ARLINGTON, VA.,
January 23, 1974.

LETTER TO THE EDITOR,
Washington Post,
Washington, D.C.

DEAR SIR: Since "Arlington Inventor Dreams of Harnessing Magnetism" was printed in the Panorama section of the Jan. 10, 1974 Washington Post I have received over 200 calls and letters. A very penetrating question was asked—"How could such a simple device have been overlooked for so long?"

My answer—we teach kids like magnetic poles repel and unlike poles attract but we DO NOT teach magnets repel much further than they attract. It is this difference in speed and distance of repulsion compared to attraction that the 25-cent device harnesses as useful energy.

If kids had been taught this basic fact in beginning science then when they got in high school and college and studied momentum and energy many of them would have arrived at this same simple solution decades ago.

I hope anyone concerned with the teaching of science will begin to teach this simple basic fact and get it incorporated in textbooks. Get two like magnets, hold like poles tightly together and release one magnet. You can measure the difference in distance for yourself.

Sincerely,

JOHN W. ECKLIN.

ARLINGTON INVENTOR DREAMS OF HARNESSING MAGNETISM

(By Thomas Grubisich)

Diet Smith has competition. He is John Ecklin, an Arlington computer technician who, like Dick Tracy's industrialist-inventor, thinks magnetism is an overlooked but potentially rich and clean source of energy.

Unlike Diet Smith, who speeds around in a space coupe and does other wonderful things with magnetic power, Ecklin isn't having too much success putting his ideas to work.

Engineers and scientists tell him he's trying, impossibly, to rewrite the first law of thermodynamics. They say it's impossible to get energy from a machine without putting an equal amount of energy into it. All perpetual motion machines failed because of this immutable law, they say, and so will a machine trying to tap magnetism instead of gravity.

Ecklin's answer to his critics is a handmade demonstration project that he claims shows how magnetic force can be converted into energy. The project consists of two dime-size magnets, a steel ball bearing, a piece of tin can sandwiched between two pieces of cardboard and two strips of Scotch tape holding his magnets to a piece of cardboard. Total cost: less than 25 cents.

When the cardboard-enclosed piece of tin can (actually a piece of steel) is placed between the ball bearing and one magnet, the bearing is attracted to the other magnet. When the shield is placed between that magnet and the bearing, the bearing is attracted to the other magnet.

Ecklin says the back and forth motion of the bearing can be captured and converted into usable energy. Three pairs of 15-pound magnets with proportionately-sized ball bearings, he claims, could power a car. Smaller ones could be used to provide household electrical power, he says, and larger ones could be used for industrial purposes.

When asked how he reconciles his device with the first law of thermodynamics, Ecklin points to his little piece of tin can wrapped in cardboard. "This shield," he says, "solves the problem."

The shield, Ecklin explains, interrupts one magnetic field so the ball bearing can be attracted to another field. But where will the energy come from to move shields through the magnetic fields? Won't that energy requirement cancel out the energy gained from the movement of the bearing?

No, says Ecklin. He explains: The shield moves at a right angle through the magnetic field. Moving laterally, it requires only a fraction of the force it would need if moved in a parallel motion.

Ecklin says this fractional energy need could be supplied by the energy extracted from the movement of the bearing.

In a larger, more sophisticated assembly, Ecklin would mount his shields on a shaft that would be turned by power supplied by the reciprocating bearing. Furthermore the bearing, when it was attracted to one magnetic field, would compress a powerful spring that would push it toward the other magnetic field. But right now Ecklin would like to see thousands of people construct their own 25-cent demonstration project, then, having convinced themselves it works, write their congressmen about the untapped power of magnetism.

Ecklin's 10-year-old son built a model and mailed it to President Nixon. Rep. Joel T. Broyhill (R.-Va.) has inserted Ecklin's explanation of his scheme (with sketches) in the Congressional Record, with this comment: ". . . I believe Mr. Ecklin's theory will be of interest to many who are now engaged in attempts to solve the problem of power shortages."

So far, Ecklin has been greeted by more skepticism than enthusiasm. "The universities won't talk to me," he says. "A professor of physics would throw my idea into the wastebasket. He'd say it isn't in the books. But you know, according to the laws of aerodynamics, the bumblebee isn't supposed to be able to fly, but he does.

Ecklin doesn't have the money, or the mechanical expertise, to build a model that would work entirely under its own power. He says the Environmental Protection Agency told him it wasn't interested in such experiments because "we are trying to improve on known technology." Inquiries to foundations and other sources failed.

Ecklin is an amateur expert on magnetism. He learned his first facts about the subject from a book he bought for his boy, called "The How and Why Wonder Book of Magnets and Magnetism."

Magnetic power, he says, would not only be clean, it would be inexhaustible. If a magnet becomes weak, it can be repowered by another magnet.

If magnetism is harnessed, Ecklin says, the implications would go far beyond the energy crisis. "It would put unlimited power in the hands of individuals. They wouldn't be dependent on the energy companies. That would mean they couldn't be controlled."

Diet Smith's creator, Chester Gould, has often used his Dick Tracy comic strip to illustrate the potential power of magnetism. One of his ideas is "atomically energized magnets that amplify the pull of gravity a billion times, if need be, to climb in space, or to brake speed by reversing the poles of the magnets."

Gould, who conceived the two-way wrist radio and other scientific and electronic marvels that proved feasible, concluded: "I have great faith in our ability to harness magnetism."

SENATE—*Monday, February 4, 1974*

The Senate met in executive session at 12 o'clock noon and was called to order by Hon. J. BENNETT JOHNSTON, JR., a Senator from the State of Louisiana.

PRAYER

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

Eternal Father, as our fathers created a nation under Thy guidance and we have pledged to keep it "one nation under God," so wilt Thou continue to rule over us. Deliver us from moral paralysis and from spiritual impotence. Renew us in our understanding of and commitment to divine law and encompass us with Thy love and grace.

Our Father, be graciously near to the President. Open his heart and his mind to wise counselors. Give him sound judgment, clear direction, and courage to act for the welfare of the whole Nation. To all leaders in government, impart Thy higher wisdom and the grace of compassion, conciliation, and cooperation. Let Thy spirit so indwell all the people of this land that through these difficult days our common life may be shaped according to the pattern of Thy kingdom.

For Thine is the kingdom and the power and the glory forever. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., February 4, 1974.

To the Senate:

Being temporarily absent from the Senate on official duties, I appoint Hon. J. BENNETT JOHNSTON, JR., a Senator from the State of Louisiana to perform the duties of the Chair during my absence.

JAMES O. EASTLAND,
President pro tempore.

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

MESSAGE FROM THE PRESIDENT

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

THE BUDGET FOR FISCAL YEAR 1975—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The ACTING PRESIDENT pro tempore (Mr. JOHNSTON) laid before the Senate the following message from the President of the United States, which, with its accompanying report, was referred to the Committee on Appropriations. The message is as follows:

To the Congress of the United States:

The Federal budget must be both a consistent statement of our national objectives and a responsible plan for

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

achieving them. The budget that I propose for fiscal year 1975 meets these standards. It places special emphasis on:

—the proper fiscal balance to keep the economy on the track to sustain high employment and more stable prices;

—a strong defense force in support of our efforts to build an enduring structure of peace in the world;

—a comprehensive energy program to deal with current shortages and to reestablish our ability to be self-sufficient in energy;

—the New Federalism philosophy of strengthening the role of State and local governments, and of the individual citizen;

—basic reforms of major domestic programs; and

—efficient management of the Federal Government in the years ahead, through a more intensive focus on the tangible results that programs achieve

In the face of economic uncertainty, my budget recommendations provide for a fiscal policy that would support high employment while restraining inflation. It would maintain the flexibility to take further action, if needed, to offset the effects of energy shortages. My budget recommendations hold the rise of Federal spending to the minimum increases necessary.

The budget recommends total outlays of $304.4 billion in 1975, $29.8 billion more than in 1974, and anticipates receipts of $295 billion, a $25 billion increase over 1974. About 90% of the increase in outlays between 1974 and 1975 represents mandatory spending increases that are unavoidable under current law.

THE BUDGET AT A GLANCE

[In billions of dollars]

Item	1973 actual	1974 estimate	1975 estimate
Receipts	232.2	270.0	295.0
Outlays	246.5	274.7	304.4
Deficit (−)	−14.3	−4.7	−9.4

Under conditions of full employment—conventionally defined as a 4% unemployment rate—Federal receipts would be substantially higher and outlays somewhat lower than these figures. Thus, on a *full employment basis* the budget shows a surplus of $4 billion in 1974 increasing to $8 billion in 1975.

The budget proposes increases for defense activities so that we can increase our defense preparedness and preserve present force levels in the face of rising costs. These proposals reflect minimum prudent levels of defense spending consistent with maintaining adequate armed forces to assure our national security.

The budget includes my program, Project Independence, to reestablish our capability for self-sufficiency in energy. I plan Federal funding of $10 million for the accelerated energy research and development component of this program over the next 5 years. Other measures already underway or proposed will help reduce low-priority energy use and minimize economic dislocations due to shortages. Our vigorous diplomatic efforts to restore an acceptable pattern of world trade in petroleum will complement these measures.

The budget carries forward the New Federalism philosophy. This philosophy stresses the need to recognize the different roles appropriate to each level of government, and to the private sector—thereby strengthening individual choice and self-reliance in America. The New Federalism calls for Federal support in meeting national problems and holds that State and local authorities are best able to make decisions on local and statewide needs in accordance with local conditions and community aspirations. Federal aid in the areas of law enforcement, manpower, and rural development incorporate the principles of the New Federalism. I now propose to apply this philosophy in major reforms of Federal assistance for health, education, community development, and transportation.

Our welfare system is inefficient and inequitable. I urge the Congress to work with my Administration in developing a new system that is simple, fair, and compassionate.

I am once again proposing a comprehensive plan for national health insurance that would make adequate insurance against the costs of health care available to *all* Americans. This far-reaching reform is long overdue. I urge early congressional action on it. The budget proposes measures to prepare for this program.

Federal taxes impose a large burden on the Nation. Each Federal program, therefore, must be managed as efficiently as possible, and each must be subject to continuous scrutiny as to how well it meets today's highest priority needs. This budget supports the major management initiatives I have undertaken to ensure that Federal programs produce results that truly satisfy the needs of the American people—and do so at the lowest possible cost to the taxpayer.

The end of American combat involvement in the Vietnam war and the reduction of cold war tensions in recent years have contributed to a significant shift in the composition of the Federal budget. Defense outlays remained virtually constant from 1968 to 1974, despite substantial cost increases and the pay raises which have accompanied the transition to an all-volunteer armed force. These added costs were offset by large savings resulting from reductions in men and materiel. Defense costs have been a decreasing share of our national budget, falling from 44% of Federal spending in 1969 to an estimated 29% in 1975.

Conversely, Federal nondefense spending has increased from 56% of Federal spending in 1969 to 71% in this budget. In the process, the form that Federal spending takes has shifted dramatically away from support for direct Federal operations and toward benefit payments to individuals and grants to State and local governments.

When I took office as President in 1969, defense outlays were nearly one-fifth more than combined outlays for aid to individuals under human resource programs and for aid to State and local governments. While our defenses are being maintained and strengthened, this budget proposes spending nearly *twice* as much money for aid to individuals and to State and local governments as for defense. This dramatic shift in Federal spending both reflects and supports the New Federalism.

THE BUDGET AND THE ECONOMY

During the past year, our economy operated at close to full capacity. In fact, the Nation's capacity for producing basic materials was used at a higher rate than in any previous year since World War II. New jobs were created for about 2¾ million people. Unemployment fell from a 5.4% average rate in the second half of calendar year 1972 to a 4.7% rate in the second half of 1973. At the same time, adverse weather and other conditions cut into the world's food supplies, including ours, while the policies of exporting countries cut supplies of oil and raised its price sharply.

These developments created a severe inflation during calendar year 1973, particularly in prices of food and energy. Our budget policy has been a key element in the effort to control that inflation. Strict limitation of expenditures in 1973 applied fiscal restraint to an economy that was expanding at an unsustainable rate. The budget totals recommended here continue a policy of fiscal responsibility as part of a continuing anti-inflation program.

THE BUDGET TOTALS

[Fiscal years. In billions]

Description	1972 actual	1973 actual	1974 estimate	1975 estimate
Budget receipts		232.2	270.0	295.0
Budget outlays		246.5	274.7	304.4
Deficit (−)		−14.3	−4.7	−9.4
Budget authority		276.7	310.9	322.1
Outstanding debt, end of year:				
Gross Federal debt	437.3	468.4	486.4	508.0
Debt held by the public	323.8	343.0	346.5	359.0
Outstanding Federal and federally assisted credit, end of year:				
Direct loans	50.1	43.9	45.9	48.2
Guaranteed and insured loans[1]	133.7	147.7	159.7	170.7
Government-sponsored agency loans[2]	48.9	67.2	83.3	86.8

[1] Excludes loans held by Government accounts and special credit agencies.

[2] See table E-7 in Special Analysis E, Federal Credit Programs, published in a separate volume.

There is now evidence that the economy is slowing down. In part this is due to the energy shortage, which limits our ability to produce some products and reduces demand for others. Our energy-use policies are designed to minimize the adverse impact of the energy shortage on the economy, but some effect is inescapable.

Some slowdown in the growth of demand is appropriate to help check inflation. This is especially true in view of supply limitations. But this slowdown

should not be permitted to go too far. Therefore, I propose a budget which will continue a posture of moderate restraint rather than greatly intensifying that restraint. Also, my Administration is developing and will be prepared to use a range of measures to support the economy if that should be necessary—measures tailored to the special conditions of the energy shortage. Along these lines, the Congress should enact the proposals I made last year to improve our regular unemployment insurance system by establishing higher minimum benefit standards and extending coverage to farmworkers.

Under conditions of full employment the budget outlays I propose would be less than the receipts from present and proposed taxes by about $4 billion in 1974 and $8 billion in 1975. A 4% rate of unemployment is used as a measure of full employment in calculating these surpluses. These surpluses, following a small full-employment deficit in 1973, and rising somewhat from 1974 to 1975, are consistent with our objective of moderate restraint.

In large part, the estimated increase in the full-employment surplus is the result of the high inflation rate experienced in calendar year 1973 and expected to continue for the first half of 1974. In the short run, inflation increases receipts more than it increases outlays. Thus, it increases for a time the surplus that would be achieved at high employment. This means that the budget has the effect of restraining inflation. The rising full-employment surpluses estimated here are largely the product of an inflation that is proceeding too rapidly. To use the size of these surpluses as an invitation or an excuse for more spending would only make the inflation rate worse.

THE FULL EMPLOYMENT BUDGET

[Fiscal years. In billions]

Description	1973 actual	1974 estimate	1975 estimate	1976 projection
Full-employment receipts	243	278	311	339
Full-employment outlays [1]	245	274	303	329
Full-employment surplus or deficit (—)	—2	4	8	10

[1] In these estimates, outlays for unemployment insurance benefits and the Emergency Employment Act program are calculated as they would be at an unemployment rate of only 4 percent.

A 4% unemployment rate is used in calculating full-employment receipts and outlays as a conventional standard which approximately removes the effects on the budget estimates of year-to-year changes in the level of economic activity. To serve this purpose the unemployment rate used for the calculations must be reasonably stable from year to year. However, this does not mean that the feasible and proper target for unemployment is always represented by the same figure. In fact, as a result of changes in the composition of the labor force, a 4% overall unemployment rate today would mean much tighter conditions in labor markets than would have been true ten or twenty years ago.

The estimate of receipts in this budget include the windfall profits tax on oil producers which I have proposed. This tax would recapture the excess profits that these producers would otherwise realize due to rising oil prices.

I continue to urge action on the tax reform and simplification proposals that were discussed with Congress last year. These proposals would not appreciably affect the *overall* tax burden on the economy; they would simply distribute it more equitably.

Our ability to carry out sound fiscal policy and to provide the resources needed to meet emerging problems is limited by decisions made in the past. The portion of the budget subject to discretionary control has shrunk in recent years primarily because of the relative decline in controllable defense spending, the growth in mandatory grants to State and local governments, and the growth in human resource programs (which largely take the form of benefit payments, set by law, to individuals and families). In 1975, over $223 billion in outlays, or nearly three-quarters of the budget, will be *virtually uncontrollable* in the short run due to existing law and prior-year commitments. This represents a substantial decline in the controllability of the budget since 1967, when only 59% of outlays were uncontrollable.

Just as each budget is heavily influenced by commitments embodied in those that have preceded it, so each, in turn, strongly influences those that follow. Therefore, the future impact of current decisions must be taken into account by projecting future available resources and the known claims against these resources. This is why the 1975 budget presents detailed projections of its 1976 spending implications; this is also the reason that all five budgets submitted by my Administration have contained 5-year projections of full employment outlays and receipts.

The costs of existing programs and of the new programs I have proposed will rise over time in response to growth in the number of eligible beneficiaries for programs such as social security and other entitlement programs, and in response to price increases. The rise in outlays for existing and currently proposed programs, however, will be less rapid than the rise in tax receipts. Thus, by 1979, receipts are projected to reach about $428 billion on a full-employment basis, while outlays for existing and proposed programs will be $391 billion. This leaves a budget margin—a margin which can be used for tax reduction, new initiatives, or retirement of public debt—of about $37 billion for 1979. This compares with a margin of $10 billion projected for 1976. The 1979 margin is a relatively small one—less than 9% of the projected 1979 receipts—to cover the exigencies of the next 5 years. But it is indicative of longer-term fiscal health if proper fiscal discipline is exercised.

TOWARD A LASTING WORLD PEACE

The overriding goal of American foreign policy is to build a lasting world peace, a peace resting on the solid foundation of mutual respect among all nations.

We have made great progress toward this objective during the past few years. During this Administration we have:

—ended American combat involvement in the war in Vietnam;
—ended the draft;
—established more cooperative relations with the Soviet Union;
—developed promising new relationships with the People's Republic of China;
—concluded an initial strategic arms limitation treaty with the Soviet Union; and
—provided diplomatic leadership toward a Middle East peace settlement.

Building sound foundations for a durable peace requires patient and skillful diplomacy. To be effective, statesmanship must be backed by credible military strength. The 1975 budget provides for the defense forces essential to protect our national security and to maintain the credibility and effectiveness of our diplomatic efforts to preserve world peace.

Increases in spending for military functions are necessary for both 1974 and 1975. Outlays of $85.8 billion are proposed for 1975, compared to $79.5 billion for 1974. These figures include the outlay impacts of proposed supplemental appropriations. These increases are required to improve the readiness of our armed forces, to build up levels of essential equipment and supplies, and to meet today's higher costs of maintaining force levels. They would also provide for a vigorous research and development effort that would enable us to produce new weapon systems if they are needed to maintain the strategic balance.

Because of the urgency I attach to a strong defense effort, I am recommending supplemental appropriations for 1974. An increase of $2.8 billion in budget authority is proposed to improve combat readiness and modernize forces, to augment munitions stock levels in accordance with lessons learned in the Middle East war, and to meet higher fuel costs.

The increases proposed for defense should be viewed in the context of the substantial—but prudent—reduction in our defense forces that has taken place since I took office. This reduction has resulted primarily from our success in bringing about a general easing of world tensions, in achieving mutual arms limitations, and in improving weapons systems and military efficiency. We have 36% fewer men under arms today than we had in 1968. In constant dollar terms, we will spend substantially less for defense in 1975 than we did in 1964, before the Vietnam buildup began.

The dollar costs of defense manpower are much higher with an all-volunteer armed force than they were under the draft. The Nation is now paying the full real costs of its defense in dollar terms; we no longer "tax" the young by commanding their services at less than their market value. I hope that we will never again need a draft.

Strengthening international economic cooperation is essential to our quest for peace. Expansion of peaceful trade relationships helps bind together the peoples of the world. We have already made considerable progress toward international monetary reform, progress which has helped bring about dramatic improvement in our balance of payments. The Trade Reform Act, now before the Congress, would authorize U.S. participation in a new round of international discussions to reduce trade barriers. Failure to enact this measure in a responsible form could result in a wave of trade protectionism that would undermine the economic well-being of all nations. I urge the Congress to approve it.

This budget provides for the continuation of our foreign assistance programs to strengthen the economies of developing nations, to provide humanitarian assistance and disaster relief, and to help friendly nations provide for their own defense.

MEETING THE NATION'S NEEDS FOR ENERGY AND BASIC RESOURCES

Until recent years, this country was largely self-sufficient in energy production. The rapidly growing demands of our households and industries for more energy, however, have now outstripped available low-cost domestic supplies. During the past few years we have become dangerously dependent on imported petroleum, which until recently was low in price. Development of relatively high-cost domestic sources has lagged.

Three years ago, in the first energy message delivered to the Congress by any President, I warned that the long era of abundant low-cost supplies of energy was drawing to a close, I proposed an expanded program to produce greater supplies of clean energy. Last April, in my second energy message, I warned that if existing trends continued unchecked, the Nation would face a serious energy problem; I proposed legislative action to meet this challenge. Since then, I have repeated my previous warnings and proposed urgent measures to restore our capability for energy self-sufficiency. The interruption of oil exports by Arab countries following the Middle East war last October has aggravated the energy problem and underscored sharply the need for this country to regain its ability to be self-sufficient in energy. I have taken all responsible actions I can within my existing authority to meet this challenge.

The 1975 budget reflects a comprehensive national energy policy to deal with current shortages and provides funds to initiate the Federal portion of Project Independence, an accelerated private and governmental effort to reestablish our capability for self-sufficiency in energy by 1980. I anticipate that the research and development component of this program will require about $10 billion in Government funds during its first 5 years; greater amounts may be needed thereafter. These funds will complement an even larger research and development investment in the private sector, which I will continue to encourage.

Higher prices will be necessary to stimulate development of adequate supplies of fuel through the mechanism of the free market. To assure that this will not result in excess profits for oil producers, I have proposed an emergency windfall profits tax on these producers.

