1.4 million; Indonesia, 1.5 million; Algeria, 1.2 million; Qatar, 600,000 barrels a day.

The total investment of the American oil companies in the petroleum industry in the Middle East and North Africa at the end of 1970 was $1,466 million, and $1,916 million respectively. At the same time their income for the same year was $1,194 million and $544 million respectively.

In 1972, the Middle Eastern governments' share of oil per barrel was $1.50. As a result of two devaluations of the dollar and the high rate of inflation in Europe, Japan, and the United States, the share of the governments per barrel has been increased to $3.00. This new arrangement will produce an income of close to $12 billion in 1974.

Up until the end of 1972, the United States used very little of the oil of the Middle East. As a matter of fact, because of the pressure of the independent oil companies, the Johnson and the Nixon Administrations imposed a quota system and tariffs on petroleum imported into the United States, At no time