Other elements of my comprehensive national energy policy include:

—reorganization of Federal administrative machinery to deal more effectively with short- and long-term energy needs;

—stringent energy conservation measures and mandatory allocation of petroleum products as long as shortages persist;

—mandatory reporting of oil production, inventories, reserves, and costs;

—modernization of regulations for railroads in order to permit energy savings and other economies;

—policies to accelerate development of domestic oil and gas reserves, including removal of ceilings on wellhead prices for new natural gas, production from the Elk Hills, Calif., Naval Petroleum Reserve, and development by private industry of western oil shale and of off-shore oil and gas deposits;

—measures to permit increased use of our vast coal reserves, including environmental safeguards for surface mining, conversion of oil-fired electric powerplants to coal, improvement of mining techniques, and accelerated efforts to develop technology for coal gasification, coal liquefaction, advanced combustion systems, and pollution control;

—development of fast breeder nuclear reactors, which will greatly increase the amount of energy recoverable from our nuclear fuel resources;

—more timely approval of sites for energy facilities and accelerated construction of nuclear powerplants; and

—increased research on advanced energy sources, including fusion power, and geothermal and solar energy.

The budget provides for $1.5 billion in outlays for direct energy research and development programs in 1975, compared to $942 million in 1974. An additional $128 million in outlays is provided in 1975 for complementary basic research and for environmental and health effects research. I will submit additional details on this accelerated effort to the Congress shortly.

The Federal Government alone cannot overcome the energy crisis. Project Independence will require a maximum effort by private industry as well. The measures proposed in this budget provide the essential governmental leadership to get this joint public and private program underway. In addition, every American household and every American business must economize on energy usage if we are to share temporary shortages equitably, as we must, and reestablish our energy independence in the long run.

The energy crisis has brought to the fore the need for a realistic balancing of the demands of economic growth and the demands of environmental protection. Shortages of "clean" fuels will mean that some temporary variances from air quality plans will be necessary to meet high priority energy needs. The progress we have made in pollution control in recent years, however, along with reductions in energy consumption, should insure that overall air quality will continue to improve.

The adverse impact of energy shortages on the economy could be aggravated by shortages of other raw materials. A comprehensive study on supplies of metal ores and other basic resources and our needs for them is now underway. This study will help insure that our policies properly anticipate potential problems.

We must also do everything we can to avoid a shortage of agricultural commodities such as we experienced last year. For many years this country enjoyed abundant agricultural production. This abundance not only met domestic needs, but aided greatly in alleviating hunger and malnutrition abroad. In 1972, however, adverse conditions throughout much of the world created widespread agricultural shortages. Food costs began to spiral, both here and abroad.

My Administration made a number of important program changes in 1973 to bring more farm land into production and to increase farm output. These steps, combined with favorable weather conditions, made 1973 a record crop year; farm income reached an all-time high level. Agricultural income now depends more upon the private market, and less upon the Government, than has been the case for over 3 decades. In 1973, direct Government payments to farmers experienced their largest dollar decline in history.

HELPING PEOPLE THROUGH STATE AND LOCAL GOVERNMENTS

Ours is a *federal* system of government. Our Constitution, now nearly two centuries old, provides for a logical division of responsibilities among:

—a strong national government, concerned with essential national needs;

—State and local governments close to, and responsive to, the needs of individuals and local communities; and

—private citizens endowed with civil liberties that are secure from governmental encroachment.

During the first century and a half of our national experience, State and local governments were able to meet community and State needs from their own revenue sources. They were financially independent of the Federal Government. During the past 40 years, however, the needs of State and local governments have outstripped their resources. The Federal Government has therefore come to play a larger and larger role in financing their day-to-day operations. In the 4 years between 1969 and 1973, Federal grants to States and localities doubled. In 1973 this financial aid, disbursed through literally hundreds of separate programs, provided more than 20% of total State and local revenues.

Unfortunately, these Federal programs have all too often been accompanied by

regulations and restrictions which have stifled innovation and initiative on the part of State and local officials, severely limiting the ability of those officials most familiar with problems at the local level to respond to local needs.

In response to this problem I have applied a philosophy of government that has come to be known as the New Federalism. It calls for each level of government to focus its attention on the functions most appropriate to that level. By strengthening the resources and responsibilities of State and local governments, it permits their policies and programs to reflect local needs more sensitively.

Broader sharing of Federal revenues with State and local governments is helping to make this philosophy a reality. Under the General Revenue Sharing program, now in its second year, State and local governments receive over $6 billion a year for use in meeting State and local needs as they see them.

This administration has also sought to substitute broad-based formula grants for narrow categorical grant programs, giving State and local governments significant discretion as to how funds are used and insuring that Federal aid is more equitably distributed among recipients. These principles now apply to several major areas of Federal assistance.

The *Law Enforcement Assistance* program has demonstrated the feasibility of broad-based formula grants. Aid under this program is being increased from $28 million in 1969 to $747 million in 1975 and is helping to make the streets of America safer.

The *Comprehensive Employment and Training Act* which I signed in December extends these same grant principles to manpower programs. Under this Act, the Federal Government will no longer specify the types, methods, and proportions of various manpower services to be provided. Instead, State and local governments will be able to use the funds allocated to them to provide the mix of services which they decide best meets the needs of their areas. The budget provides for $2 billion in outlays for this program in 1975.

New authorities under the *Rural Development Act* are being implemented this year in a manner which is supportive of State and local development plans and priorities.

I urge congressional action to achieve similar reform in additional areas this year:

The principles embodied in the *Education Grants Consolidation and Reform* I proposed last year deserve priority attention. State and local education agencies should have greater freedom to direct Federal assistance toward meeting what they view as high priority local needs. I will continue to work with the Congress, therefore, on legislation to consolidate and improve education grant programs.

The *Better Communities Act* would replace several ineffective grant and loan programs with a more streamlined approach to the problems of urban areas. This act would allow localities to decide for themselves how to allocate community development funds. The budget proposes funding for this program of $2.3 billion in 1975.

The *Unified Transportation Assistance Program* I am proposing this year would provide $2.3 billion in highway and mass transit funds, and permit States and localities to allocate these grant funds flexibly in accordance with local conditions and priorities. Since transportation is a major consumer of energy and is strongly affected by the energy crisis, high priority must be given to enabling States and localities to make decisions on transportation systems based on their assessment of economy, energy conservation, environmental impact, and safety considerations.

I am proposing legislation for a new *Economic Adjustment Assistance* program. This legislation would permit States and communities to respond flexibly to problems of economic change and unemployment.

Another central feature of the New Federalism is strengthening the ability of State and local governments to perform effectively. The *Responsive Governments Act* would broaden Federal assistance available for improving State and local planning, decisionmaking, and management capabilities.

I urge the earliest possible enactment of all these measures.

In parallel with these legislative initiatives, my Administration is continuing its efforts to consolidate and streamline categorical grant programs, to simplify complex and burdensome procedures, and to remove unnecessary, inflexible program restrictions.

As part of this same effort, Federal programs are being decentralized along uniform regional lines, and the Federal Regional Councils are being strengthened to facilitate coordination of Federal with State and local activities at the operating level.

The budget accelerates our programs for aiding State and local governments in improving water quality. The Environmental Protection Agency has allotted $4 billion to the States for 1975 to make grants for municipal sewage treatment plants, a $1 billion increase over the allotment for 1974. Priorities for grants within these allotments will be determined by the States. A total of $6.9 billion was made available for this program in 1973 and 1974, more than twice the amount made available in the preceding 2 years.

STRENGTHENING THE ROLE OF THE INDIVIDUAL

Abraham Lincoln believed that:

The legitimate object of Government is to do for a community of people whatever they need to have done, but cannot do at all, or cannot do so well, for themselves, in their separate and individual capacities. *In all that the people can individually do as well for themselves, government ought not to interfere.*

I share this belief. This philosophy underlies the efforts of my Administration to strengthen the role of the individual in American society. It is a cornerstone of the New Federalism.

I believe that government policy should seek to maintain an economic environment in which all who are able to work can find employment and adequate earnings. For those unable to support themselves, government should help to provide the means necessary to meet personal and family needs, while preserving individual dignity and self-respect.

My Administration has consistently endeavored to strengthen the role of the individual in American society and to ensure that all Americans enjoy equality of opportunity in education, in employment, in business, and in housing. We have consistently worked to improve assistance for the retired, the disabled, and the unemployed.

Reflecting these concerns, Federal human resource programs have grown dramatically. Between 1969 and 1975, outlays for these programs will have increased by 139%, while outlays for all other programs will have risen only 26%.

The national health insurance plan I am proposing represents another major step toward improving the lives of individual Americans. My proposal calls for basic reform in the financing of medical care. It would bring comprehensive insurance protection against medical expenses within reach of all Americans, including millions of people who cannot now obtain adequate insurance coverage. Costs of coverage for low-income families would be federally supported, with payments scaled according to family income.

It will take several years for this reform to become fully operational. In the interim, the 1975 budget provides $26.3 billion for existing health programs. Under this budget, the momentum of cancer, heart, and other research initiatives would be sustained, and total funding for biomedical research would exceed $2 billion in 1975, almost double the 1969 level. To support continued reform of our medical care system, the budget proposes a total of $125 million in 1974 and 1975 to demonstrate health maintenance organization concepts throughout the Nation. I am also proposing a Health Resources Planning Act to enhance State and regional capabilities and responsibilities for planning and regulating health services.

The rapid growth of human resource programs in recent years has brought about many improvements in the well-being of the American people. Higher social security benefits and extension of the Medicare program, for example, have increased the economic security of the elderly and the disabled. Cash benefits under social security programs will rise from $26.2 billion in 1969 to $62.9 billion in 1975. They now reach 29 million beneficiaries. Five social security benefit increases have been enacted since 1969. Taken together, these increases total nearly 70%, far exceeding the increases in the cost of living, and in average wages, over this period. I continue to urge enactment of legislation to reform private pension plans, legislation which would further strengthen the economic security of millions of Americans in their retirement years.

The Supplemental Security Income

program began operation on January 1, 1974, replacing the various State public assistance programs for the aged, the blind, and the disabled with a more uniform and equitable national system. This broad reform provides higher benefits for these disadvantaged groups. In addition, Federal assumption of responsibility for these programs will provide substantial fiscal relief to State and local governments.

Also during the past month, food stamp benefits have been increased by over 20%, and the program has been extended to those parts of the country where it was not available before. Outlays for food stamps will be $3.9 billion in 1975, 78% higher than the 1973 level.

I propose further measures to improve the income security of Americans, including:

—reform of pensions for veterans and their dependents, with provisions for automatic cost-of-living adjustments in benefits, and better matching of pensions to family need;

—an increase in education benefits for veterans to help meet cost increases since these benefits were last raised;

—automatic cost-of-living increases for the aged, blind, and disabled beneficiaries of the Supplemental Security Income program;

—transfer of food stamps and related nutrition programs to the Department of Health, Education, and Welfare, to improve coordination of income maintenance programs; and

—continued priority efforts to develop a practical program of direct cash assistance for housing.

One of the major unfinished pieces of business of my Administration is the replacement of the current welfare system with a new system that *works*. Figures collected over the past year are grim testimony to the fact that our current welfare system is a mess; these figures show that fully 40% of the payments made are incorrect. I intend to make new proposals to solve this continuing problem.

As we begin this effort, I hope that the debate can focus on the substance of the issues, not on superficial labels. I believe that the majority of the American people agree on the principles that should guide Federal income assistance:

—the system should provide strong work incentives for those able to help themselves;

—income assistance should be provided in cash, rather than in kind, so that families can make their own spending decisions;

—the system should be as simple as possible, replacing the chaotic rules and overlapping programs that we have now;

—the levels of support provided should reflect the compassionate spirit of the American people toward those who cannot provide for themselves; and

—Federal aid should be provided on an equitable basis nationwide.

I believe that the Administration and the Congress, working together, can *and must* find a solution that accords with these principles.

IMPROVING MANAGEMENT IN THE FEDERAL GOVERNMENT

The recommendations contained in this budget are part of a broad effort by my Administration, working with the Congress and with State and local officials, to improve public services at all levels. The New Federalism is a crucial element of this broad endeavor. A second, complementary element consists of improving the efficiency and effectiveness of Federal programs in carrying out Federal responsibilities.

Concern for meeting problems must extend beyond the well-intended commitment of public funds. What really matters are the tangible results produced through the effective use of these funds—results measured in terms of better lives for all Americans.

Since I assumed office as President I have encouraged extensive efforts to streamline and revitalize the organization and management of the Federal Government. These efforts are helping to ensure that the taxpayers get their money's worth from the Government.

To enable the Federal Government to meet emerging challenges more effectively, several new organizations have been created during my Administration, and existing ones have been improved. Among these new offices are Action, the Environmental Protection Agency, the Council on Environmental Quality, the National Oceanic and Atmospheric Administration, the Domestic Council, the Office of Management and Budget, the Drug Enforcement Administration, the Consumer Product Safety Commission, the Council on International Economic Policy, and the Federal Energy Office.

In 1971 I proposed creation of four new departments, including a department to be responsible for energy and natural resources. I continue to urge congressional approval of this proposal as revised in legislation submitted last year. In addition, I ask the Congress to join me in renewing consideration of other departmental reorganization legislation that will permit more effective management of the Government.

During the past 25 years, Presidents have been able to make many improvements in Government organization under Presidential Reorganization Plan Authority. This legislation has now expired. I urge the Congress to restore this authority as soon as possible in order to facilitate continued modernization of our governmental structure.

Good organization is only a first step toward improving governmental performance. Government can be effective only if the public service can develop and retain capable leadership. In response to this need, this Administration has placed high priority on the identification and development of the most able career managers. We intend to intensify this effort.

Increasing the effectiveness of individual programs is another essential step in improving overall governmental performance. During the past year I have launched an intensive effort to strengthen the management of major Federal activities. The emphasis in this management initiative is not on producing a great display of activity, nor on merely rearranging work processes; the emphasis is on producing significant *results*. To help keep a constant focus on program results, I have asked each major department and agency to work with me in developing a set of specific objectives to be achieved during fiscal year 1974. As we approach 1975, we will identify further objectives. Currently, we are working toward more than 200 such objectives, ranging from international monetary reform to improvement of opportunities for minorities and women.

These objectives will not simply be identified and then filed away and forgotten. Specific results are to be achieved by specific deadlines. These commitments will be reviewed continually and will guide day-to-day operations until the objectives are met.

Congressional procedures, too, are in need of reform—particularly those that deal with the budget. In my last three budget messages I encouraged the Congress to reform its procedures for considering the budget. I noted that the Congress faced a fundamental problem because it lacks a system for relating each individual spending decision—whether or not it is part of the appropriation process—to overall budget totals. The need for a more systematic congressional process was once again illustrated during the session just concluded. Congressional actions, taken together, increased spending totals over my proposals by $3.8 billion in 1974 and by $8.2 billion in 1975.

The Congress is currently moving toward a new budgetary system. I commend this action and urge that the final procedures worked out by the Congress recognize the necessary and proper role of the President and his responsibility for efficient administration of the executive branch. I am particularly concerned about provisions which would subject some of the most routine financial actions of the executive branch to veto by either house of the Congress.

CONCLUSION

The proposals set forth in this budget are constructive and forward-looking. They meet the Federal Government's responsibility to provide vigorous national leadership toward the solution of major national problems. They do so within the bounds of fiscal prudence.

But the Federal Government cannot do everything. It should not be expected to. Nor can money alone solve all of our problems. Recognizing these limitations, my Administration has made an intensive effort to identify and *do well* those things which the Federal Government should do. By the same token, this budget, like my previous ones, stresses the revitalization of individual initiative and of State and local capabilities. It represents an important further step in my efforts to restore a proper balance of individual and governmental power in America.

RICHARD NIXON.

FEBRUARY 4, 1974.

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 JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Friday, February 1, 1974, be dispensed with.

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

WAIVER OF THE CALL OF THE CALENDAR

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the call of the Legislative Calendar, under rule VIII, be dispensed with.

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

COMMITTEE MEETINGS DURING SENATE SESSION

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

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

ASSISTANT SECRETARY FOR INDIAN AFFAIRS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 649, S. 2777.

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

The assistant legislative clerk read as follows:

S. 2777, to establish within the Department of the Interior an additional Assistant Secretary of the Interior for Indian Affairs.

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

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Interior and Insular Affairs with an amendment, to strike out all after the enacting clause and insert:

That there shall be in the Department of the Interior, in addition to the Assistant Secretaries now provided for by law, one additional Assistant Secretary of the Interior for Indian Affairs, who shall be appointed by the President by and with the advice and consent of the Senate, who shall be responsible for such duties as the Secretary of the Interior shall prescribe with respect to the conduct of Indian Affairs, and who shall receive compensation at the rate now or hereafter prescribed by law for Assistant Secretaries of the Interior.

SEC. 2. Section 5315 of title 5 of the United States Code is amended by striking out "(6)" at the end of item (18) and by inserting in lieu thereof "(7)".

SEC. 3. Section 462, Revised Statutes, as amended and supplemented (25 U.S.C. 1), and paragraph (45) of section 5316 of title 5 of the United States Code are repealed: *Provided*, That this section shall not take effect until an Assistant Secretary of the Interior for Indian Affairs has been confirmed and takes the oath of office.

SEC. 4. Subsection 7(c) of the Alaska Native Claims Settlement Act (85 Stat. 688) is hereby amended by deleting that subsection in its entirety and inserting in lieu thereof a new subsection as follows:

"(c) The Secretary shall establish a thirteenth region for the benefit of Natives who are nonresidents of Alaska who, pursuant to section 28 of this Act, shall be enrolled therein, and they may establish a regional corporation pursuant to this Act."

SEC. 5. The Alaksa Native Claims Settlement Act (85 Stat. 688) is hereby further amended by inserting at the end thereof a new section 28 as follows:

"SEC. 28(a) A Native who elected to be enrolled in a thirteenth region, pursuant to subsection 5(c) shall be so enrolled, notwithstanding the fact that a majority of the Natives eligiblie to elect enrollment in that region may not have so elected and notwithstanding the certification, on December 18, 1973, of a final roll by the Secretary pursuant to section 5(a) of this Act.

"(b) Any Native who, on or before December 1, 1973, had filed with the Secretary or his delegate any application to amend his enrollment application regarding his election whether or not to be enrolled in the thirteenth region shall, within ninety days of the enactment of this section, inform the Secretary whether or not he wishes to be enrolled in the thirteenth region. Any Native who so informs the Secretary shall be enrolled according to his preference as indicated in the information so submitted to the Secretary. Any Native who fails so to inform the Secretary shall be enrolled according to the information provided in that Native's original enrollment application. The Secretary shall, within thirty days of enactment of this section, take such action as he may deem necessary to insure that every Native affected by this section is aware of his option to change his enrollment decision.

"(c) Within one hundred and twenty days of the enactment of this section the Secretary shall amend the final roll to reflect the changes required by this section as well as other changes made by the Secretary in accordance with this Act and shall immediately certify such amended final roll.

"(d) Within thirty days of the certification of the amended final roll pursuant to this section, any bona fide organization representing nonresident Natives shall submit to the Secretary the names of not more than five Natives who have elected to be enrolled in the thirteenth region as nominees for the positions of the five incorporators of the thirteenth regional corporation. Not less than thirty days nor more than sixty days after such certification, the Secretary shall mail to all eligible voters ballots containing the names of all nominees and their associational affiliations for the purpose of an election by mail of the five incorporators who shall serve as the initial directors of the thirteenth regional corporation. Eligible voters in the election shall be only Natives eighteen years of age or older on the date of election of incorporators pursuant to this subsection who are enrolled in the thirteenth region. Valid ballots shall be only those ballots mailed to the Secretary or his designee not later than ninety days after such certification. The five nominees for whom the most votes are cast shall be elected incorporators of the thirteenth regional corporation and shall promptly take all steps authorized by this Act for such incorporators. All rules, regulations, and information relating to the election shall be transmitted directly to all known organizations representing nonresident Natives, the twelve regional corporations representing resident Natives, and all eligible voters.

"No moneys distributed or to be distributed pursuant to this Act may be expended or obligated by any Native, Native corporation, Native organization, representative thereof, or adviser thereto, to assist in, communicate on, or otherwise influence the election.

"(e) The articles of incorporation of the thirteenth regional corporation shall be submitted to the Secretary for approval in accordance with subsection 7(c) within eighteen months of the enactment of this section.

"(f) Any distribution of funds from the Alaska Native Fund pursuant to subsection 6(c) of this Act made by the Secretary or his delegate prior to enactment of this section on the basis of the final roll certified on December 18, 1973, shall not be affected by the provisions of this section. Immediately upon certification of the amended final roll as provided in subsection (c) of this section, the Secretary shall make any necessary adjustments in future distributions of funds pursuant to subsection 6(c) to accommodate the changes in the final roll by the amended final roll provided in subsection (c) thereof: *Provided*, That such adjustments shall not take effect until the next regularly scheduled distribution period following certification of the amended final roll: *Provided further*, That the Secretary is authorized to make payments to the thirteenth regional corporation, once established, during the period prior to such next regularly scheduled distribution period from the Fund pursuant to this Act which such payments shall be in the form of advances on such corporation's adjusted share of such regularly scheduled distribution.

"(g) Except as specifically provided, nothing in this section shall be construed to alter or amend any of the provisions of this Act."

SEC. 6. The Alaska Native Claims Settlement Act (85 Stat. 688) is further amended by adding a new section 29, to read as follows:

"SEC. 29. Any corporation organized pursuant to this Act shall through December 31, 1976, be exempt from the provisions of the Investment Company Act of 1940 (54 Stat. 789), as amended. Nothing in this section shall, however, be construed to mean that any such corporation shall or shall not after such date be subject to the provisions of the Investment Company Act of 1940."

The amendment was agreed to.

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

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Does the acting minority leader desire to be recognized at this time?

Mr. GRIFFIN. No, Mr. President.

ACCESS TO THE MEDIA

Mr. McCLELLAN. Mr. President, the Supreme Court of the United States agreed on January 14, 1974, to hear arguments in a case which will have the most fundamental and far-reaching implications for the right of access to the media by persons under criticism by the press.

The case, Miami Herald Publishing Co. against Tornillo, is being heard on

appeal from the Supreme Court of Florida which upheld a 1913 State law requiring a newspaper to give equal space for a reply from a political candidate if it "assails" his personal character or charges him with "malfeasance or misfeasance in office or otherwise attacks his official record."

To briefly summarize the facts of the case in question, Mr. Tornillo was a candidate for the Florida Legislature in 1972. In accordance with Florida's right-to-reply law, he requested the Miami Herald to print verbatim replies to two editorials attacking his personal character. The newspaper refused, and Mr. Tornillo filed suit alleging a failure to comply with the statute.

He argued that if a newspaper may attack a candidate with impunity and he is provided no right to reply, the public interest suffers because they can only hear the publisher's side of the argument and are denied a dissenting viewpoint.

The Circuit Court for Dade County dismissed the complaint and held that the statute was in violation of the 1st and 14th amendments of the U.S. Constitution. Mr. Tornillo appealed, and the Florida Supreme Court, by a 6-to-1 margin, reversed the lower court and held that the newspaper was bound by the right-of-reply law.

The case reached the Supreme Court upon the appeal of the Miami Herald, which argues that the decision "represents a severe restraint upon the exercise of journalistic discretion by putting the Government in the editor's chair."

Inasmuch as this matter is now pending before the High Court. I do not intend to advocate a particular point of view at this time. But I believe that the issue raised here—the right of access by the public to the mass media—is of such transcendental importance that the Senate cannot afford to ignore it.

As the Florida Supreme Court noted, the right of the public to hear all sides to a controversy and then to make a judgment is being jeopardized by the growing concentration of the ownership of the media into fewer hands, "resulting ultimately in a form of private censorship."

In fact, as the Arkansas Democrat of January 21, 1974, has pointed out, the number of newspapers published in the United States is steadily decreasing. In 1904, for example, there were 17,000 different newspapers; today, there are but 11,000.

As a result of this trend toward monopolization of the media, the Florida Supreme Court took a new and arresting view of the first amendment, which I would like to call to the attention of the Senate. It stated:

> Freedom of expression was retained by the people through the First Amendment *for all the people* and *not merely for a select few*. The First Amendment *did not create a privileged class* which through a monopoly of instruments of the newspaper industry would be able to *deny to the people the freedom of expression* which the First Amendment guarantees.

The court reasoned that access to the media at least for a reply to an attack is particularly critical in the case of political candidates, since the very integrity of our system of democratic elections depends upon an informed public.

In view of these facts, Mr. President, if the Supreme Court holds there are no constitutional barriers to right of reply laws, I believe that the Senate might wish to give careful study and consideration to the possibility of enacting a national law similar to the Florida statute.

The need for such a study is now even more urgent in light of court decisions in libel cases which virtually deprive officials of the opportunity to recover damages unless they can prove malice.

In essence, a national right to reply law would entail the application of some form of the "fairness doctrine" now applicable to broadcasters to the print media. I am convinced that further study will show that such access would not infringe, but would enlarge the use of first amendment rights by extending their enjoyment beyond those who happen to own newspapers.

In recent years, Mr. President, the Senate has taken decisive action to allow broadened access to grand jury and Civil Rights Commission reports by public officials criticized in them so they may file answers before the documents are made public.

During 1970, such safeguards were added at my request to the Organized Crime Control Act of 1970 and to the Civil Rights Act of 1957.

Several interesting discussions have recently come to my attention regarding the question of access to the media which I would like to call to the attention of the Senate. One is a thoughtful speech by the retired Chief Justice of the California State Supreme Court, Roger J. Traynor, at the dedication on January 11, 1974, of the Arkansas Bar Center in Little Rock. The other is an editorial from the Arkansas Democrat of January 21, 1974.

I ask unanimous consent that they be printed in the RECORD.

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

SPEECH IMPEDIMENT AND HURRICANE FLO

(Remarks of Retired Chief Justice Roger J. Traynor of the California State Supreme Court at the dedication of the Arkansas Bar Center)

The new Arkansas Bar Center comes alive in the center of the state and at the heart of middle America, where it can magnetize lawyers from every direction for creative workshops or conferences. In the family of the United States, this Center has an ideal place. It comes alive also at a significant time, a new year that is heir apparent to the 182nd birthday of the first ten amendments. Though that Bill of Rights is doing reasonably well for its age, it has nonetheless suffered wounds from right and left that need healing in such sanctuaries of law as this Center.

We lawyers are apt to do best at restoration when we think small instead of in grandiose terms. It is not the sweeping gesture, but the precise stitch in time that saves nine. In that spirit, surely the animating force of this Center, I proceed directly, not through time immemorial back to Runnymede or to all the nearer groves of the Bill of Rights, but only to the First Amendment. Even here, we can dispense with a study of all of its ramifications the better to focus on a singular recent offshoot. That offshoot, first curling outward as a question of access to the news media, is now unfurling back to cling to the First Amendment as a constitutional right. If the offshoot clenches its cling, will the First Amendment wax or wane?

Getting down to cases, the salient details of the offshoot, we find in them less than a clear reading of the meaning and portent of access. Much depends upon who demands access to the media and why. Something may depend on how tightly a journal or broadcasting station controls access to the public and how significant that public is. Something may also depend on who the beggar for access is. Can the beggar address a plea only to some metropolitan megaphone or also to some provincial journal or some trade publication or scholarly bulletin? Does he seek vindication in sequence of an attack upon him, or does he seek equal time on some controversial issue, or does he simply demand an exclusive easement for some crusade of his own? Does it matter whether the beggar outside publication gates is in public or private life, a leading citizen or an obscure one, a well-tempered spokesman or a zealot with the gleam of half-truth in his eye? On an issue such as women's liberation would it matter whether the would-be spokesperson were an adult male, an adult female, or a child under or over thirty?

As lawyers well know, there is widespread ignorance about such questions as these that relate to the Bill of Rights. The public has slept right through the walls of the news media over a recent decision that rolled out of Florida shortly after the Fourth of July, headed in all directions. We might well call it Hurricane Flo. A taciturn downeaster might be moved to observe that henceforth "As Flo goes, so goes the nation." That depends, of course, on how appealing Flo will look upon final appeal. The Supreme Court of Florida held that the Miami Herald Publishing Company is bound by Florida's right-of-reply statute to publish the reply of a candidate for public office to two editorials allegedly attacking his personal character.

An editor of the Wall Street Journal, Michael Gartner, thereafter quoted Yale Professor Thomas Emerson: "It means the government can tell the newspapers that the newspapers can be forced to print material they don't want to print. This is the very opposite of freedom of the press." Editor Gartner's own comment on the decision is that "the government is our new managing editor."

Certainly the new religion of Open Up prescribed for editors is shoving hard against editorial freedom, the old-time religion of Shut Out. Whoever cries Wolf or Censor, however, had better first make sure that others will trust his message that the danger is indeed at the door. The Florida case has no such open-and-shut simplicity. It is in fact a classic hard case, and no one can predict whether it will finally lead to bad law or good.

Consider, for example, the sweet reasonableness attending the plea that a publisher who dominates or perhaps even monopolizes access to a large audience should leave some access road open to others for response to whatever attack he publishes against them. His very power delineates his freedom, so goes the argument; he cannot be equated with legendary Tom Paines who had no dominant access to large audiences and whose own freedom would have been destroyed by any compulsion to share access with others. There was no need for every Tom, Dick, and Harry to go down Paine's alley when they had equal opportunity to

open up alleys of their own. The situation is quite otherwise, said the Florida court, when one or two publishers dominate the main avenues of communication. The fewer they are, the more powerful they become as they edit the news and voice their editorial opinions thereon. When they use their power to attack anyone without comparable access to their audience, they have a corresponding responsibility to observe Florida's right-of-reply statute.

Newspeople may view such legal workings as the work of the devil, but it is sound practice to give the devil his due. It may be particularly appropriate for a Californian to assume the role of devil's advocate for Florida.

Many have revolted against what Florida has wrought, on the usual hearsay of not necessarily unimpeachable sources. It would be wiser to examine the original source, the opinion itself of the Florida Supreme Court. There is plausibility to that opinion. The language is cool, not florid. The Court believes that Florida's right-to-reply statute "enhances rather than abridges freedom of speech protected by the First Amendment. . ." and it explains why. Consider the reasoning straight from the Florida opinion:

"The right of the public to know all sides of controversy and from such information to be able to make an enlightened choice is being jeopardized by the growing concentration of the ownership of the mass media into fewer hands, resulting ultimately in a form of private censorship. Through consolidation, syndication, acquisition of radio and television stations and the demise of vast numbers of newspapers, competition is rapidly vanishing and news corporations are acquiring monopolistic influence over huge areas of the country.

"Freedom of expression was retained by the people through the First Amendment *for all the people and not merely for a select few.* The First Amendment *did not create a privileged class,* which through a monopoly of instruments of the newspaper industry would be able to *deny to the people the freedom of expression* which the First Amendment guarantees."

The Florida Supreme Court reasoned that access at least for reply to an attack is particularly necessary in the case of a political candidate, since the very integrity of democratic elections depends upon an informed public.

The Florida Court is beaming a twofold message. First, those who rule the fine or gross print, like those who rule the airwaves, have a constitutional obligation to fulfill the public's need to know. Second, they are accordingly obliged to give reply space to whomever they have attacked.

The outcry of the print media at this twofold message carries undertones of injured amour-propre. Suddenly the scribblers, far from being the untouchable loners of the communications industry, find themselves charged with social obligations like any ordinary licensee of broadcasting. No longer can they be sure of breathing a headier freedom than the poor licensees, whose rich livelihood depends on their pleasing as many people as possible, with better programs or worse, for richer ratings or richest, in news as in entertainment, in sick comedies as in health messages, always with eyes at the back of their heads to see whether Granny them live another few years. It has come as Government also looks pleased enough to let them live another few years. It has come as a jolt to proud earthlings that their freedom may not be much loftier than the pedestrian freedom of those who tiptoe on air.

A devil's advocate is bound to remind the shaken freemen that the Florida Supreme Court spoke the language of freedom, not repression. It leaned heavily on the 1964 decision of the United States Supreme Court in *New York Times v. Sullivan* and its 1971 decision in *Rosenbloom v. Metromedia.* These two cases were landmarks of freedom for the press. Are they also landing fields for Hurricane Flo as the Florida opinion suggests?

New York Times v. Sullivan holds that a government official cannot recover damages from a publisher for a defamatory falsehood relating to his official conduct if he fails to prove "actual malice," namely, that the defendant made the statement with knowledge that it was false or with reckless disregard of its truth or falsity. The United States Supreme Court thus declared the First Amendment to be the safeguard of a right to speak on public issues forcefully, carelessly, and even falsely, without stammering deference to other points of view.

The *Times* case involved no reporter's tall story, no columnist's small talk, no editor's slip of a paragraph, but a paid advertisement that allegedly libeled a local police commissioner. Nonetheless, the Court found that, unlike the usual commercial advertisement, this one "communicated information, expressed opinion, recited grievances, protested claimed abuses, and sought financial support on behalf of a movement whose existence and objectives are matters of the highest public interest and concern."

In the area of public issues the *Times* case thus marks a new tolerance for misstatements, cracker-barrel views, and freewheeling language. Better the smog of error or eccentricity or zealotry that others are free to deplore or dissipate than a pall of black-letter law whose immutable and oppressive presence would impel people not only to watch for fatal flaws in the words of others but also to keep uneasy watch on their own words. Self-censorship, in the view of the Court, is as deadly as any other censorship to freedom.

The Florida opinion is also forcefully linked to the language of the more recent decision in *Rosenbloom v. Metromedia,* which not only accorded *Times* freedom to a broadcaster, thus narrowing the gap between print media and government-stamped broadcasters, but also extended *Times* freedom of speech about a private citizen, on the ground that it concerned primarily a matter of public interest, namely, the peddling of allegedly obscene materials.

By clothing the distribution of nudist magazines as an issue of public interest, the United States Supreme Court in the *Metromedia* case went beyond the *Times* case to enlarge not only the chorus but the score of freedom. Now the rising voices of mere licensees could join with those of venerable *Times* publishers, and the newly aggrandized chorus could sound out lustily on new great social issues of the day, such as girlie magazines. On high constitutional ground an aggrieved peddler, charging libel in vain, bit the dust as had an aggrieved police commissioner before him.

Given the heady freedom of the *Times* and *Metromedia* cases, the old boys and girls of the print media may have failed to take note of all the sobering implications of their new links with the lads and lassies of broadcasting. It took the Florida connection in the *Miami Herald* case to bring them to a day of reckoning with the most sobering implication of all. If *Times* and *Metromedia* are kissing counsins in a family chorus of freedom, they may then likewise be linked in an obligation to accord to an importunate outsider a right of access to their professional chorus, at least when they have been singing away about his failings in matters of public interest.

When a government itself has little right to make a newspaper shut up, why should a newspaper that has freely criticized a political candidate shut out his right of reply in its pages? If a candidate cannot shout back to the same audience the newspaper reached, has he encountered an insurmountable obstacle to speech more serious than the restraining threat of official sanctions would be? If he is cut off from even whispering to the only audience he wants, is he any less bereft because he can shout at the moon from the rooftops?

The growing clamor now for a right of access should hardly come as a surprise. A complainant carrying the heavy burden of proving actual malice feels doubly aggrieved if his already meager chance of proving such malice is cut down at the very time the press has gained new constitutional freedom to publish falsehoods without liability. It is no longer enough for a complainant to catch the publisher in a lie; he must catch him in a malicious lie, while sinking under a crushing burden of proof. If a publisher fails to distinguish true from false and then fails to retract the falsehood and still remains immune from liability, it does not seem so unreasonable to grant the target of the falsehood at least a chance to bring the facts into line. It was grievance upon grievance that drove complainants to demand a right of reply.

Hurricane Flo might not be blowing so hard without the opinion of the United States Supreme Court in *Red Lion Broadcasting Co. v. FCC* in 1969, five years after the *Times* case. The Court let no one forget that FCC was the den mother of Red Lion. It upheld the authority of the FCC to implement the established Fairness Doctrine on coverage of public issues by spelling out mandatory procedures in the event of a broadcasting of a personal attack or political editorial. The opinion recognized that broadcasting "is clearly a medium affected by a First Amendment interest," but also clearly viewed broadcasters such as Red Lion as a special breed of cat because their capacity to roar can drown out other voices.

The Court was concerned not only with how raucously a Red Lion could roar, but also how it could dominate the air to the exclusion of others, given the shortage of frequencies. In its view, "it is idle to posit an unabridgeable First Amendment right to broadcast comparable to the right of every individual to speak, write, or publish."

It is significant that in the four years between the *Red Lion* case of 1969 and the *Miami Herald* case of 1973 technology has advanced by leaps and bounds to give promise of many more frequencies for broadcasting and hence many more possibilities for making inroads into the current domination of the airwaves. The more frequencies there are, the fewer may be the problems of short supply, or of oft-mentioned chaos and cacophony, still invoked as a basis for regulating broadcasters and not print media. At the same time there has been a growing domination of major print media by fewer publishers, as well as recent severe shortages of timber for newsprint. The fewer major print media there are, the more their domination of major audiences will come to resemble the current domination of the airwaves. Hence it is a good deal more plausible in 1973 than it would have been earlier for the public to view broadcasters and print publishers as Tweedledee and Tweedledum rather than as Red Lion and Tom Paine.

It took Hurricane Flo to bring that news home to us. The Florida court desegregated the broadcasters. The newly integrated print publishers learned from the court's opinion that Florida's right-of-reply statute, applied against a newspaper, is consistent with the Frst Amendment by virtue of such cases as *Metromedia.* The *Metromedia* case, like the *Times* case before it, had won new freedom to comment without liability on "social issues." Nonetheless there were signs that the United States Supreme Court was increas-

ingly troubled by the problem of access. The times they were achanging.

In sum, the *Times* case let freedom ring for the newspaper publishers, and the *Metromedia* case let freedom tinkle for the broadcasters when the Fairness Doctrine was not at issue, but there were outsiders who felt correspondingly stifled. Given the concentrated power of the media, the *Red Lion* case found justification for an outsider's right of access to the broadcasting stations, in the context of the Fairness Doctrine. The *Miami Herald* case found comparable justification for access to newspapers. Let freedom ring for everyone, said the Florida court in effect, across airwaves and the rivers of ink.

With such words a devil's advocate for Hurricane Flo might close his case. For the good sake of an open hearing, however, I now likewise present the other side.

The Florida Court has attempted a soft landing for Hurricane Flo on constitutional grounds. The right of access was presented narrowly in the *Miami Herald* case as a right of reply in the event of a newspaper's attack on a political candidate. Is such access of a piece with the theme of "uninhibited, robust, and wide-open speech" that runs through the opinions of the United States Supreme Court on First Amendment freedom? To answer this question, we must first answer another. When a newspaper dominates an audience, it is then constitutionally obliged to fulfill what has been vaguely called the people's right to know? Just what is this right to know?

The people's right to know means everyone's freedom to seek out information from others and to receive whatever information others wish to dispense. The right carries no power, however, to compel others to dispense information to the public at large. No thirster after knowledge can compel even his own government to dispense information. A fortiori he cannot demand access to the Government Printing Office to publicize a rejected request for information, let alone to publicize his own arguments against government secrecy. Whatever limited access he can gain results not from any First Amendment mandate, but from such statutes as the Freedom of Information Act, wherein the government voluntarily grants a measure of access to official information. Such access for the passive receipt of information is a far cry from access for the active distribution of one's own views.

If the right to know, in the light of the First Amendment, does not empower an outsider to compel even his own government to print and distribute his copy, how can he compel a newspaper to do so? Moreover, the First Amendment mandate against abridging the freedom of the press is closely attuned to the editorial freedom of large pubishers as well as small, the corporation as well as Tom Paine. The complex task of putting together a large daily newspaper could be disrupted by volunteer composers in the composing room.

An adherent of this thesis may have been nearly blown out of his mind by Hurricane Flo in July. He may find some reassurance, however, in recalling the merrier month of May when the United States Supreme Court held the line against access even to electronic media. The Democratic National Committee and the Business Executives' Move for Vietnam Peace had demanded access to broadcasting facilities for paid editorial advertisements. The Court upheld the FCC ruling that a broadcaster had discretion to deny such access, in light of its record of full and fair coverage of the controverted issues. The Court squared such discretion with the FCC's statutory authority to command access, as in the *Red Lion* case. Once the FCC determined that a broadcaster met the obligations of the Fairness Doctrine incumbent upon him, would-be advertisers could not invoke the First Amendment to plead access. The right of the public to be informed did not endow a private individual or group with "a right to command the use of broadcast facilities."

These various opinions combine to remind the public that the First Amendment continues to stand guard against access to newspapers. Nonetheless the case narrowed the gap between newspapers and broadcasters, not by reducing the First Amendment freedom of the press, but by augmenting the freedom of broadcasters via an outward push against the flexible boundaries of statutory regulation. Any Tom Paine remained the darling of the First Amendment, even when he had grown to monstrous size. The new twist in the case was the Court's concern over Red Lions, which had been kept in captivity since infancy, because of their own monstrous size, and now bleeped more than they roared. There were intimations that maybe even a firmly regulated old Red Lion should be trusted to exercise a little more freedom to make it a little more robust. Too many bleeps in the bellows and a lion loses its tone.

There are many straws in this case that go counter to Hurricane Flo. It would be premature, however, to rest easy that the hurricane has spent its force. There are other straws to indicate that it may still blow strong.

In the decade since the *Times* case made waves in the flow of communication, the United States Supreme Court has been of various minds on what amateurs, if any, can crash onto the established routes of publishers. The rationale of amateur hours is that they counteract the concentrated power of publishers. The dilemma remains, however, that every amateur entry is by grace of an official ruling, and each ruling strengthens the power of government over the press. Whatever the grievance of an amateur shut out by a powerful broadcaster or publisher, there is still the risk that he may lose more than he gains when he gains access with the help of a government more powerful than the press. Is he not then in turn subject to government control in a rule-making process without end? As against the government is his First Amendment freedom now worth any more than that of the one ordered to yield him time or space? Will he not also feel the king's chilling presence at the microphone or typewriter?

Oppressive supervision is apt to begin with incidents too small for general notice. Few take alarm if an official referee appears on the bank of a tributary to the main flow of communication to gain access to someone else's facilities for a would-be sender of messages or a would-be editor of other people's messages. The scene may even appear to illustrate our democratic way of life.

Nonetheless, as Justice Brandeis has warned, " 'Experience should teach us to be most on our guard to protect liberty when the government's purposes are beneficent. . . . The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding.' "

A speech impediment is never a minor ailment, even when it affects only the commercial tract, only the tone of a want ad. Orders for fairness go to the heart of editorial judgment, which is by definition partisan. An editor cannot also be a carrier of sandwich signs, his head lost between neatly balanced sides of Pros and Cons. A speech impediment becomes incurable when official observers take a permanent stand to make an editor watch his words. An editor's freedom may be vitiated when he is ordered to distribute the occasional compositions of others; but it risks total destruction when he must take orders on the writing of his own compositions. Only by dehumanizing his own mind can he assemble his words as a Commissioner of human relations or community relations or foreign relations dictates, in the name of justice of fairness or Regulation X.

The case for an editor's freedom might be summed up as a case for everyman's freedom. If First Amendment freedom once ceased to ring, we would know from deadly drumbeats the dominant force of our new commanders on the front lines of communication.

This presentation of both sides of the access problem is the merest introduction to its defiant complexity. The times may be achanging, but the morrow is not yet clear. Will Hurricane Flo be stopped dead in its tracks at some ivied temple of Fair Comment or some more recent shrine of Fair Falsehood? Will it gain instead enough momentum to carry along Red Lion, still up in the air, and deposit it as a graven image of the Fairness Doctrine for a new cloverleaf of intertwining access routes to land, sea, and air? Or will the hurricane wind down in the gray lands between the temples and shrines and a distant cloverleaf site?

We need to know much more about those gray lands, if we are to deal with storms more rationally than by adding wings at random to the sanctums of wise or wanton editors or by embarking on random sorties of road construction with wise or wanton Populists. As a step toward rational exploration and development, the recently established National News Council has begun work on its first project, the question of access to news media.

Whatever the measures taken to contain a hurricane, however random or rational, they are bound to have repercussions on the interaction of government, the press, and the people; on what access each should have to the others. It is time to keep a weather eye out on that basic question of freedom, for more storms are on the way. Lawyers can still find occasions to rejoice, as we do today, that such stations of law as the Arkansas Bar Center will be more than a match for the storms.

Shivers From Florida

In July the Florida Supreme Court sent shivers through all of journalism by upholding a 60-year-old statute that guaranteed the right of reply to any person attacked by a newspaper. Last week the U.S. Supreme Court agreed to consider the case, itself an indication of its importance since the high court tries not to take cases from state supreme courts whenever it can avoid it.

A controversial school teacher, Pat Tornillo Jr., a candidate for the Florida legislature, was opposed by the Miami Herald, which is five times the size of its only competitor and a member of a national newspaper chain. It called Tornillo irresponsible and accused him of illegal conduct in two editorials. The Herald refused to print his reply verbatim, and Tornillo resurrected this old statute and sued. A lower court decided against Tornillo, but he persisted and suddenly came the thunderbolt from the state supreme court. The decision, which was 6 to 1 against the newspaper, quickly drew such predictable reactions as this one from the editor of the Wall Street Journal: "The government is now our new managing editor."

While we do not endorse the decision, we must say that it is neither nutty nor insignificant. At the beginning, we should say that the conventional interpretation of the first amendment demands the overturning of this or any other law that seeks to regulate the press. After all, government telling a newspaper what it has to print is just as obnoxious as telling it what it cannot print.

But the Florida Supreme Court has made

a new and arresting interpretation. The first amendment, it says, did not create a privileged class for just newspaper editors. What it means is that everyone should enjoy freedom of expression, not just journalists. Obviously, when a newspaper has a monopoly—or a near-monopoly—it is absurd to say that a person enjoys freedom of expression when he is denied the opportunity to respond to an attack—and to the same audience addressed by his attackers. This is no longer the day of the pamphleteer, when everyone's publication had about the same circulation, which was determined largely by how far the publisher-editor-printer wanted to carry his broadsides.

As a matter of fact, this is not even 1904, when there were 17,000 different newspapers in America. Today, there are only 11,000, with the Miami Herald being one of the very largest. The man shouting from the roof of his house, buying a billboard or even speaking on the radio to defend himself is not quite the same thing as having it printed in the Miami Herald.

So maybe this old statute is not as ridiculous as it first appears to be. In fact, just last year, Jerome Barron, a scholar who has written a great deal about access to the media, wrote a book, "Freedom of the Press for Whom?", that suggested that the right of reply was so important that a national law should be drawn very similar to the Florida statute. This is more important now because of libel decisions that virtually give public figures no chance to recover damages unless they can prove malice. After all, they argue, the broadcast media have been able to live and to profit with the fairness doctrine—a guarantee of the right of reply—so why not the newspapers?

Well, without getting into that thicket, we can only say that the question is not one that is going to be solved by hysterical outbursts or by counting on the first amendment as a complete shield. It is marvelously broad but in this day of disappearing newspapers—more precisely, their acquisition by a few owners—there is reason to question whether it is broad enough to protect us from the luxury that we have enjoyed until now, which is every publisher doing as he damned well pleased.

While we think and hope that the Miami Herald will win its case at the Supreme Court, the question is not certain and will by no means be settled finally. The case should certainly cause newspaper owners to look to their ethics and to thing about the wisdom of having some voluntary self-policing. The alternative is to one day have government decide that, like so many other things, the first amendment needs a modern interpretation.

ORDER OF BUSINESS

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

(The remarks Senator CLARK made at this point on the introduction of S. 2943, the Comprehensive Election Reform Act, are printed in the RECORD under Statements on Introduced Bills and Joint Resolutions.)

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Michigan (Mr. GRIFFIN) is recognized for not to exceed 15 minutes.

SENATOR MANSFIELD'S STATE OF THE NATION ADDRESS

Mr. GRIFFIN. Mr. President, along with millions of other Americans, I listened Friday evening with close attention as the distinguished majority leader of the Senate (Mr. MANSFIELD) spoke on nationwide television in response to the President's earlier state of the Union address.

If there are any who may have concluded that Senator MANSFIELD was not effective as a spokesman for his party because he spoke with restraint and a high degree of statesmanship, I would say, as a spokesman from the ranks of the other political party, that they are wrong.

Through his candor and his forthrightness, Senator MANSFIELD, was particularly effective—and I would observe that it is precisely because of those qualities that he is so well respected and so well liked by the Members of both parties in the Senate.

Senator MANSFIELD made the point that a party leader should make—and he made them in a very telling way. In so doing, he was both constructive and eloquent.

I would observe that Senator MANSFIELD spoke on Friday night for his own party—but in part, at least—and I know he intended it that way—he spoke also on behalf of the legislative branch and those of both parties who serve in it.

For the most part, I thought the speech by the distinguished majority leader was a positive, constructive statement laying out attainable goals for this session of Congress. He deserves to be commended for recognizing the areas in which there is substantial agreement between Republicans and Democrats as well as an agreement between the Democrats in Congress and the administration. Nor did he shy away from acknowledging and conferring credit upon the President of the United States and Dr. Kissinger for their extraordinarily effective leadership in foreign affairs.

As I watched and listened, I had the impression—perhaps not justified—that many in the press corps might even be disappointed by the performance of the majority leader. On the whole, his speech was political with a minimum of partisanship; it was effective with a maximum of objectivity.

While not necessarily agreeing with all that he said, I salute the majority leader for the presentation he made. It was a credit to him, to his party, and to the Senate.

Mr. MANSFIELD. I thank the distinguished Senator.

APPOINTMENTS BY THE VICE PRESIDENT

The ACTING PRESIDENT pro tempore. The Chair, on behalf of the Vice President, appoints the following Senators to attend the meeting of the Assembly of Parties of the International Telecommunications Satellite Organization—INTELSAT—to be held in Washington, D.C., February 4–8, 1974: the Senator from Rhode Island (Mr. PASTORE) and the Senator from Alaska (Mr. STEVENS).

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order the Senator from West Virginia (Mr. ROBERT C. BYRD) is recognized for not to exceed 14 minutes.

Mr. ROBERT C. BYRD. Does the distinguished Senator from Michigan yield back his time?

Mr. GRIFFIN. Yes, I do.

Mr. ROBERT C. BYRD. Mr. President, I yield 5 minutes or more out of my order to the distinguished senior Senator from Virginia (Mr. HARRY F. BYRD, JR.).

The ACTING PRESIDENT pro tempore. The Senator from Virginia is recognized.

MEMORIAL SERVICE FOR THE LATE ADM. LEWIS L. STRAUSS

Mr. HARRY F. BYRD, JR. Mr. President, on Friday, January 25, 1974, there was held in the city of Washington a memorial service for the late Adm. Lewis L. Strauss. The service was held in the sanctuary of the Washington Hebrew Congregation. Two eulogies were delivered that day, one by Rabbi Joshua O. Haberman and the other by Adm. Arleigh Burke, former Chief of Naval Operations. It was a beautiful service.

Mr. President, Rabbi Haberman captured so beautifully the qualities of Lewis Strauss and delivered the eulogy so eloquently that I asked Rabbi Haberman to send a copy so that I might have it printed in the RECORD. Rabbi Haberman, in the course of his remarks, said of Lewis Strauss: "Yes, he was a prince and a great man."

Admiral Burke, in his comments on Lewis Strauss, proclaimed him "a great American—a great man, and a great friend."

Two Virginia newspapers had beautiful editorials on Admiral Strauss. One is the Richmond Times-Dispatch, under the date of January 26, 1974. The editorial was written by the chairman and publisher of the Richmond Times-Dispatch, Mr. David Tennant Bryan. Another editorial appeared in the Norfolk, Va., Ledger-Star of January 24, 1974, captioned "Mr. Strauss' Able Service."

Mr. President, I ask unanimous consent that the eulogy by Rabbi Haberman, the eulogy by Admiral Burke, the editorial in the Richmond Times-Dispatch captioned "Lewis Strauss," and the editorial in the Norfolk, Va., Ledger-Star, captioned "Mr. Strauss' Able Service," be printed in the RECORD.

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

IN MEMORY OF ADM. LEWIS L. STRAUSS

(Delivered by Rabbi Joshua O. Haberman)

"The righteous shall flourish like the palm tree;
He shall grow like a cedar in Lebanon.
Planted in the house of the Lord,
They shall flourish in the courts of our God.
They shall still bring forth fruit in old age;
They shall be full of sap and richness;
To declare the Lord is upright,
My Rock, in whom there is no unrighteousness."—(Psalm 92:13–16)

Good friends: We have entered this sacred place anxious to share with one another memory of Lewis L. Strauss. This large assembly of men and women of different walks of life, of diverse faiths, of all sorts of authority and competence, reflects the extensive spread of his fruitful life and the wide range of his contact and influence. Because of his brilliant mind, his nobility of character and his uprightness as a man, we are now a community of mourners, each bringing to this hour a measure of affection, of friendship, of respect. It is as though all our hearts had become one heart, filled with loving sympathy for his sorely bereaved household. A link has been broken in the chain of love that bound them together in family union. As Walt Whitman put it, ". . . the best is that which must be left unsaid,"—we shall be unable to express adequately the meaning of his life to those who were dearest to him, the gentleness of his love as a husband, the tenderness of his heart as father and grandfather, the devotion of a brother. However family, friends or aquaintances might differ in the quality and intensity of their feelings, we are all as one in our appraisal of the stature of the man we lost. We may apply to him the words of King David's lament over the death of one of his ablest generals:

Know ye not that there is a prince and a great man fallen this day in Israel?" (II: Samuel 3.38)

Admiral Strauss had the qualities of the authentic leader: vision, daring, tenacity, the princely qualities of leadership. But, matching all these endowments that make for victory and success were the inner spiritual qualities of greatness which produced excellence of character, a life of spotless integrity and honor.

He was princely in his generosity, a compassionate son of the Covenant, whose heart and hand responded readily to the Jewish people's desperate cry for help. Yet, he knew that while charity begins at home, that was not where it must end. And so, he became a philanthropist who showered his beneficence upon all kinds of non-sectarian institutions of learning and healing.

The public career of our departed, his crucial role in one of history's decisive moments, has already been prominently recognized in the press, in contemporary literature and in the utterances of the nation's highest authorities. To all this I should only wish to add a glance at his inner spiritual core. His Jewish heritage, received from revered parents, ennobled his soul. Words of Hebrew prayers sanctified his daily life. He observed the Sabbath as a day with God. He knew and loved and read and re-read the sacred Scriptures and was proud to be able to study them in the original Hebrew language. He undertook to teach the Bible to his son and, together, they published a private edition of selected Bible portions to mark the boy's attainment of the age of Bar Mitzvah.

He gloried in the ancient Biblical Covenant as the faith of his fathers and accepted its mandates as the spiritual foundations of his life. Characteristically, he asked to be laid to rest in the traditional Jewish manner, with a "tallit," the prayer scarf, wrapped around his shoulders.

Political controversy has projected a public image of this man which unduly accentuates his fiercest fighting capacity. Tough he was, but also gentle, an affable, delightful man of great sensitivity and tact, a man of charm and culture with whom conversation was edification, a man who met his fellow with a warm heart and a cheerful countenance.

His name is linked to the creation of the most awesome weapons system of the ages. He meant it as America's most potent guarantee of freedom and world peace. He was one of the fathers of the Atoms-For-Peace program. His heart was bent upon peace, not war. A great idea of his whose time unfortunately had not yet come was a project of international cooperation in the Middle East. The Eisenhower-Strauss De-salting Plan which could have made the desert bloom with Arabs and Israelis turning swords into plowshares. Symbol of his devotion to "shalom," peace, as a personal ideal, was the provision in his will to smash all firearms in his possession following his death so that no one might say that he inherited a gun from Lewis L. Strauss.

As I think of him, I see him in the image of the 92nd Psalm:

"The righteous shall flourish like the palm tree; He shall grow like a cedar in Lebanon."

Why like a palm tree or a cedar? asked one of our sages. Because the other, smaller trees soon fade from view as we go past them. But the stately cedars and palm trees are seen long after the others have disappeared. So it is with those who live righteous lives.

Even after the passage of many years, there will stand out in our memory this stately, noble man, with sturdy Jewish ancestral roots, nurtured in the generous soil of America, rugged in character like the trunk of the tree, a straight man of sound fiber and true grain, upright and forthright, not only outstanding but upstanding. Yet, beneath the tough bark of the tree was the living sap of human kindness and above rested the crown of a keen mind, spreading out in numerous branches of knowledge.

As the psalmist said:

"Planted in the house of the Lord, They shall still bring forth fruit in old age."

His spirit remained unbroken, down to the last. He never cringed nor cowered. Yes, he was a prince and a great man. We must match his faith with ours and face this moment with the same fearlessness which, throughout the ages, moved our people to say at a time such as this:

"The Lord has given.
The Lord has taken.
Blessed be the name of the Lord." Amen.

MEMORIAL SERVICE FOR REAR ADM. LEWIS L. STRAUSS

(By Adm. Arleigh Burke)

We are here today to do honor to the memory of a dear friend and a renowned American—Admiral Lewis Strauss.

Every great nation has been made great by the men that nation has produced. In the history of the two centuries of the United States, it has been given to very few men to make extraordinary contributions to our country and to our society.

Such a man was Lewis Strauss.

We could wish that we might have known young Lewis in those early days when he was formulating his ideals, days when his parents firmly instilled in him appreciation of the privilege of growing up in this land of the free. We can only guess at the lessons he learned in the hard competitive school of salesmanship. Even then the scholar was beginning to appear, for these were times on the road when he was free to read the books he always carried. The goal was always before him—earning enough money to go to college and study physics.

But the first World War was now in progress, and the newspapers in Lewis' hometown of Richmond were filled with the tales of suffering in Belgium, and of Mr. Herbert Hoover who was hard at work to bring the stranded Americans home. President Wilson was calling Mr. Hoover to Washington where he would work without pay.

Young Lewis had saved his money for college, but he decided that instead he would also go to Washington to help Mr. Hoover, and also without pay. He was well received in his Senator's office by the Senator's secretary. His request for a letter of introduction to Mr. Hoover created no problem. One was struck off immediately, and the Senator's name was signed by the secretary.

But even in those days integrity was a way of life for Lewis. The coveted letter was useless in his eyes.

The story of how this young man made his own way into Mr. Hoover's office and into Mr. Hoover's life as advisor, friend and confidant, is only the beginning of a great career.

When World War II loomed, Lieutenant Commander Strauss, United States Naval Reserve, was called to active duty. He early provided an invaluable source of workable ideas to the Bureau of Ordnance. It was then that those of us in the Navy first came to appreciate his ability to get to the heart of complex problems. During those five years of active duty he was given greater and greater responsibilities, and as before he became the chief advisor and trusted confidant of the Secretary of the Navy, who was later to become the first Secretary of Defense.

It was then too that his naval officer associates came to recognize his dedication to his country, his great patriotism, and his courage to stand for what he felt was right for mankind and his country. In those years friendships were formed that stood the test of years.

After the war was over, Admiral Strauss was appointed a member of the Atomic Energy Commission by President Truman. There he took part in history making decisions familiar to us all.

Retirement from those arduous years did not last long. A trusted experienced chairman of the Atomic Energy Commission must be found. President Eisenhower gave Lewis the task of finding a qualified man to take this important position who would be willing to accept the necessary sacrifice of personal considerations including financial loss. The search was long and difficult and finally President Eisenhower drafted Lewis once more into the service of his country.

Both Presidents gave him their complete trust and confidence because they knew him to be a staunch man devoted and loyal to the best interests of his country. They respected his rare wisdom and good judgment. Their faith in his strength of character was justified for he did defend the best interests of the United States, and under his guidance the security of the United States was maintained and enhanced.

In all of these years of devoted service to his nation, he made great contributions in many fields. His services were sought by Presidents for he demonstrated again and again his great ability to organize and direct large organizations so that they were successful in their endeavors. His work, his achievements, helped the United States become a great, generous, responsible nation.

His great accomplishments were not solely, or even the foremost reasons that Lewis Strauss was admired—respected—and loved—by his many friends, great as his achievements were. In his personal life, as well as in his official life, his outstanding characteristic was integrity. He was straightforward—direct—a man of high principles and high standards—standards by which he

lived—standards by which he measured himself and his actions.

Last of all, he was a kindly, modest man. He liked people—he understood people. He was a pleasant man to be with—for he exuded warmth and graciousness. He was also fun—for he had a keen sense of quiet humor.

It was these personal characteristics that made him a staunch reliable friend—so many people thought of him as one of their best friends—and he was.

Lewis Strauss was a great American—a great man—a great friend.

We shall miss him.

[From the Richmond (Va.) Times-Dispatch, Jan. 26, 1974]

LEWIS STRAUSS

In the death of Lewis Lichtenstein Strauss on Monday, Virginia and the nation have lost a truly great citizen whose enthusiastic dedication to the best interests of both led him into a life of service to mankind.

Though he was born in the neighboring state of West Virginia, Lewis Strauss grew up and lived most of his life in Virginia. He always thought of and referred to himself as a Virginian. An honor graduate of Richmond's John Marshall High School, he would have gone on to study at the University of Virginia had not his family loyalty led him to join his father in business.

At the age of 21, he went to Washington where he offered his services to the newly formed Belgian Relief Commission. There his industry, intelligence and judgment soon brought him an appointment as secretary and principal assistant to Herbert Hoover, then chief of the commission, who remained his lifelong friend and admirer.

In his many fields of endeavor, ranging from war relief to high finance and atomic energy, Lewis Strauss demonstrated his understanding of the basic purposes he sought to serve, refusing to be diverted by political or self-serving considerations from what he knew to be the right course. As a result of his fidelity to his convictions, including the belief that America should provide adequately for its national security, he accumulated a host of enemies. There were those who resented his determination to develop the hydrogen bomb (and to encourage the peaceful use of atomic energy by private enterprise) during his chairmanship of the Atomic Energy Commission, and they helped to cause the narrow defeat of his confirmation as secretary of commerce in President Eisenhower's administration.

Even this heavy blow to his pride did not embitter him, however. He continued to give his time and talents wherever they were needed in the service of his country until his retirement at 70 to his Brandy Rock Farm in Culpeper County.

A detailed account of Lewis Strauss' career in business and public service would show the breadth of his interests and depth of his intellect, but it could give only an inadequate account of the spirit that motivated him. His vitality and ambition were matched by his conscience. But over and above this dedicated man's love of his country, his family, his state and his fellow man was always his unquestioning reverence for his God.

[From the Norfolk (Va.) Ledger-Star, Jan. 24, 1974]

MR. STRAUSS' ABLE SERVICE

Lewis L. Strauss, the former Atomic Energy Commission chairman who died at his farm near Culpeper the other day, served his country in public life with the same distinction he achieved in private life as a financier.

The public schools in Richmond were the total springboard of formal education from which he rose to a partnership in one of Wall Street's biggest banking houses and to seats on the boards of several major corporations. One of those decisionmakers in American business who were called to help manage the United States' vast effort in World War II, he performed ordnance and production duties for the Navy so ably that he advanced from lieutenant commander to rear admiral and the post of special assistant to the vice chief of naval operations.

Political controversy and the hot glare of congressional hearings were an unlikely encroachment on the life of this banker who went to Washington during the emergency and willingly would have retired to the boardrooms afterward. Such notoriety came his way, though, because the government's enlarged role after the war required men of ability and strength of personality in responsible positions.

Named by President Truman to the original Atomic Energy Commission, he served as the AEC chairman for five years during the Eisenhower administration. The decisions he had to make involved him in such issues of the day as the personal tragedy of Dr. Robert Oppenheimer and his revoked security clearance, and the political football of "Dixon-Yates" and that now all-but-forgotten power plant contract. Fallout from such disputes, complicated by the oncoming 1960 elections and, to be sure, the brittleness of his responses to critics and inquisitors, led to Mr. Strauss' nomination as secretary of commerce being rejected by the Senate.

Today we are more accustomed to seeing confirmation battles go beyond the proper question of the abilities and qualifications of presidential nominees, by which test Mr. Strauss was a distinguished choice. But it was not so commonplace then; he was the first Cabinet nominee in a generation to be turned down. Mr. Eisenhower said at the time that the American people had lost more than did Mr. Strauss. That will probably be the judgment of history, too.

ORDER OF BUSINESS

Mr. HARRY F. BYRD, JR. Mr. Presidet, I yield back my remaining time to the distinguished Senator from West Virginia.

Mr. ROBERT C. BYRD. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER (Mr. CHILES). The Senator has 10 minutes remaining.

Mr. ROBERT C. BYRD. Mr. President, I yield 10 minutes to the distinguished Senator from Idaho (Mr. CHURCH), if there is no objection.

Mr. CHURCH. Mr. President, I thank the Senator very much.

SENATE RESOLUTION 271—SUBMISSION OF A RESOLUTION DISAPPROVING THE SALARY RECOMMENDATIONS OF THE PRESIDENT

(Referred to the Committee on Post Office and Civil Service.)

STOP THE PAY RAISE

Mr. CHURCH. Mr. President, the President of the United States has today transmitted to the Congress a budget request for fiscal year 1975 of over $304 billion. Included in that budget are recommendations of pay increases for Members of Congress, Federal judges and all high officials in the executive departments of the Government, totaling, for fiscal 1974 and 1975, $34 million.

This year's budget request is nearly $30 billion higher than for 1974, and represents a vast increase in Federal spending at a time when the economy is near chaos. Furthermore, like all previous Nixon budgets, this one is deeply in the red, projecting still another deficit of nearly $10 billion. Congress will have to pare this budget to the very bone. To do less would make the Congress derelict in its responsibility to the American people.

Obviously, we face hard decisions as to where we must apply the knife to the President's new spending requests. But I submit that the first cut we should make is his recommendation for pay increases for Members of Congress and other high Government officials.

Just a few nights ago, the President assured—even promised—the American people that there would be no recession this year. It was noted that several administration economists grimaced during that pronouncement. The facts are that inflation continues at a record pace, unemployment continues to rise and interest rates are sky high. Add to that the energy crisis and the resultant increases in the price of fuel, and the conclusion is inescapable: the economy is quivering on the verge of collapse.

It is the inflation that concerns me the most. Every day I receive letters from people in my State who are getting desperate. The average income for a family of four in Idaho is well under $10,000. With the cost of every necessary commodity rising faster than wage and salary increases can match, many Idahoans can literally no longer afford enough food or fuel. And in the face of all this, the President has recommended an increase in salaries for top officials in Congress, the executive and judicial branches. I might add that $27 million of the $34 million in pay raises requested would go to officials in the executive branch, with $3 million and $4 million going to the legislative and judicial branches, respectively.

I am aware that the Commission on Executive, Legislative, and Judicial Salaries has recommended an immediate 25-percent increase in these salaries, and that the President has pared that recommendation to about 7.5 percent annually over the next 3 years. Nonetheless, in view of the shaky state of our economy, this is not the time to be raising the salaries of the best paid people in Government.

Therefore, for myself and Senator CHILES, I am today introducing a resolution which, if adopted, would disapprove the salary recommendations of the President with respect to section 225(h) of the Federal Salary Act of 1967, for the fiscal year 1975.

I urge passage of this resolution and ask unanimous consent that it be printed in the RECORD at this point.

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

S. RES. 271

Resolved, That the Senate disapproves the recommendations of the President with respect to rates of pay transmitted to the Congress in the budget for the fiscal year 1975 pursuant to section 225(h) of the Federal Salary Act of 1967.

PREDATOR CONTROL

Mr. CHURCH. Mr. President, predator control has always been an emotional issue in the Western States. Since 1972, when President Nixon issued an Executive order banning the use of chemical toxicants for predator control on public lands the issue has become more heated. Charges and countercharges have been made over the effectiveness of poisons in the control of predators.

Idaho woolgrowers have stated, very loudly, that the Executive order was based on insufficient information and that depredations have increased as a result of the ban on poisons. Various conservation groups, on the other hand, have claimed that the estimates of loss given by our cattlemen and sheepmen are inflated and, therefore, should not be given credence.

In the interest of clarifying the conflicting positions and in order to gather substantive evidence on either side of the issue, I called for field hearings, in January of 1973, on the subject of predator control. Those hearings, held in Sun Valley, Idaho, and Casper, Wyo., were informative, because they highlighted the fact that the Presidential order came from on high with evidence that was, at best, subject to strong rebuttal.

Seeking further explanation, and in response to some very serious charges about laundering of research data by the Department of the Interior, here in Washington, I signed a letter to Secretary Rogers C. B. Morton, along with 20 other Senators, asking for clarification. Subsequent to the sending of that letter, those of us who signed have been charged with advocating the use of poisons to control predators. The plain truth is the letter in no way advocated the use of poisons.

Mr. R. K. "Bill" Siddoway, of St. Anthony, Idaho, president of the National Wool Growers Association, has responded to an editorial in the New York Times which both criticized the signing of the letter and asserted that the letter implied that poisons should again be used. I ask unanimous consent that the editorial and the text of Mr. Siddoway's letter to the New York Times appear at the end of my remarks.

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

(See exhibit 1.)

Mr. CHURCH. Mr. President, I have also received a letter from the National Audubon Society expressing serious concern over what that association has determined is an implied advocacy for use of poisons. I also ask unanimous consent that the text of that letter appear at the end of my comments.

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

(See exhibit 2.)

Mr. CHURCH. Mr. President, I believe that these two letters crystallize the conflicts in the evidence that is available. I commend these letters to my colleagues for their reading. The dispute of facts cited in both letters appears to me to exemplify the very reason I signed the letter to Secretary Morton.

EXHIBIT 1

[From the New York Times, Jan. 14, 1974]

BACK TO POISON?

Just two years ago, President Nixon signed—to the warm praise of conservationists—an Executive order that was intended to put an end to the horrid practice of poisoning prairie dogs and predatory birds and animals on the public lands. Of all man's intrusions on nature's order, the wholesale use of poison in the United States has been among the most reckless and indefensible.

Like most Executive orders, this one required aggressive leadership if it was actually to produce a change in long-established Government practice. In this instance, the Interior Department managed to find language in the order that enabled it to continue the use of poisons against prairie dogs. Meanwhile, the pressure from Western sheep and cattle ranchers for resumptions of large-scale use of poison has been unremitting.

Twenty-one Western Senators led by Senator Henry M. Jackson, who used to be known as a conservationist, have now intensified this pressure by sending Secretary of the Interior Morton a joint letter complaining that his department has failed to protect ranchers against "substantial losses of domestic livestock to coyotes."

The sheep ranchers have come up with the fantastic and unprovable estimate of 800,000 lambs and sheep lost to predators. Whatever the figure, the ranchers make no secret of their preferred solution to the predator problem: back to poisons.

It is impossible to zero in on particular predators and poison only them even if that were desirable, which it is not. The slaughter of millions of prairie dogs, amounting now almost to extermination, has resulted in the virtual disappearance of the unique animal—the black-footed ferret—that preys on prairie dogs. Numerous other predators and scavengers have incidentally been decimated by the use of poison, including falcons, hawks, owls, condors and even the nation's symbol, the eagle. Moreover, the coyote—instead of being the dread menace depicted in sheepmen's propaganda—is, like the wolf, a useful species whose very existence is threatened.

Ranchers and their political patrons must come to understand that the indiscriminate use of poison on the public domain is morally offensive and ecologically inexcusable. If the White House and the Interior Department stand their ground, the ranchers may come to realize that for once they cannot prevail by political bullying.

When that is clearly established, they will drop their exaggerated claims of damage and begin to cope with the modest problem of predators, where it exists, in more humane and more effective ways. Instead of relying upon chemicals to police the natural enemies of their lambs and sheep, they might even consider hiring shepherds to tend their flocks. That was how man raised sheep over ages past—before he became greedy enough to resort to the cruel practice of mass poisoning.

NATIONAL WOOL GROWERS ASSOCIATION,

Washington, D.C., January 28, 1974

Mr. ARTHUR OCHS SULZBERGER,

Chairman and President, New York Times Corporation, New York, N.Y.

DEAR MR. SULZBERGER: The New York Times, a fountainhead of contemporary American knowledge has been had—or else your editorial staff knows better, but chooses to expound as it would have the public believe. I refer specifically to an editorial entitled "Back to Poison," which appeared in the edition of Monday, January 14, 1974. This expression of opinion is so biased and misleading and so replete with falsehoods and inaccuracies that it seems impossible it could have been written by persons with any sense of objectivity—especially considering your newspaper has recently printed several excellent news accounts of coyote predation upon livestock in the Western United States.

I know the persons who communicated with your editorialists in this instance, and they deceived and misled them just as they have other segments of the news media, the American people, and even committees of the Congress of the United States. Hopefully the principal informants won't be around much longer. Had your staff wanted to write a sensible editorial they could have done so because factual information is available which, if studied would produce a balanced judgment on this very critical subject.

To begin with, the twenty-one Western Senators who signed the letter of complaint to Secretary Morton, referred to in the editorial, have not, as an impartial reader might infer, advocated a presumption of the use of poison as a method of controlling coyotes. Such an inference does them a great disservice. It took considerable courage and conviction to compose and sign the letter because they knew full well that by so doing they would be subjected to editorial abuse and a spate of hysterical, form letter, hate mail. They are not the "political patrons" of ranchers, but concerned legislators troubled by the west-wide peril of coyote predation who are seeking some straight answers. It is a grave problem and if you were to ask your own Western reporters they would attest to this fact. The editorial skillfully clouds the issue by irrelevant references to the poisoning of prairie dogs and other supposedly endangered species. The editorial should have focused on the coyote issue, as the Senators did.

Now let's get a few things straight. Regarding the use of the chemical toxicants in question for predator control, there is absolutely *no evidence* that these ecologically sound tools were harmful to the environment. *No evidence!* The shrill cries of irresponsible environmentalists that millions of innocent animals were slaughtered by the "wholesale" use of toxicants has no factual basis. There is only the much heralded study of 1971, known as the "Cain Report." At least one member of the Cain Committee has publicly recanted on his critical contribution. The report was intended to be only a preliminary study, and it cautioned against an immediate elimination of toxicants. Yet it was used as the basis for the Presidential Executive Order prohibiting toxicant use on Federal lands.

The Cain Committee overlooked a vast collection of material compiled by the Department of Interior to defend a 1971 lawsuit brought by two environmental groups to force an end to predator control. These reports are a thorough and factual defense of the program. They have been long suppressed, but recently pried loose by the Committee on Agriculture of the House of Representatives. They deal with each of the wildlife species mentioned in the editorial and conclude that the breeding populations of none of these animals, nor any others for that matter, were reduced by toxicants being used for predator control. This is substantial data, which was and is available to your reporters and editorial writers—if they were inclined to look for it.

As a matter of interest it would be well to note that the same chemicals which were banned for use in predator control are still being used in rural and urban areas to combat rodents. The Environmental Protection Agency recently dropped a legal inquiry into the rodent aspect for lack of evidence that such use was harmful to the environment. Yet the evidence is the same for the predator program and no hearing was held, despite

governmental promises to do so, before the substances were removed for that purpose.

The use of chemical toxicants to control wild animal predators was not indiscriminant and although it may have offended some uninformed segments of society, it was ecologically sound.

Let's talk about fact and fiction. Does it not seem strange to you that regarding this subject the assertions of some radical environmentalists—most of whom have never bothered to observe conditions in the West—are unquestioned for accuracy, whereas the claims of those of us who live with this problem are dismissed as exaggerations. Is the word of someone blindly accepted just because he speaks in the name of a better environment? The losses of sheepmen are substantiated. This is being done every day by government officials, veterinarians, trappers, professors, researchers, etc. The loss figure of 800,000 sheep, which ranchers were supposed to "have come up with", and which the editorial labeled as a "fantastic and unprovable estimate", is modest in relation to that just reported by a Department of Agriculture expert on January 25, in San Diego, California. Dr. Clair Terrill estimates 2,000,000 sheep were killed by coyotes in 1972 alone with a loss valued at $50,000,000. That represents 100,000,000 pounds of meat.

The President's Executive Order which banned toxicants was another example of environmental overkill politically perpetrated on the American public, by a handful of arrogant administrative appointees, who have dealt irreparable harm to the nation's food supply in the name of ecology. What is so discouraging is that it has taken so long for the truth to emerge. But it is. Pseudo-environmentalists have cried wolf (or black footed ferret) once too often. Their credibility is shattered. I refer to pseudo-environmentalists because the more professional environmental groups have either taken no position on this subject or have endorsed the carefully controlled use of some toxicants—as has the International Association of Fish, Game and Conservation Commissioners and the National Wildlife Federation.

The New York Times carried a letter last Sunday from the President of the Audubon Society in which he stated wool growers are only interested in toxicants, where we should be supporting research for improved methods. Where was the Society during all those years—before the environment became a popular cause which filled the coffers of the New York Office—when wool growers were pleading alone for interest in predator research? We welcome other means of control.

Wool growers are sometimes too eager to find new answers. A report was made last fall at a sheep management symposium in Denver by a rancher who felt he had found an effective repellent for coyotes. As a result, a great many sheep throughout the West were sprayed with the substance until the Environmental Protection Agency and the Food and Drug Administration advised the product had no clearance and ranchers were risking condemnation of their lambs at the slaughter plant.

Mr. Sulzberger, we sheepmen don't like toxicants any more than their critics do. A panel of scientists presented to the National Wool Growers Convention in San Diego last week, the full range of predator research endeavors. It's impressive research and an impressive effort. But, to a man, they emphasized that results are, at best, several years away; and that we should expect no panaceas. Several projects show promise of helping under some circumstances, just as the currently developed tools are effective under some conditions. For now toxicants are the only effective weapons in some areas under some circumstances. They are no panacea either. Unless we have a variety of tools available to us which can be selectively employed by trained professionals, until toxicant substitutes are perfected, the senseless waste of food and fiber, which is so desperately needed today, will continue.

Sheep raising is one of the most ecologically sound of agricultural enterprises. These helpless animals are generally raised in natural environments on a renewable resource—natural forage. They produce red meat and natural fiber, with simple efficiency, using little more than solar energy. Such efficiency is vital in today's world.

Another absurdity contained in the editorial is the statement that the coyote is a species whose "very existence is threatened". Perhaps you might be interested in knowing a fact your writers have not cared to develop. Today there are more coyotes in more states than there have ever been. They are seen where never observed before. They are more dense in sections of states which border the Western banks of the Mississippi River than in many regions of the Far West. Nebraska, for example, experienced an increase of over 140% between 1972–1973 according to Department of Interior trend data.

The coyote is an extraordinary species, prolific and adaptable, with a remarkable ability to respond rapidly to any relaxation of control. Sheepmen have been forced to absorb enormous losses since the ban on toxicants because there are sometimes no adequate alternative control methods. All we ask is the supervised use of toxicants which are known to be environmentally safe until substitutes are available. Researchers, in at least two independent economic studies, have declared predators to be the single most important factor in the rapid decline in sheep raising. We must be able to control this menace or there won't be any of us left.

I found the editorial reference to sheepherders particularly offensive. We are told to hire herders to tend our flocks "as man raised sheep over ages past." What do they think we do, turn the sheep loose in the mountains and let them fend for themselves. Most Western sheepmen use all the herders they can find, and most of them are from Spain and South America because we can't get United States citizens to do the work. Herders are not a sufficient answer to predation—and any observer who has ever bothered to visit the West and observe the problem knows this. Scarce herders, in fact, are quitting in disgust at the suffering of their sheep which they feel is caused by a stupid and callous government.

We are accused of "political bullying". Is that really fair? We are a small industry fighting for our livelihood and being destroyed by a handful of biased bureaucrats and a few well-organized special interest groups. These groups use their plentiful tax exempt dollars to mount political pressure campaigns that make our efforts look paltry in comparison. One of these organizations gives a free subscription of its very slick, full color, magazine to the wives of every member of Congress. They place dishonest articles in the magazines of airlines which carry Congressmen to and from Washington, D.C. when critical votes on predator legislation are imminent. They distribute flatly dishonest TV films to stations all over the nation under the guise of public service commentary. They are the ones who are really "bullying" the American public.

Whatever we are accused of, please remember this. The propriety of using chemical toxicants to control predatory animals will ultimately be decided in court, and neither we, the press, nor the environmentalist pressure groups can "bully" a Federal judge. We will abide by a judicial outcome. Let's hope others can accept it.

I have written the New York Times in the past, oddly enough, to commend the paper on news coverage of the sheepman's plight. But my communications haven't been published. I ask you to print this one. But in the event you choose not to, I have sent copies of both the editorial and my response to members of the Senate and House of Representatives in the hope that one or more will see fit to publish them in the Congressional Record.

You are invited, Mr. Sulzberger, to come West any time, at wool growers expense, to stay with me or my fellow ranchers and view, firsthand, the facts of the predator issue.

Yours sincerely,

R. K. "BILL" SIDDOWAY,
President, National Wool Growers Association.

EXHIBIT 2

NATIONAL AUDUBON SOCIETY,
New York, N.Y., January 10, 1974.

HON. FRANK CHURCH,
U.S. Senator, Senate Office Building, Washington, D.C.

DEAR SENATOR CHURCH: We are deeply concerned over the letter you and other Senators signed recently and sent to Secretary Mortion about predator control as reported in the New York Times January 2, 1974. We have since seen the letter you signed.

We are loath to get caught in a crossfire between distinguished members of the Senate and the Secretary of the Interior, but we do believe—and with abundant reason—that the Interior Department has made a good faith effort both to reduce damage from predators and, through expanded research, to find more effective means of preventing damage.

The National Audubon Society for some years has closely followed the predator control issue. It has opposed the field use of Compound 1080, strychnine and cyanide to kill predators because these poisons are non-selective, highly dangerous to man, lethal to non-target wildlife species and domestic animals and, in the case of Compound 1080 and strychnine, inhumane.

Moreover, we can document the point that poisons simply are not the answer to the predator problem. They did not work in the past, when widely used. There is no reason to believe they will if the current ban is overturned.

Since the promulgation of the 1972 Executive Order halting the use of predator poisons on federal lands, Interior has conducted an accelerated predator control program using mechanical methods. In fiscal 1973, without using poisons, Interior's program killed 85,000 coyotes, 14,000 more than in fiscal 1972. Even allowing for an increase in coyote populations, and assuming that not all poisoned wildlife—including non-target species—were retrieved in past years, we believe these figures show quite clearly that predator control is possible without the use of poisons.

I realize that you don't have time to read every word of the voluminous testimony before Senate Committee on this subject. I respectfully suggest, however, that the record of recent congressional hearings on predator control contains no credible evidence that the poison ban has caused total losses to predators to increase. Moreover, at those hearings, witnesses from the Interior Department—including the scientists working on predator research—testified at length and candidly answered questions on every aspect of the predator problem.

Before the poison ban was announced, the wool growers were claiming the losses were increasing. Yet since the ban they contend that the ban is the cause of higher losses. For instance, some wool growers have blamed the supposed 0.3% increase in losses from 1971 to 1972 on the poison ban. Consider the facts, however: Since poisons set out in

the winter of 1971–72 affected the predator breeding population of the *following* spring and poison baits were not removed from the high country until as late as June, 1972, the ban's total effect could not *possibly* have been felt for months after it was announced.

Moreover, even if losses are up in one year, that in itself is of little significance in determining the effectiveness or lack of effectiveness of a predator control program. Losses fluctuated even during the years when 1080, strychnine and cyanide were widely used. According to the U.S. Agriculture Department, which is pro-poison, the highest losses—8.1%—in recent years occurred in 1970, two years *before* the poison ban!

Final loss figures for 1973 have not yet been compiled, as far as we know. It is certainly possible that when the final figures for 1973 are in, they may show increases in some states—and decreases in other states. But regardless of what they show, one year is hardly enough to establish a valid statistical trend!

We also point out that the loss *figures*—be they higher or lower—cannot be accepted as gospel. Too often these figures are based on projections which, in turn, are based on questionnaires sent to individual sheep ranchers who may or may not be reporting losses accurately.

As the Final Report to the Four Corners Regional Commission on an important Predator Control Study noted:

"Unbiased estimates of the *causes* of loss, whether predation or otherwise, are more difficult to get and tend to fall in the surmise category. While stockmen frequently feel that their veracity is held in question on this matter, this is not the case at all. The basic problem is that it is almost always difficult, if not impossible, to see all or most of the animals that die. A prime example is the Davenport et al. study in which a small, selected group of stockmen were asked to report all dead sheep they found, and the investigators themselves spent a great deal of time searching the range areas. Even under this intensive regime, only half of the dead animals were found on the limited spring ranges, and only about one fourth of the dead animals were seen in the more extensive summer ranges.

"When only a fraction of the dead animals is found, the observer is always left with the problem of *surmising* what the causes of loss have been *in the unobserved animals*. It is a natural tendency to assume that the same pattern of loss prevails among the unobserved animals as among the observed animals.

"This may or may not be true. Davenport et al. considered the possibility that predation losses were more observable because they occurred in the vicinity of bedding grounds and open terrain nearby. The implication was that predation losses constituted a lower percentage of the unseen deaths which comprised roughly three-fourths of the total, summer losses. They did not assert this as necessarily being true, but it left sufficient uncertainty to prevent any confident projections to total predation loss for their data."

We are well aware that some sheep ranchers have testified at hearings that their losses are higher. But this does not mean that all sheep raisers have higher losses this year; indeed, those with few losses have little incentive to report at all—and many don't.

The *New York York Times* story of January 2 also quoted the executive secretary of the National Wool Growers Association as saying that sheep losses will continue to worsen as long as ranchers are barred from using poisons.

I submit that while predators are indeed a real problem for sheep ranchers, the loss figures used by spokesmen for the wool growers are unreliable, unscientific and quite possibly self-serving. I suggest that no member of Congress would want to base his election campaign strategy on survey or polling techniques of the type used to compile estimated sheep loss due to coyotes.

Another factor to be kept in mind in evaluating claims to sheep losses is that poisons are still being used in some sheep states. For example, in the past year and one half, the Colorado Agriculture Department issued more than 200 permits to poison predators on private land. (The EPA order does not affect intrastate sale of poisons.) Thus, while claiming high losses *due* to the poison ban, some wool growers have been *using* poisons all along.

Incidentally, although the Executive Order provides for emergency use of 1080 and other poisons, in the nearly two years since the order became effective, the Interior Department has received only five requests for such use, only one of them for protection of domestic livestock.

The Nation's wool-growing industry is suffering from a variety of economic pressures, as the wool growers themselves admit in their industry magazine. In their frustration, some wool growers blame predators for their ills. I suppose it is much easier to hate a coyote than to change management practices or compete with synthetic fibers and foreign wool. From their point of view, wool growers face an emergency which they blame on the poison ban.

But as Mr. William Mau, past president of the Wyoming Wool Growers, said at the Senate Commerce Committee hearings last March: "Predatory animal control is a continuing emergency in Wyoming. History shows that 37 of 42 Wyoming legislative sessions have had to deal with predatory animal problems."

If a predator-caused emergency has existed for so many years in Wyoming, during which time poisons were broadcast on public and private lands, can the problems of the wool growers be blamed on the relatively recent poison ban? Would relaxing the poison ban solve the problems of the wool growers?

The National Audubon Society believes the answer to both of those questions is definitely "no."

We also believe that predators, especially coyotes, are indeed a problem for some sheep ranchers. We further believe that the answer to the coyote problem will be found through a predator control program based on research and technical and financial aid to States to help them control nuisance coyotes without using poisons, and on improved livestock husbandry techniques.

We believe that the wool growers themselves are responsible for stalling the enactment of new legislation. Despite all the evidence to the contrary, too many wool growers still see poisons as the only solution to the coyote problem, and their efforts to overturn the poison ban have obstructed passage of needed new legislation.

We will be happy to work with you, the Interior Department, and the wool growers to help implement an improved predator control program. But we urge you not to be misled by unsubstantiated charges and loss claims. Poisons simply are not the answers to the coyote problem. If they were, the problem should no longer exist, what with all the poisons spread upon western lands through the years before the ban.

Thank you for considering our views.

Sincerely,

ELVIS J. STAHR,
President.

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

Mr. CHURCH. I yield.

Mr. MANSFIELD. Mr. President, I am delighted that the distinguished Senator from Idaho has made his remarks on predator control this morning, because I am the subject of the same kind of criticism relative to my signing the letter along with 21 of my colleagues from the West.

It is getting so one cannot even call for an inquiry or clarification without being criticized for taking such action. I would hope that those groups on both sides of this question would not become so emotionally involved and would recognize the fact that Senators, once in a while at least, would like to get all of the facts laid before them for the purpose of enhancing their education on a particular subject which is of primacy at this particular moment.

I thank the Senator for yielding.

Mr. CHURCH. I thank the majority leader for his comments.

This is one field, Mr. President, where a reasonable solution is obtainable. If we could get the facts laid out in an objective manner, I am certain that the problem can be solved in a way that would be satisfactory both to the wool growers and the cattlemen, as well as the various conservation and environmental groups that have been involved in this controversy. However, unless we can get the facts and lay them out carefully and make the objective assessment that is required, emotions will continue to dominate.

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

PERIOD FOR TRANSACTION OF ROUTINE MORNING BUSINESS

The PRESIDING OFFICER (Mr. CHILES). 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 made therein limited to 3 minutes.

PRESIDENT'S BUDGET: ENGINE OF INFLATION

Mr. PROXMIRE. Mr. President, the President's budget for the coming year has been released within the hour. The President has proposed by far the largest dollar increase in Federal spending in the history of this country, in peacetime, and one of the largest percentage increases this country has ever had.

Our No. 1 economic problem today is inflation. The colossal $30 billion in additional spending the President proposes is going to make that inflation worse.

What irony—on Wednesday night in his state of the Union speech the President said and I quote:

The way to hold down inflation is to hold down Federal spending.

Now, less than 5 days later, he proposes a budget which not only fails to hold down Federal spending, but it explodes Federal spending.

Consider what the last three administrations—Democratic and Republican—have done to the American taxpayer just in the last 14 years.

In 1961 the Federal budget was less than $98 billion.

For the coming year it will be $304 billion. Now think about that for just a minute. In 14 short years the budget has tripled. It has increased threefold.

Mr. President, the last 5 years have been especially discouraging. The Republican Party in general and Mr. Nixon in particular have made a great deal of economy in Government. But since the President assumed office the budget has gone from about $196 billion to more than $300 billion, an increase of well over 50 percent, and to make the increase even more astonishing this increase has come after the conclusion of a war.

Mr. President, this is the first war in this Nation's history which has been followed—not by a reduction in spending but an increase in spending.

After the Korean war, Federal spending dropped more than $8 billion or in excess of 10 percent.

After World War II, Federal spending dropped from $95 billion down to $36 billion or a remarkable 60 percent, but after the Vietnam war the budget not only did not drop but it increased by billions, so that next year it will be more than 50 percent higher than at the peak of the war.

But, Mr. President, the situation is even worse than I have indicated. Thanks in part to revenue sharing and a series of Federal programs that virtually dictate increased State and local spending, spending by State and local government has increased even more rapidly than Federal spending.

In fiscal 1961 State and local spending was about $56 billion. In the coming fiscal year it will be about $210 billion. So, whereas Federal spending has increased threefold, State and local spending is well on its way to a fourfold increase.

Mr. President one of the alibis advanced for the increase in spending is that there is nothing the President or the Congress can do about it. The spending is called uncontrollable.

In any one year of course there is something to that. Contract commitments must be honored. Social security payments increased by past Congresses to take effect in the coming year must be honored.

How did we get into this kind of fix? We got into it because we adopt immensely expensive programs without really concerning ourselves with their cost. Who is to blame? The answer: Both the President and the Congress are to blame.

Take the Nixon proposal for a universal health care program. The cost, $40 billion each and every year. And on the basis of our experience with medicare, that $40 billion is just a beginning.

Take the guaranteed annual income program cost: a few billion to begin with, but once we start—watch out. That program with its built-in, like social security—every election year a boostershot will make the military budget look penny ante.

And future Presidents and Congresses will talk about another huge uncontrollable spending obligation.

Mr. President in the next few days I expect to make a series of speeches on the budget and to offer a counterbudget.

For those Members of Congress and the public who believe Federal spending is becoming a smothering burden, this is going to seem like a lonely road. The newspapers I have read, the television commentaries I have heard on the budget—all either take the spending increase for granted or argue that it may not be enough if recession hits us.

But I am convinced that the American people overwhelmingly have quite a different view. They are vehemently opposed to the suffocating tide of increased Federal spending and they are anxious to see it stopped and reversed. I am not talking about conservative Republicans. I am talking about all the American people—all income groups, occupational groups—all ages. All regions of this country favor holding down Federal spending. Mr. President, I venture to guess that there is not a State in this country in which a majority of voters would not vote for a reduction in almost every major phase of the President's budget—domestic, military, you name it.

Remote as the prospects may seem, I think it is worth a fight to try to get that sentiment together.

THE PROPOSED PAY RAISE

Mr. GRIFFIN. Mr. President, earlier the distinguished Senator from Idaho (Mr. CHURCH) submitted a resolution of disapproval of the 7.5 percent pay raise which President Nixon has recommended for certain officers in the judiciary branch, in the legislative branch, and the executive branch.

From a political point of view, perhaps it would be expedient to have no comment or, perhaps, to join in cosponsoring the resolution of disapproval. However, I feel it is important that someone undertake to put this matter in perspective.

For example, in the remarks which accompanied submission of the resolution, I did not hear it said that judges, Members of the Congress, and those in the executive branch who would be affected have had no adjustment in pay since March of 1969. It was not pointed out in the presentation that since March of 1969, the cost of living has gone up nearly 30 percent.

We hear a lot these days about the need for confidence in Government and how essential it is that good people be attracted to Government service and be willing to stay in Government.

If Members of Congress are reluctant to vote themselves a cost-of-living adjustment, I hope they will at least take a look at the need for such an adjustment in the case of other officers in the judicial and executive branches.

It is essential that able and distinguished lawyers be willing to serve as Federal judges. But the fact is that Federal judges have experienced a pay cut of more than 25 percent since March of 1969.

If we hope to attract the best of the legal profession to serve in the judiciary and to stay in the judiciary, certainly some kind of a catchup, cost-of-living adjustment is in order at this time.

Mr. ROBERT C. BYRD. Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will please come to order. The Senator is entitled to be heard.

The Senator's 3 minutes have expired.

Mr. PERCY. Mr. President, I seek recognition, and I yield to the Senator from Michigan.

Mr. GRIFFIN. There is another point I should like to make. It should be noted that the President has not recommended a 25- or 30-percent increase—which would be necessary to catch up with the cost of living. Instead, he has recommended only a 7½-percent increase, which will accomplish nothing more than keep pace this year with the approximate increase in the cost of living that most economists anticipate this year.

I thank the distinguished Senator from Illinois for yielding.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that further statements during the transaction of routine morning business be limited to 6 minutes rather than 3 minutes.

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

THE FISCAL YEAR 1975 BUDGET

Mr. PERCY. Mr. President, the President's office released the President's fiscal year 1975 budget request about 12 o'clock noon today. My comments will be brief, but, having spent an interesting weekend reviewing the proposed budget, I should like to make a few comments.

I was pleased by the offer of cooperation extended to the Congress by the President and administration officials in presenting the President's budget requests for fiscal 1975. Such cooperation is vital if the Federal Government is to respond effectively to our Nation's economic and social needs this year and in the years ahead.

I am concerned that the President's fiscal year 1975 budget request may be based on overly optimistic assumptions about the economy in 1974.

The President declared in the state of the Union message that there will not be recession. The Council of Economic Advisers projects a slow rate of economic expansion in the first half of the year, while admitting the possibility of a decline.

These forecasts seem to me to be too optimistic. Unfortunately, I think there is a better than even chance that in both the first and second quarters of this year real GNP will actually drop. Two quarters of negative, or zero, GNP growth would, by the commonly accepted definition, mean an actual recession.

It is in fact a sorry state of affairs when the best that the administration can even hope for is inflation close to 7 percent and unemployment close to 6 percent. But even these projections may be overoptimistic.

If the administration's projected upturns do not occur by the beginning of the second quarter the administration should be prepared with a contingency plan to promote recovery. It should not wait, however, until the spring to prepare this plan. Rather it should have programs developed and ready to put in place should the upturn fail to develop, and it should begin now to develop alternatives in consultation with Congress.

The lesson of the last year or two is that there will be surprises and that being unprepared turns surprise into disaster.

The administration's assumptions about the economy, and the fiscal policies derived from those assumptions, contain a kind of "time bomb." If we wait too long to see whether the assumptions are right or wrong, and do not have corrective programs to implement, we risk plunging the economy into an even deeper downturn. For example, if unemployment continues to rise dramatically additional fiscal stimulus will be needed.

There are at least two areas in which additional Federal spending would be desirable. Secretary of the Treasury Schultz has suggested improvements in the unemployment compensation program as a major response to growing unemployment. This is a partial, but not an adequate solution.

What is needed now is an immediate supplemental appropriation of at least $800 million for the public employment program to offset the job losses occasioned by the energy crisis and its side effects. This amount of additional funding would allow State and local governments in areas of high unemployment to immediately hire at least 170,000 persons.

Conspicuously present in this budget are dramatic expenditures to increase energy supplies, in a long-range basis. What is conspicuously absent is a package of incentives—tax and otherwise—to promote energy conservation and to offset the additional costs of energy to the consumer.

The volatile nature of the economy and the necessity to work closely together to see that the Federal budget has the necessary fiscal impact makes enactment of congressional budget reform urgent. I predict that Congress will respond and that the Senate will adopt the most sweeping budget reform since 1921 within the next 45 days, and that the legislation should be on the President's desk for signature during the second quarter of this year.

Mr. President, more than ever when we have a volatile economy, with a potential for a downturn, or an upturn if the embargo is lifted quickly and we can respond quickly to it, we need to stay sensitive to the economic needs of the Nation, and this calls for closer coordination and cooperation than ever before between the executive branch of the Government and the congressional branch.

We can be very grateful indeed that two committees of the Senate, the Committee on Government Operations and the Committee on Rules and Administration, have been laboring long and hard; that, together with the expertise exercised through the years by the Appropriations Committee and other committees, can bring about a change this year in Congress that is long overdue, but which is now vital and absolutely essential for us to pursue a policy of fiscal responsibility and fiscal responsiveness to the economic needs of the country.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

ORDER FOR ADJOURNMENT UNTIL TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 11 a.m. tomorrow.

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

(Later this order was changed to provide for the Senate to convene at 10 a.m. tomorrow.)

QUORUM CALL

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

ORDER FOR SENATE TO CONVENE IN EXECUTIVE SESSION AT CONCLUSION OF MORNING BUSINESS TODAY

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that, at the conclusion of routine morning business today, the Senate go into executive session to resume consideration of the Genocide Convention.

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

QUORUM CALL

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. ROBERT C. BYRD. Mr. President, how much time remains for morning business?

The PRESIDING OFFICER. Eight minutes.

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

DIVISION AND CONTROL OF TIME ON CONSIDERATION OF GENOCIDE CONVENTION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on tomorrow, the distingiushed Senator from Idaho (Mr. CHURCH) and the distinguished Senator from North Carolina (Mr. HELMS) control the time for the 1 hour of debate under rule XXII on the Genocide Convention.

Mr. JAVITS. Mr. President, before that request is agreed to—the Senator moved rather fast for me on that—I should like to reserve the right to object on that division of time to ask the Senator from West Virginia a question.

Mr. ROBERT C. BYRD. Yes.

Mr. JAVITS. What assurance does the Senator have that Senator HELMS has requested that time or will use it? It is most extraordinary that there have been a number of days of debate now on this matter and the opposition professes to be determined in its opposition, but we have yet to hear the arguments in opposition. Thus, I believe we have a right to ask, is the Senator from North Carolina going to take the time that he has asked for and, hopefully, will use it?

Mr. ROBERT C. BYRD. I cannot answer the Senator. The Senator from North Carolina did not ask me for the time, but as is usually the case, we do attempt to divide the time between the two opposing sides. I just went on the assumption that Senator HELMS would control the time for the opposition.

Mr. JAVITS. I thank my colleague very much. I shall not object, of course, because this is the way we usually do it. But I do think it is important to note for the RECORD and for all Senators that we have been here prepared to debate. We could have taken Monday off, too, but we are prepared to stay as late as anyone wishes. I will stay here until midnight tonight if necessary. We have made our arguments. We have heard none, notwithstanding, as I say, the assurance of the determined opposition. The leadership has kind of assumed that that is so, too, but without any tangible evidence on the floor, because there has been no desire on the part of the opposition to close up this matter. Under those circumstances, as I understand it, I shall, of course, not object. But I believe it should be noted exactly what the situation is with respect to disposition of this Genocide Treaty which was so widely advertised as being absolutely dug in and irreconcilable, but we have yet to hear from them.

I thank my colleague.

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

VALIDATION OF AMENDMENTS TO BE PROPOSED TO GENOCIDE CONVENTION

Mr. ROBERT C. BYRD. Mr. President, as in exectutive session, I ask unanimous consent that all amendments involving reservations, understandings, and declarations proposed to the resolution of ratification on Executive O, 81st Congress, 1st session, at the desk, by the beginning of the vote to invoke cloture, now be considered as having been read so as to comply with the reading requirements under rule XXII.

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

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

ORDER FOR ADJOURNMENT UNTIL 10:30 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 10:30 a.m. tomorrow.

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

ORDER FOR TRANSACTION OF ROUTINE BUSINESS TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that after the two leaders or their designees, as the case may be, have been recognized under the standing order tomorrow, there be a period for the transaction of routine morning business of not to extend beyond the hour of 11 o'clock a.m., with statements therein limited to 3 minutes.

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

ORDER FOR EXECUTIVE SESSION ON GENOCIDE CONVENTION TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that at the hour of 11 o'clock a.m. tomorrow the Senate go into executive session to resume the consideration of the Genocide Convention.

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

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

ORDER FOR RECOGNITION OF SENATOR ROBERT C. BYRD TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that following the recognition of the two leaders or their designees, as the case may be, under the standing order tomorrow, I be recognized for not to exceed 15 minutes, or in any event not to extend beyond the hour of 11 o'clock a.m.

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

Mr. ROBERT C. BYRD. This would eliminate the period for the transaction of routine morning business tomorrow.

The PRESIDING OFFICER. That is correct.

Mr. ROBERT C. BYRD. Mr. President, has morning business been closed?

The PRESIDING OFFICER. Morning business has been closed.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. CHILES, from the Committee on Government Operations, with amendments:

S. 1414. A bill to strengthen congressional control in determining priorities of appropriations and expenditures by requiring the budget to be organized and submitted on the basis of national needs, agency programs, and basic program steps (Rept. No. 93-675).

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. CLARK:

S. 2943. A bill to provide for public financing of all Presidential and congressional election campaigns, to repeal the Campaign Communications Reform Act, to amend the Federal Election Campaign Act of 1971, and the Presidential Election Campaign Fund Act, and for other purposes: Referred, by unanimous consent, jointly to the Committees on Rules and Administration, Commerce, and Finance.

By Mr. PEARSON:

S. 2944. A bill to provide for the assignment of Foreign Service officers to certain public organizations. Referred to the Committee on Foreign Relations.

By Mr. BELLMON (for himself and Mr. BARTLETT):

S. 2945. A bill to repeal the Economic Stabilization Act of 1970. Referred to the Committee on Banking, Housing and Urban Affairs.

By Mr. TALMADGE (by request):

S. 2946. A bill to amend the provisions of the Perishable Agricultural Commodities Act, 1930, relating to practices in the marketing of perishable agricultural commodities. Referred to the Committee on Agriculture and Forestry.

By Mr. CHILES:

S. 2947. A bill to amend the Export Administration Act of 1969 to authorize the imposition of export controls when necessary to bring about adjustments in economic policies or actions by foreign governments. Referred to the Committee on Banking, Housing and Urban Affairs.

By Mr. DOMINICK (for himself, Mr. BENNETT, Mr. DOMENICI, Mr. MONTOYA, Mr. FANNIN, and Mr. HASKELL):

S. 2948. A bill to amend section 5(c) of the National Trails System Act. Referred to the Committee on Interior and Insular Affairs.

By Mr. BAYH:

S. 2949. A bill to amend title XVIII of the Social Security Act to include breast prosthesis among the items and services for which payment may be made under the supplementary medical insurance program. Referred to the Committee on Finance.

S. 2950. A bill to amend title II of the Social Security Act to increase to $4,800 the amount of outside earnings permitted each year without deductions from benefits thereunder. Referred to the Committee on Finance.

By Mr. BAYH:

S. 2951. A bill to provide for public ownership of certain documents of elected public officials. Referred to the Committee on Government Operations.

By Mr. HUMPHREY:

S. 2952. A bill to provide for project grants for the development and demonstration of programs for rehabilitative, habilitative, personal support, residential, medical, dental, and mental health services for the chronically ill residents of identified population areas. Referred to the Committee on Labor and Public Welfare.

By Mr. MATHIAS:

S. 2953. A bill for the posthumous promotion of Lt. Comdr. Herbert Montgomery Hayter, U.S. Navy. Referred to the Committee on Armed Services.

By Mr. MATHIAS (for himself and Mr. ERVIN):

S. 2954 A bill to amend the Economic Stabilization Act of 1970 to establish improved procedures for the implementation of that act, and to assure due process under that act. Referred to the Committee on Banking, Housing and Urban Affairs.

By Mr. MOSS (for himself and Mr. GOLDWATER) (by request):

S. 2955. A bill to authorize appropriations to the National Aeronautics and Space Administration for research and development, construction of facilities, and research and program management, and for other purposes. Referred to the Committee on Aeronautical and Space Sciences.

By Mr. SCHWEIKER:

S. 2956. A bill to establish the Federal Energy Production Corporation, and for other purposes. Referred, by unanimous consent, to the Committee on Government Operations; and, when and if reported by that committee, jointly to the Committees on Finance and Interior and Insular Affairs.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. CLARK:

S. 2943. A bill to provide for public financing of all Presidential and congressional election campaigns, to repeal the Campaign Communications Reform Act. to amend the Federal Election Campaign Act of 1971, and the Presidential Election Campaign Fund Act, and for other purposes. Referred, by unanimous consent, jointly to the Committees on Rules and Administration, Commerce, and Finance.

COMPREHENSIVE ELECTION REFORM ACT OF 1974

We shall not finally come to grips with the problem except as we are prepared to pay for the public business of elections with public funds. (Sen. Mike Mansfield, Feb. 1, 1974).

Mr. CLARK. Mr. President, it has been 18 months, now, since a small group of men broke into the Democratic Party's national headquarters setting in motion what has become the most serious and devastating episode of political scandal and corruption in this country's history. Since that day in June, the revelations and criminal charges have not stopped—bribery, perjury, illegal wiretapping, bur-

glary, and a score of illegal campaign contributions.

Through the efforts of the Special Prosecutors' Office, the Senate Select Committee, Judge Sirica, and the grand juries, and now the House Judiciary Committee, everyone knows just how widespread the disease has been. The evidence is not all in, of course, and the investigations and trials will continue. But the people of this country have heard enough and seen enough to expect that something be done to change the political practices that allowed this to flourish. They expect a significant change, and they expect the Congress to make it, if only because the administration certainly is not going to lead the reform effort.

A few days ago, we listened to the President's reflections on the state of the Union. It was ironic that he would ignore one of this country's most critical problems: the public's widespread, growing distrust for public officials and Government. It is not enough to proclaim: "One year of Watergate is enough," and then to say that we should end the investigations before they are complete; and to "get on with the business of the country" is to say that trying to prevent political corruption is not the country's business. Unfortunately, it is very much a part of it.

Like political corruption, the liabilities of a political system like ours—based on private financing—are not limited to the executive branch. The impact of the private dollar on the legislative process has been pervasive, and there probably is not a single Member of the U.S. Congress who has not felt it or wished that it might be changed.

Many people in Iowa, like people across this country, feel disillusioned, frustrated, and angry. They are upset about the energy situation and the high profits of the oil companies, but they become even angrier when they learn that oil companies financed a significant part of the President's reelection campaign. As a result, people do not trust the administration—or Congress, for that matter—and they do not believe that the Federal Government can even deal with the energy emergency, the inflationary economy, and any number of problems that face the Nation today.

They strongly suspect that Government's principal interest is not their interest. And that suspicion is gradually becoming disdain and apathy. Already, this country has the lowest voter participation of any country. The events of the last year have had their strongest impact upon young people, and I am terribly afraid that unless we move decisively to improve the political process, to make it more responsive, more and more young people are going to stay away from Government and public service. If they do stay, if they do decide that the political process is simply not worth the effort, what is this country going to be like 20 years from now?

At the heart of that public distrust is a fundamental suspicion of the political process that provides for the election of public officials heavily dependent on private contributions. "You don't get something for nothing," as the saying goes, and too many people have applied to Government; and all too often, there is little distinction between a campaign contribution and a bribe.

PUBLIC FINANCING

Mr. President, late in December, the Senate recognized the problems of the present system and came very close to passing a limited public financing proposal, one advanced by Senator KENNEDY and Senator HUGH SCOTT of Pennsylvania, with the support of a number of Senators who have introduced their own public financing legislation.

If the need for public financing was well-established then, it is even more so now. This is a new year, and it presents new opportunities for improving the political process that has been so crippled over the last 18 months. If we do not take advantage of the opportunity, the result may be even more tragic than the legacy of Watergate.

Today, I am introducing a bill to establish total public financing for political campaigns. It virtually would eliminate the role of the private dollar in public elections, requiring that all campaign funds be exclusively and strictly controlled by a Federal Election Commission. The proposed legislation is an attempt to define what could be—in my judgment—the most basic reform possible. It goes beyond the public financing proposals introduced last year, but I am convinced that it will take nothing less than legislation of this scope to begin to restore trust and confidence in Government.

The events of last year brought it into the open, but even without Watergate, the need for far-reaching political reform through public financing should be apparent.

The 1972 general election was only the latest example that in politics, money works wonders. Fewer than 20 incumbents in the entire Congress were not reelected in that election. Ideally, that could be explained by the exemplary records of Congressmen and Senators—or, at worst, by the incumbents' traditional advantages of office. But it is no secret that the only real difference between incumbents and challengers in many cases is money, and money is a poor standard for Government leadership.

After studying the 1972 campaign, Common Cause reported that incumbents were able to raise—and spend—twice as much money as their challengers. By and large, the money for political campaigns, whether for an incumbent or a challenger, does not come from a broad range of concerned citizens giving small amounts. Instead, more than two-thirds of the money raised in political campaigns comes from a very small number of wealthy individuals and groups.

Any public officials, willing to admit it, knows what this means: Each time a political campaign accepts such "gifts"—and no candidate could now choose not to—that candidate may sacrifice a small piece of independence, integrity, and the ability to serve the public in office, and even if he does not, the public will think he has. Congress, then, may become farther and farther removed from the people, less reflective of their views, and more responsive to the "big" contributors. In the eyes of many public officials an "unofficial" distinction emerges—between people who contribute and people who do not contribute. By giving money to a political campaign, some people are trying to improve the political system—they expect only the best representation—but many contributors are far less altruistic. The distinction cannot help but seriously damage the principle of "one person—one vote," often destroying the people's confidence in Government in the process.

The bill I am introducing today relies heavily on the experience of several Senators who have led efforts for public financing. No public financing proposal even would be possible were it not for the work of Senator RUSSELL LONG, who has been advocating the concept for the last 10 years. And I have drawn on the bills introduced earlier in this Congress by Senators CRANSTON, HART, KENNEDY, MATHIAS, MONDALE, PELL, SCHWEIKER, SCOTT, STAFFORD, and STEVENSON. Representative BILL GUNTER of Florida, has introduced legislation in the House which includes many of the same concepts. The legislation also has benefited from the advice of a number of groups, primarily the Center for Public Financing of Elections, and Ralph Nader's Congress Watch and Common Cause as well.

The basic substance of this total financing concept first was presented by Prof. Joel L. Fleishman of Duke University, in hearings last September before Senator PELL's Subcommittee on Privileges and Elections. An associate professor of law and director of the university's Institute of Policy Sciences and Public Affairs, he is regarded as one of the leading scholars in this area.

PROVISIONS

To raise revenues for Federal election campaigns, this bill uses an expanded version of the income tax checkoff originated by Senator LONG. The amount would be raised to $2 for each taxpayer, and it would be automatic unless the taxpayer objected.

As with the other bills, the proposal calls for a seven-member bipartisan Federal Election Commission. As with other bills, the Commission would be given primary responsibility for administering and regulating Federal election campaigns—with full investigative, subpena, and prosecutorial powers. However, in this proposal, the Commission also would control all campaign funds, setting up a central account for each candidate, paying campaign bills, and salaries directly.

Such a system obviously would necessitate significant changes in the way campaigns have traditionally been conducted. But I strongly believe that such changes would lead to better planned and

better organized campaigns, better for the candidate and for the public. I do not think that such a system would create a new bureaucracy. Under this bill, the manpower required would be that of a small town bank with a few thousand checking accounts.

This proposal incorporates roughly the same campaign expenditure limits as the Senate Rules Committee version of S. 372—for Senate and Presidential primaries, 15 cents for each voter, and 20 cents in the general election; for House primaries 25 cents for each voter, and 30 cents in the general election.

It repeals the equal time provisions of the Communications Act of 1934 and bans the use of the frank for mass mailing within 90 days of any Federal election. In addition, it would require the U.S. Postal Service to establish a reduced postage rate for all candidates for Federal office.

The central feature of this proposal—the one that sets it apart from other bills—is the establishment of total public funding for all major party candidates in both primary and general elections, outlawing all private contributions and expenditures. I will include in the RECORD a summary of the bill's proposals and cost; but briefly, major party candidates would qualify for public funds by submitting a prescribed number of petition signatures to the Election Commission—a fairer test of public support than money. From that point on, their campaigns would be financed solely from the Federal election campaign fund. Minor party and independent candidates also would qualify for substantial—even total—public funding, depending on their performance in the election.

COST

Assuming three candidates in each party primary for every Federal office, the system would cost about $250 million a year. That is only a dollar a year for each person in America. When one thinks of the benefits of a government truly responsible to all the people, it would be, as author Philip Stern has said:

The greatest bargain the people could possibly get.

One dollar a year, from each of us—surely a small price to pay for better Government.

This measure does not incorporate a security deposit or matching formula approach to granting public funds to a candidate, as other legislation has done. Instead, it uses petition signatures. Even with these other approaches, there is some inequity involved—the candidate still must raise money from private individuals. The more doors left open for private contributions, it seems to me, the more doors left open for abuse.

Mr. President, it is clear that private financing has no place any longer in this country. It does not work well—practically or theoretically. In the recent case of Bullock against Carter, the Supreme Court ruled that the Texas system of requiring substantial candidate filing fees was unconstitutional. In that decision, the Court said:

Many potential office seekers lacking both personal wealth and affluent backers are in every practical sense precluded from seeking the nomination of their chosen party, no matter how qualified they might be, and no matter how broad or enthusiastic their popular support . . . not only are voters substantially limited in their choice of candidates, but also there is the obvious likelihood that this limitation would fall most heavly on the less affluent segment of the community . . . [A]t the same time it gives the affluent the power to place on the ballot their own names or the names of persons they favor . . . [which] is endemic to the system . . . [W]e would ignore reality were we not to recognize that this system falls with unequal weight on voters, as well as candidates, according to their economic status. 405 U.S. 143–4 (1972)

The Court concludes by saying:

[T]o the extent that the system requires candidates to rely on contributions from voters in order to pay the assessments . . . it tends to deny some voters the opportunity to vote for a candidate of their choosing . . .

The present system of campaign financing encourages abuse and discourages participation. Others, of course, have made the case that prohibiting private contributions would violate the first amendment. Professor Fleishman offered an excellent response to these charges in his article in the most recent edition of the North Carolina Law Review. Citing Bullock against Carter and others, he wrote:

It has been ably argued that there is a protected right to spend one's private money without restriction for political purposes. One must ask, however, how such a right can conceivably coexist side by side with the Court's repeated affirmation of a diametrically opposite right—the right of citizens to be free of wealth distinctions in acting, and being acted upon, in the political process. Moreover, those same opinions imply an affirmative obligation to reduce or eliminate wealth-derived influence in political campaigns. If there is such an affirmative obligation to reduce or prevent the impact of money in politics, there can hardly be a right to use one's money freely in politics. Thus, in theory, and on the basis of more than enough practical reasons, a legal right to act politically by means of one's material wealth cannot be seriously maintained. North Carolina Law Review, Vol. 52, p. 349.

There has been much support for the concept of total public campaign financing. Howard K. Smith, the ABC network broadcaster, said it very simply in an evening news commentary last September:

Drop complicated plans in some present bills for government to match private contributions on a graduated scale. Simply forbid all private financing. Have government pay all costs.

And Charles W. Colson, the former special counsel to President Nixon, wrote in the New York Times:

No half-way measure like that now pending in Congress will suffice. Those who seek to corrupt will find loopholes in any purely regulatory statute Congress can draw. What is needed is a complete substitution of public for private financing.

Mr. President, I understand that the Senator from Nevada (Mr. CANNON) and the Rules Committee will soon be preparing public financing legislation for the Senate's consideration. I hope the committee will consider the approach outlined in this bill.

We can help stop corruption and the predominance of special interests, and the need to take action now should be readily apparent.

Mr. President, I ask unanimous consent to have printed in the RECORD the text of the bill, a brief explanation and summary of the bill, and a financial analysis.

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

S. 2943

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 "Comprehensive Election Reform Act of 1974".

DECLARATION OF PURPOSE

SEC. 2. It is the purpose of this Act—

(1) to provide total public financing of federal political campaigns, eliminating the necessity of financial contributions from private sources;

(2) to enable more people to become directly involved in the democratic process as candidates, eliminating individual wealth or access to wealth as prerequisites for public office;

(3) to give the electorate equal exposure to the ideas and viewpoints of candidates in each election, eliminating the advantages that wealth and public office may bring.

FEDERAL ELECTION CAMPAIGN FINANCING

SEC. 3. (a) The Federal Election Campaign Act of 1971 is amended by adding at the end thereof the following new title:

"TITLE V—PUBLIC FINANCING OF FEDERAL ELECTION CAMPAIGNS

"DEFINITIONS

"SEC. 501. When used in this title—

"(1) 'candidate' means an individual who seeks nomination for election, or election, to Federal office, whether or not he is elected, and, for purposes of this paragraph, an individual seeks nomination for election, or election, if he (A) takes the action necessary under the law of a State to qualify himself for nomination for election, or election, to Federal office, (B) receives contributions or makes expenditures, or (C) gives his consent for any other person to receive contributions or make expenditures for the purpose of bringing about his nomination for election, or election, to such office;

"(2) 'Commission' means the Federal Election Commission established under section 502;

"(3) 'contribution'—

"(A) means a gift, subscription, loan, advance, or deposit of money or anything of value, made for the purpose of—

"(i) influencing the nomination for election, or election, of any person to Federal office or as a Presidential or Vice-Presidential elector; or

"(ii) influencing the result of a primary held for the selection of delegates to a national nominating convention of a political party or for the expression of a preference for the nomination of persons for election to the office of President;

"(B) means a contract, promise, or agreement, whether or not legally enforceable, to make a contribution for any such purpose;

"(C) means a transfer of funds between political committees; and

"(D) means the payment, by any person other than a candidate or political committee, of compensation for the personal services of another person which are rendered to such candidate or committee without charge for any such purpose; but

"(E) does not include—

"(i) (except as provided in subparagraph (D)) the value of personal services rendered to or for the benefit of the candidate by an individual who receives no compensation for rendering any service to the candidate;

"(ii) payments under section 509;

"(iii) news stories, commentaries and editorials on broadcast stations or in newspaper, magazines and other periodical publications (other than a publication of a political party, a political committee as defined in section 591(d) of title 18, United States Code, a candidate or an agent of any of the foregoing); non-partisan registration and get-out-the vote activity; communications by an establishes membership organization (other than a political party) to its members, or by a corporation (not organized for purely political purposes) to its stockholders;

"(4) 'expenditure' means—

"(A) a purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made for the purpose of—

"(i) influencing the nomination for election, or election, of any person to Federal office, or as a Presidential and Vice-Presidential elector; or

"(ii) influencing the result of a primary held for the selection of delegates to a national nominating convention of a political party or for the expression of a preference for the nomination of persons for election to the office of President;

"(B) a contract, promise, or agreement, whether or not legally enforceable, to make an expenditure; and

"(C) a transfer of funds between political committees;

"(5) 'Federal office' means the office of President of the United States or of Senator or Representative in the Congress of the United States;

"(6) 'general election' means any election, including special elections, held for the election of a candidate to Federal office;

"(7) 'major party' means a political party which, in the preceding general election nominated a candidate who—

"(A) received, as the candidate of that party, twenty five percent or more of the total number of popular votes cast for all candidates for election to that office; or

"(B) received, as the candidate of that party, the largest number or second largest number of popular votes cast for any candidate for election to that office;

"(8) 'minor party' means a political party which is not a major political party;

"(9) 'political party' means a committee, association, or organization the primary purpose of which is to select and to support individuals who seek election to Federal, State, and local office as the candidate of that committee, association, or organization;

"(10) 'primary election' means (A) an election, including a run-off election, held for the nomination of a candidate for election to Federal office, (B) a convention or caucus of a political party held for the nomination of such a candidate, (C) an election held for the selection of delegates to a national nominating convention of a political party, and (D) an election held for the expression of a preference for the nomination of persons for election to the office of President;

"(11) 'Representative' includes Delegates or Resident Commissioners to the Congress of the United States; and

"(12) 'State' means each State of the States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

"FEDERAL ELECTION COMMISSION

"SEC. 502. (a)(1) There is established, as an independent establishment of the executive branch of the Government of the United States, a commission to be known as the Federal Election Commission.

"(2) The Commission shall be composed of seven members who shall be appointed by the President by and with the advice and consent of the Senate. Of the seven members—

"(A) two shall be chosen from among individuals recommended by the President pro tempore of the Senate, upon the recommendations of the majority leader of the Senate and the minority leader of the Senate; and

"(B) two shall be chosen from among individuals recommended by the Speaker of the House of Representatives, upon the recommendations of the majority leader of the House and the minority leader of the House.

The two members appointed under subparagraph (A) shall not be affiliated with the same political party; nor shall the two members appointed under subparagraph (B). Of the three members not appointed under such subparagraphs, no more than two shall be affiliated with the same political party.

"(3) Members of the Commission shall serve for terms of seven years, except that, or the members first appointed—

"(A) two of the members not appointed under subparagraph (A) or (B) of paragraph (2) shall be appointed for terms ending on the April thirtieth first occurring more than six months after the date on which they are appointed;

"(B) one of the members appointed under paragraph (2) (A) shall be appointed for a term ending one year after the April thirtieth on which the term of the member referred to in subparagraph (A) of this paragraph ends;

"(C) one of the members appointed under paragraph (2) (B) shall be appointed for a term ending two years thereafter;

"(D) one of the members not appointed under subparagraph (A) or (B) of paragraph (2) shall be appointed for a term ending three years thereafter;

"(E) one of the members appointed under paragraph (2) (A) shall be appointed for a term ending four years thereafter; and

"(F) one of the members appointed under paragraph (2) (B) shall be appointed for a term ending five years thereafter.

"(4) Members shall be chosen on the basis of their maturity, experience, integrity, impartiality, and good judgment. A member may be reappointed to the Commission only once.

"(5) An individual appointed to fill a vacancy occurring other than by the expiration of a term of office shall be appointed only for the unexpired term of the member he succeeds. Any vacancy occurring in the office of member of the Commission shall be filled in the manner in which that office was originally filled.

"(6) The Commission shall elect a Chairman and a Vice Chairman from among its members for a term of two years. The chairman and the Vice Chairman shal not be affiated with the same political party. The Vice Chairman shall act as Chairman in the absence or disability of the Chairman, or in the event of a vacancy in that office.

"(b) A vacancy in the Commission shall not impair the right of the remaining members to exercise all the powers of the Commission and four members thereof shall constitute a quorum.

"(c) The Commission shall have an official seal which shall be judicially noticed.

"(d) The Commission shall at the close of each fiscal year report to the Congress and to the President concerning the action it has taken; the names, salaries, and duties of all individuals in its employ and the money it has disbursed; and shall make such further reports on the matters within its jurisdiction and such recommendations for further legislation as may appear desirable.

"(e) The principal office of the Commission shall be in or near the District of Columbia, but it may meet or exercise any or all its powers in any State.

"(f) The Commission shall appoint a General Counsel and an Executive Director to serve at the pleasure of the Commission. The General Counsel shall be the chief legal officer of the Commission. The Executive Director shall be responsible for the administrative operations of the Commission and shall perform such other duties as may be delegated or assigned to him from time to time by regulations or orders of the Commission. The Commission shall not delegate the making of regulations regarding elections to the Executive Director.

"(g) The Commission may obtain the services of experts and consultants in accordance with section 3109 of title 5, United States Code.

"(h) In carrying out its responsibilities under this title, the Commission shall, to the fullest extent practicable, avail itself of the assistance, including personnel and facilities, of the General Accounting Office and the Department of Justice. The Comptroller General and the Attorney General are authorized to make available to Commission such personnel, facilities, and other assistance, with or without reimbursement, as the Commission may request.

"(i) The provisions of section 7324 of title 5, United States Code, shall apply to members of the Commission notwithstanding the provisions of subsection (d) (3) of such section.

"(j) (1) Whenever the Commission submits any budget estimate or request to the President or the Office of Management and Budget, it shall concurrently transmit a copy of that estimate or request to the Congress.

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

"(k) In verifying signatures on petitions required under this title, the Commission shall avail itself of the assistance, including personnel and facilities, of State and local governments to the extent those governments have already established programs to verify signatures on petitions. The Commission may make agreements with State and local governments to reimburse those governments for such assistance.

"POWERS OF COMMISSION

"SEC. 503. (a) The Commission shall have the power—

"(1) to make, pursuant to the provisions of chapter 5 of title 5, United States Code, any rules necessary to carry out its functions

under this Act, including rules defining terms used in this Act and rules establishing procedures for gathering and certifying signatures on petitions required under this title;

"(2) to make rules governing the manner of its operations, organizations, and personnel;

"(3) to require, by special or general orders, any person to submit in writing reports and answers to questions the Commission may prescribe; and those reports and answers shall be submitted to the Commission within such reasonable period and under oath or otherwise as the Commission may determine;

"(4) to administer oaths;

"(5) to require by subpena, signed by the Chairman or the Vice Chairman, the attendance and testimony of witnesses and the production of all documentary evidence relating to the execution of its duties;

"(6) in any proceeding or investigation, to order testimony to be taken by deposition before any person designated by the Commission who has the power to administer oaths, and to compel testimony and the production of evidence in the same manner as authorized under paragraph (5) of this subsection;

"(7) to pay witnesses the same fees and mileage as are paid in like circumstances in the courts of the United States;

"(8) to initiate (thruogh civil proceedings and through presentations to Federal grand juries), prosecute, defend, or appeal any court action in the name of the Commission for the purpose of enforcing the provisions of this title and of sections 602, 608, 610, 611, 612, and 613 of title 18, United States Code, and to recover any amounts payable to the Secretary of the Treasury under section 510, through its General Counsel; and

"(9) to delegate any of its functions or powers, other than the power to issue subpenas under paragraph (5) to any officer or employee of the Commission.

"(b) Any United States district court within the jurisdiction of which any inquiry is carried on, may, upon petition by the Commission—

"(1) in case of refusal to obey a subpena or order of the Commission issued under subsection (a) of this section, issue an order requiring compliance therewith; and any failure to obey the order of the court may be punished by the court as a contempt thereof; and

"(2) upon the request of the Commission, convene a special Federal grand jury to investigate possible violations of this Act.

"(c) No person shall be subject to civil liability to any person (other than the Commission or the United States) for disclosing information at the request of the Commission.

"(d) Notwithstanding any other provision of law, the Commission shall be the primary civil and criminal enforcement agency for violations of the provisions of this title, and of sections 602, 608, 610, 611, 612, and 613 of title 18, United States Code. The Attorney General shall prosecute violations of this Act or those sections of title 18 only upon the request of the Commission.

"(e) Upon application made by any individual holding Federal office, any candidate, or any political committee, the Commission, through its General Counsel, shall provide, within a reasonable period of time, an advisory opinion whether any specific transaction or activity may constitute a violation of any provision of this title or of any provision of title 18, United States Code, over which the Commission has primary jurisdiction under subsection (d).

"ELIGIBILITY FOR FEDERAL CAMPAIGN FINANCING

"SEC. 504. (a) Every political party and candidate shall—

"(1) agree to obtain and to furnish to the Commission any evidence it may request about the expenditures by that party or candidate;

"(2) agree to keep and to furnish to the Commission any records, books, and other information it may request; and

"(3) agree to an audit and examination by the Commission under section 510 and to pay any amounts required under section 510.

"(b) Every political party and candidate shall certify to the Commission that—

"(1) the candidate will not incur expenditures greater than the limitations in section 506; and

"(2) no contributions greater than the limitations on contributions in section 507 have been or will be accepted by the party or candidate.

"(c) To be eligible to have the Commission make any payments under section 509, a candidate shall file all agreements and certifications required under subsections (a) and (b) with the Commission before the date of the relevant election at the time required by the Commission.

"(d) To be eligible to have the Commission make any payments in connection with a major party primary election campaign under section 509, a candidate who seeks the nomination of that party must, in addition to the requirements of subsection (c), file with the Commission not later than 210 days before the date of that primary election—

"(1) a declaration that the candidate is seeking the nomination of a named major party for election to the office of Representative and a petition in support of his candidacy signed by a total number of people in excess of two percent of the voting age population (as certified under section 104 (a)(5)) of the Congressional district in which he seeks election; or

"(2) a declaration that the candidate is seeking the nomination of a named major party for election to the office of Representative in a State which is entitled to only one Representative, to the office of Senator, to the office of Vice President, or to the office of President, and a petition in support of his candidacy signed by a total number of people in excess of one percent of the voting age population (as certified under section 104(a)(5)) of the geographic area in which that primary election for that office is held.

"(e)(1) No candidate may be eligible under subsection (d) until the Commission verifies that the petition filed by the candidate meets the requirements of subsection (b) and that—

"(A) the signatures on the petition are valid;

"(B) the individuals who signed the petition are eighteen years of age or older;

"(C) the individuals who signed the petition live in the geographic area in which the general election for the office the candidate seeks is held or are qualified to vote in the primary election under the laws of the State in which that election is held; and

"(D) no individual who signed the petition has signed a petition required under this section of any other candidate for the same office.

"(2) The Commission shall approve or disapprove any petition filed under this subsection not later than 180 days before the date of the primary election in connection with which that petition is filed

"(f) To be eligible to have the Commission make any payments under section 509, a political party must, in addition to the requirements of subsection (c), file with the Commission, at the time and in the manner the Commission prescribes by rule, a declaration that the political party will nominate candidates who will actively campaign for election in the next regular general election.

"ENTITLEMENT TO PAYMENTS BY THE COMMISSION

"SEC. 505. (a)(1) Every candidate who is eligible for Federal financing of his campaign under section 504 is entitled to payment by the Commission of expenditures he incurs in connection with his campaign for nomination by a major political party.

"(2) No candidate who seeks the nomination of a major party is entitled to payment of his expenditures by the Commission under this subsection in excess of an amount which is equal to the amount the candidate is permitted to incur in connection with his primary election campaign under section 506 (a)(1) or (b), as applicable.

"(b)(1) Every candidate nominated by a political party who is eligible for Federal financing of his campaign under section 504 is entitled by the Commission of expenditures he incurs in connection with his general election campaign.

"(A) No candidate of a major party is entitled to payment of his expenditures by the Commission under this subsection in excess of an amount which is equal to the amount the candidate is permitted to incur in connection with his campaign for election under section 506 (a)(2) or (b).

"(B) No candidate of a minor party is entitled to payment of his expenditures by the Commission under this subsection in excess of an amount which is equal to the greater of—

"(i) an amount which bears the same ratio to the amount of payments to which a candidate of a major party for the same office is entitled under this subsection as the total number of popular votes received by the candidate of that minor party for that office in the preceding general election bears to the average number of popular votes received by the candidate of a major party for that office in the preceding general election; or

"(ii) an amount which bears the same ratio to the amount of payments to which a candidate of a major party for the same office is entitled under this subsection as the total number of popular votes received by the candidate in the current general election bears to the average number of popular votes received by the candidate of a major party for that office in the current general election.

"(2)(A) Every independent candidate who is eligible for Federal financing of his campaign under section 504 is entitled to payment by the Commission of expenditures he incurs in connection with his general election campaign.

"(B) No independent candidate is entitled to payment of his expenditures by the Commission under this subsection in excess of an amount which is equal to the greater of—

"(i) an amount which bears the same ratio to the amount of payment to which a candidate of a major party for the same office is entitled under this subsection as the total number of popular votes received by the independent candidate as a candidate for that office in the preceding general election bears to the average number of popular votes received by the candidate of a major party for that office in the preceding general election; or

"(ii) an amount whch bears the same ratio to the amount of payment to which a candidate of a major party for the same office is entitled under this subsection as the total number of popular votes received by the independent candidate in the current general election bears to the average number of popular votes received by the candidate

of a major party for the same office in the current general election.

"(c) A minor party candidate or an independent candidate who (1) was the candidate of a major party for the same office in the preceding general election, (2) received the largest or second largest number of popular votes cast for a candidate for that office in the preceding general election, or (3) received more than twenty-five percent of the total number of popular votes cast in the preceding general election for that office, shall be considered to be the candidate of a major party for purposes of this section.

"(d)(1) Every political party which is eligible for Federal financing under section 504 is entitled to payment by the Commission of expenditures it incurs in connection with Federal election activities such as voter registration drives, get-out-the-vote drives, and nominating conventions.

"(2) No political party is entitled to payment of its expenditures by the Commission under this subsection in excess of—

"(A) twenty percent of the amount of payment by the Commission to which the Presidential candidate of that party is entitled under subsection (b), in any year in which a regular quadrennial Presidential election is held; or

"(B) fifteen percent of the amount of payment by the Commission to which the Presidential candidate of that party is entitled during a regular quadrennial Presidential election year under subsection (b) in any other year.

"(e) Notwithstanding the provisions of subsection (b), no minor party candidate or independent candidate is entitled to payment by the Commission of any expenditures under this section which, when added to the total amount of contributions received by him in connection with his campaign, exceed the amount of expenditures he may incur in connection with that campaign under the provisions of section 506.

"EXPENDITURE LIMITATIONS

"SEC. 506. (a) (1) Except to the extent that such amounts are changed under subsection (e), no candidate, other than a candidate for the office of President, may incur any expenditure in connection with his primary election campaign in excess of—

"(A) in the case of a candidate who seeks nomination for election to the office of Senator, the greater of—

"(i) fifteen cents multiplied by the voting age population (as certified under section 104(a)(5)) of the State in which he seeks nomination for election; or

"(ii) $175,000;

"(B) in the case of a candidate who seeks nomination for election to the office of Representative—

"(i) twenty-five cents multiplied by the voting age population (as certified under section 105(a)(5)) of the Congressional district in which he seeks nomination for election; or

"(ii) the limitation under subparagraph (A) if the State in which he seeks nomination is entitled to only one Representative.

"(2) Except to the extent that such amounts are increased under subsection (e) no candidate, other than a candidate for election to the office of President, may incur any expenditure in connection with his general election campaign in excess of—

"(A) in the case of a candidate who is seeking election to the office of Senator, the greater of—

"(i) twenty cents multiplied by the voting age population (as certified under section 104(a)(5)) of the State in which he seeks election; or

"(ii) $250,000;

"(B) in the case of a candidate who is seeking election to the office of Representative—

"(i) thirty cents multiplied by the voting age population (as certified under section 104(a)(5)) of the State in which he seeks election; or

"(ii) the limitation under subparagraph (A) if the State in which he seeks election is entitled to only one Representative.

"(b)(1) No candidate for nomination for election, to the office of President may incur any expenditure in any State in connection with his campaign in excess of the amount which a candidate for nomination for election, or election, to the office of Senator (or for nomination for election, to the office of Delegate, in the case of the District of Columbia) may incur within the State in connection with his campaign for that nomination or election.

(2) No candidate for election to the office of President may incur any expenditure in connection with his general election campaign in excess of twenty cents multiplied by the voting age population (as certified under section 104(a)(5)) of the United States.

"(3) The Commission shall prescribe rules under which any expenditure incurred by a candidate who seeks nomination for election, to the office of President for use in two or more States shall be attributed to that candidate's expenditure limitation in each such State based on the number of persons in each State who can reasonably be expected to be reached by that expenditure.

"(4) The Commission shall prescribe rules under which a candidate for nomination for election to the office of President may authorize his national campaign committee to incur expenditures in connection with his national campaign in an amount not in excess of ten percent of the amount of expenditures which he may incur in connection with his primary election campaign in a State under this section. The expenditure limitation applicable to that candidate for such campaign in that State shall be reduced by an amount equal to the amount the candidate authorizes under this section.

"(c)(1) No candidate who is unopposed in a primary election may incur any expenditure which is in excess of an amount which is equal to twenty percent of the limitation applicable to that candidate under subsections (a) or (b) of this section.

"(2) A candidate in a primary or general election run off election shall have an expenditure limitation which is fifty percent of the limitation in subsections (a) or (b) of this section, as applicable.

"(3) A candidate who seeks the nomination of a political party which selects its nominee by means of a convention or caucus system which does not include a popular election or elections shall have an expenditure limitation which is ten percent of the limitation in subsections (a) or (b) of this section, as applicable.

"(d) (1) Expenditures incurred on behalf of any candidate are, for the purpose of this section, considered to be incurred by that candidate.

"(2) For purposes of this subsection, an expenditure is considered to be incurred on behalf of a candidate if it is incurred by—

"(A) an agent of the candidate for the purposes of incurring any campaign expenditure,

"(B) any person authorized or requested by the candidate to incur an expenditure on his behalf, or

"(C) in the case of the candidate of a political party for President, the candidate of that party for Vice President, or his agent, or any person he authorizes to incur an expenditure on his behalf.

"(e) Each amount under subsection (a) shall be changed at the beginning of each calendar year by the percentage difference between price indices as determined by the Secretary of Labor under section 104(a)(4). Each amount so changed shall be the amount in effect for that calendar year.

"CONTRIBUTION LIMITATIONS

"SEC. 507. (a)(1) No person may make a contribution to a major party, to a candidate who seeks the nomination of a major party, or to the candidate of a major party for use in connection with a primary election or general election campaign of that party or candidate.

"(2) No major party, candidate who seeks the nomination of a major party, or candidate of a major party may knowingly accept a contribution from any person in connection with a primary election or general election campaign of that party or candidate. For purposes of this paragraph, a contribution accepted by any political committee which makes any expenditures in connection with the primary or general election campaign of a major party or the candidate of a major party shall be considered to be received by that party or candidate.

"(b) No minor party may accept contributions in connection with its Federal election campaign activities in excess of an amount which, when added to the maximum amount of payments by the Commission to which that party is entitled under section 505, exceeds the amount of payments by the Commission to which a major party is entitled under section 505.

"(c)(1) No candidate who seeks the nomination of a minor party may accept total contributions in connection with his primary election campaign which exceed the amount of the limitation on expenditures which applies to a candidate in a primary election campaign under section 506(a)(1) or (b).

"(2)(A) A candidate of a minor party or an independent candidate may accept contributions in connection with his general election campaign only during the period beginning 180 days before the date of the general election, or on the date on which a major party nominates a candidate for the office the minor party or independent candidate seeks, whichever date is earlier, and ending on the date of the general election.

"(B) No candidate of a minor party or independent candidate may accept local contributions which, when added to the maximum amount of payments by the Commission to which that candidate is entitled under section 505, exceed the limitation on expenditures which applies to a candidate in a general election campaign under section 506(a)(2) or (b).

"(d) For purposes of this section, a contribution accepted by any political committee which makes any expenditures in connection with the primary or general election campaign of a minor party, a candidate who seeks the nomination of a minor party, a minor party candidate, or an independent candidate, is considered to be accepted by that party or candidate.

"(e)(1) No person may make a contribution which, when aded to all other contributions made by that person to the same party or candidate in connection with the same campaign, exceeds $100. This $100 limitation applies separately to contributions made in connection with a primary election campaign and with a general election campaign.

"(2) No party or candidate may knowingly accept contributions in connection with its Federal election campaign from any person which, when added to all other contributions accepted by that party or candidate which were made by that person in connection with the same campaign, equals an amount in

excess of $100. This $100 limitation applies separately to contributions made in connection with a primary election campaign and with a general election campaign. For purposes of this paragraph a contribution accepted by any political committee which makes any expenditures in connection with the primary or general election campaign of a candidate shall be considered to be accepted by that candidate.

"(f) No person may make a contribution which, when added to all other contributions made by that person to all political parties and candidates in connection with any primary election or general election campaigns during the preceding twelve months, exceeds $1,000.

"(g) All contributions which a party or candidate receives shall be sent to the Commission in the manner and with any information about the identity of the contributor which the Commission prescribes by rule.

"(h)(1) No person shall make any expenditure advocating the election or defeat of a clearly identified candidate or political party during any calendar year (other than an expenditure made on behalf of a candidate, as defined in section 506(d)(2)) which, when added to all other such expenditures made by that person during that year exceeds $1,000.

"(2) For purposes paragraph (1), 'clearly identified' means—

"(A) the candidate or political party is named;

"(B) a photograph or drawing of the candidate appears; or

"(C) the identity of the candidate or political party is apparent by unambiguous reference.

"(3) For purposes of paragraph (1), 'person' does not include a political party.

"(i) For purposes of this section, 'contribution' does not include monies collected for a petition drive under section 508.

"PETITION DRIVES

"SEC. 508. (a) Except to the extent that such amounts are changed under subsection (d)—

"(1) no candidate who seeks a major party nomination for election to the office of Representative may incur any expenditures in connection with his petition drive to meet the requirements of section 504 which exceed an amount equal to two cents multiplied by the voting age population (as certified under section 104(a)(5)) of the congressional district in which he seeks election; or

"(2) no candidate who seeks a major party nomination for election to the office of Representative from a state which is entitled to only one Representative, Senator, or President, may incur any expenditures in connection with his petition drive to meet the requirements of section 504 which exceed an amount equal to the greater of—

"(A) one cent multiplied by the voting age population (as certified under section 140(a)(5)) of the geographic region in which he seeks election; or

"(B) $7,500.

"(b)(1) No person may make a contribution to any candidate for use in connection with the petition drive of that candidate to meet the requirements of section 504 which, when added to all other contributions made by that person to that candidate in connection with the same petition drive, exceeds $100.

"(2) No candidate may knowingly accept a contribution from any person made in connection with the petition drive of that candidate which, when added to all other contributions from that person made in connection with that petition drive, exceeds $100. For purposes of this paragraph, a contribution accepted by any person who makes any expenditures in connection with the petition drive of a candidate is considered to be accepted by that candidate.

"(c) No candidate may make any expenditure or accept any contribution in connection with his petition drive except during the period beginning 300 days before the date of the primary election of the major party whose nomination the candidate seeks and ending 210 days before that date.

"(d)(1) Each candidate who files a petition with the Commission under section 504 shall report to the Commission the amount of each contribution he receives in connection with his petition drive, the identity of each contributor, and any other information the Commission requires at the time and in the manner the Commission prescribes.

"(2) If a candidate meets the requirements of section 504, the Commission shall pay an amount to each person who contributed to the petition drive of that candidate an amount equal to the contribution made by that person under subsection (b) to that candidate.

"(e) Each amount under subsection (a) shall be changed at the beginning of each calendar year by the percentage difference between price indices as determined by the Secretary of Labor under section 104(a)(4). Each amount so changed shall be the amount in effect for that calendar year.

"PAYMENTS BY THE COMMISSION

"SEC. 509. (a)(1) There is established on the books of the Treasury of the United States a fund to be known as the Federal Election Campaign Fund.

"(2) There are authorized to be appropriated to the fund such amounts as are necessary to carry out the provisions of this title.

"(3) On the day after the effective date of this title, the Secretary of the Treasury shall transfer to the fund any monies in the Presidential Election Campaign Fund established under section 9006 of the Internal Revenue Code of 1954.

"(4) The Secretary of the Treasury may transfer to the general Fund of the Treasury any amounts from the Federal Election Campaign fund which he determines, after consultation with the Commission, are in excess of the amounts which are necessary to carry out the provisions of this title.

"(b) The Secretary of the Treasury shall transfer to the Commission such amounts as the Commission certifies to the Secretary from time to time are necessary to make payents under this section.

"(c)(1) The Commission shall create on its books an account for each political party and candidate eligible for payments under section 504.

"(2) The Commission shall allocate the funds it receives from the Secretary of the Treasury under paragraph (1) among the accounts of each political party and candidate according to the amount to which each party and candidate is entitled under section 505.

"(3) The Commission shall credit all contributions which a political party or candidate sends to the Commission under section 507 to the account of that party or candidate.

"(d)(1) A candidate who seeks the nomination of a major political party may contract for goods, services, or other expenditures in connection with his primary election campaign only during the period beginning 180 days before the date of the primary election of that party and ending on the date of that primary election.

"(2) A candidate may contract for goods, services, or other expenditures in connection with his general election campaign only during the period beginning on the date on which he is nominated by a major political party for that election and ending on the date of that general election. A minor party or independent candidate may contract for such goods and services only during the period beginning 180 days before the date of the general election, or on the date on which a major party nominates a candidate for the office the minor party or independent candidate seeks, whichever date is earlier, and ending on the date of the general election.

"(3) A political party may contract for goods, services, or other expenditures in connection with its Federal election campaign activities only during the period beginning two years before the date of the next general election in which it will nominate candidates and ending on the date of that general election.

"(4) The Commission may void any contract made by a party or candidate under this subsection which is fraudulent or illegal before performance of that contract begins according to procedures it prescribes by rule.

"(e)(1) The Commission shall pay all expenditures incurred by each political party or candidate by contracts created by that party or candidate under subsection (d). The Commission may not pay any amount in excess of the amount to which that political party or candidate is entitled under section 505.

"(2) If a candidate becomes entitled to an increased amount of payments under section 505(b)(1)(B) or (b)(2)(B) because of the number of votes he receives in an election, the Commission shall pay the amount of that increase in payments to which the candidate is entitled on a pro rata basis directly to the persons who contributed to that candidate in connection with that election under section 507.

"(f)(1) The Commission shall make all payments under this section directly to the person with whom the political party or candidate contracts for goods, services, or other expenditures. Except as provided in paragraph (2), no political party or candidate shall pay any expenditures which it or he incurs in connection with a Federal election campaign except through payments by the Commission under this title.

"(2) A candidate may maintain a petty cash fund out of which he, or one individual he authorizes in writing, may make expenditures not in excess of $25 to any person in connection with a single purchase or transaction. A candidate for Vice President or President may maintain one petty cash fund in each State. Records and reports of petty cash disbursements shall be kept and furnished to the Commission in the form and manner the Commission prescribes.

"EXAMINATIONS AND AUDITS; REPAYMENTS

"SEC. 510. (a) After each Federal election, the Commission shall conduct a thorough examination and audit of the expenditures incurred by every candidate.

"(b)(1) If the Commission determines that any portion of the payments it makes for a political party or candidate under section 509 was in excess of the aggregate amount of the payments to which the party or candidate was entitled under section 505, it shall so notify that party or candidate, and the party or candidate shall pay to the Secretary of the Treasury an amount equal to the excess amount.

"(2) If the Commission determines that any amount of any payment made by the Commission for a political party or candidate under section 509 was used for any purpose other than—

"(A) to pay expenditures, or

"(B) to repay loans the proceeds of which were used, or otherwise to restore funds (other than contributions to pay expendi-

tures which were received and expended) which were used, to pay expenditures,

it shall notify the party or candidate of the amount so used, and the party or candidate shall pay to the Secretary of the Treasury an amount equal to such amount.

"(3) If the Commission determines that a major party candidate for whom it has made payments under section 509 received—

"(A) a total number of popular votes in the primary election, in connection with which the Commission made payments for that candidate, which is less than fifteen percent of the total number of popular votes cast for all candidates seeking the same office that candidate seeks in that primary election;

"(B) a total number of delegate votes in the nominating convention in connection with which the Commission made payments for that candidate which is less than fifteen percent of the total number of delegate votes cast for all candidates seeking the same office that candidate seeks in that convention; or

"(C) a total number of popualr votes in the general election in connection with which the Commission made payments for that candidate which is less than twenty-five percent of the total number of popular votes cast for all candidates seeking the same office that candidate seeks in that general election, it shall notify that candidate and the candidate shall pay to the Secretary of the Treasury an amount equal to the total amount of payments which the Commission made for him under section 509.

"(4) No payment shall be required from a political party or candidate under this subsection in excess of the total amount of all payments by the Commission for that party or candidate under section 509.

"(c) No notification shall be made by the Commission under subsection (b) with respect to a Federal election more than three years after the day of the election.

"(d) A candidate for whom the Commission has made payments under section 509 in an amount which is less than twenty-five percent of the amount to which that candidate is entitled for a primary or general election under section 505 may withdraw as a candidate in that primary or general election at any time up to the forty-fifth day before the date of the primary election, or the thirtieth day before the date of the general election, in connection with which the Commission made those payments. A candidate who withdraws under this subsection shall pay to the Secretary of the Treasury an amount equal to fifty percent of the payments which the Commission made for him under section 509.

"(e) All payments received by the Secretary under subsections (b) and (d) shall be deposited by him in the fund.

"REPORTS TO CONGRESS; INVESTIGATIONS; RECORDS

"SEC. 511. (a) The Commission shall, as soon as practicable after each Federal election, submit a full report to the Senate and House of Representatives setting forth—

"(1) the expenditures incurred by each political party and candidate which received a payment under section 509 in connection with that election;

"(2) the amounts paid by it under section 509 for that political party or that candidate; and

"(3) the amount of payments, if any, required from that political party or candidate under section 510, and the reasons for each payment required.

"(b) The Commission may conduct examinations and audits (in addition to the examinations and audits under section 510), investigations, and require the keeping and submission of any books, records, and information, necessary to carry out the functions and duties imposed on it by this title.

"JUDICIAL REVIEW

"SEC. 512. (a) Any agency action by the Commission made under the provisions of this title or title III shall be subject to review by the United States Court of Appeals for the District of Columbia Circuit upon petition filed in such court by any interested person. Any petition filed pursuant to this section shall be filed within thirty days after the agency action by the Commission for which review is sought.

"(b) The Commission, a political party; a candidate, and individuals eligible to vote in an election for Federal office, are authorized to institute any action, including actions for declaratory judgment or injunctive relief, which are appropriate to implement any provision of this title.

"(c) The provisions of chapter 7 of title 5, United States Code, apply to judicial review of any agency action, as defined in section 551 of title 5, United States Code, by the Commission.

"PENALTIES

"SEC. 513. (a) Any person who violates the provisions of sections 506, 507, 508, or 509 of this title shall be fined not more than $50,000, or imprisoned for not more than five years, or both.

"(b)(1) It is unlawful for any person knowingly and willfully—

"(A) to furnish any false, fictitious, or fraudulent evidence, books, or information to the Commission under this title, or to include in any evidence, books, or information so furnished any misrepresentation of a material fact, or to falsify or conceal any evidence, books, or information relevant to an examination and audit by the Commission under this title; or

"(B) to fail to furnish to the Commission any records, books, or information requested by him for purposes of this title.

"(2) Any person who violates the provisions of paragraph (1) shall be fined not more than $50,000, or imprisoned not more than five years, or both.

"(c)(1) It is unlawful for any person knowingly and willfully to give or accept any kickback or any illegal payment in connection with any expenditure incurred by a candidate or political party which the Commission pays under section 509.

"(2) Any person who violates the provisions of paragraph (1) shall be fined not more than $50,000 or imprisoned not more than five years, or both.

"(d)(1) Any person who violates any provision of this title or of section 602, 608, 610, 611, 612, and 613 of title 18, United States Code, may, in addition to any other penalty, be assessed a civil penalty by the Commission under paragraph (2) of this subsection of not more than $10,000 for each violation. Each violation of this title and each day of noncompliance with an order of the Commission shall constitute a separate offense. In determining the amount of the penalty the Commission shall consider the person's history of previous violations, the appropriateness of such penalty to the financial resources of the person charged, the gravity of the violation, and the demonstrated good faith of the person charged in attempting to achieve rapid compliance after notification of a violation.

"(2) A civil penalty under this subsection shall be assessed only after the person charged with a violation has been given an opportunity for a hearing and the Commission has determined, by decision which includes findings of fact, that a violation did occur, and the amount of the penalty. Any hearing under this section shall be held in accordance with section 554 of title 5, United States Code.

"(3) If the person against whom a civil penalty is assessed fails to pay the penalty, the Commission may file a petition for enforcement of its order assessing the penalty in any appropriate district court of the United States. The petition shall designate the person against whom the order is sought to be enforced as the respondent. A copy of the petition shall forthwith be sent by registered or certified mail to the respondent and his attorney of record, and thereupon the Commission shall certify and file in such court the record upon which such order sought to be enforced was issued. The court shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order and decision of the Commission or it may remand the proceedings to the Commission for such further action as it may direct. The court may determine de novo all issues of law but the Commission's findings of fact, if supported by substantial evidence, shall be conclusive.

"RELATIONSHIP TO OTHER FEDERAL ELECTION LAWS

"SEC. 514. The Commission shall consult from time to time with the Secretary of the Senate, the Clerk of the House of Representatives, the Federal Communications Commission, and with other Federal officers charged with the administration of laws relating to Federal elections, in order to develop as much consistency and coordination with the administration of those other laws as the provisions of this title permit. The Commission shall use the same or comparable data as that used in the administration of such other election laws whenever possible.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 515. There are authorized to be appropriated to the Commission, for the purpose of carrying out its functions under this title, such funds as are necessary for the fiscal year ending July 30, 1975, and each fiscal year thereafter.".

(b) The Federal Election Campaign Act of 1971 is amended by—

(1) striking out "Comptroller General" in sections 104(a) (3), (4), and (5) and inserting "Federal Election Commission";

(2) striking out "Comptroller General" in section 105 and inserting "Federal Election Commission";

(3) amending section 301 (g) (relating to definitions) to read as follows:

"(g) 'Commission' means the Federal Election Commission;";

(4) striking out "supervisory officer" in section 302 (d) (relating to organization of political committees) and inserting "Commission";

(5) amending section 302 (f) by—

(A) striking out "appropriate supervisory officer" in the quoted matter appearing in paragraph (1) and inserting "Federal Election Commission";

(B) striking out "supervisory officer" in subparagraphs (A) and (B) of paragraph (2) and inserting "Commission"; and

(C) striking out "which has filed a report with him" in paragraph (2)(A) and inserting "which has filed a report with it";

(6) amending section 303 (relating to registration of political committees; statements) by—

(A) striking out "supervisory officer" each time it appears and inserting "Commission"; and

(B) striking out "he" in the second sentence of subsection (a) and inserting "it";

(7) amending section 304 (relating to reports by political committees and candidates) by—

(A) striking out "appropriate supervisory officer" and "him" in the first sentence of subsection (a), and inserting "Commission" and "it, respectively;

(B) striking out "supervisory officer' where it appears in the second sentence of subsection (a) and in paragraphs (12) and (13) of subsection (b), and inserting "Commission"; and

(C) striking out everything after "filing" in the second sentence of subsection (a) and inserting a period;

(8) striking out "supervisory officer" each place it appears in section 305 (relating to reports by other than political committees) and section 306 (relating to formal requirements respecting reports and statements) and inserting "Commission";

(9) striking out "Comptroller General of the United States" and "he" in section 307 (relating to reports on convention financing) and inserting "Federal Election Commission and "it", respectively;

(10) striking out "SUPERVISORY OFFICER" in the caption of section 308 (relating to duties of the supervisory officer) and inserting "COMMISSION";

(11) striking out "supervisory officer" in the first sentences of subsections 308(a) and 308(b) and inserting "Commission";

(12) amending section 308(a) by—

(A) striking out "him" in paragraphs (1) and (4) and inserting "it"; and

(B) striking out "he" each place it appears in paragraph (7) and (9) and inserting "it";

(13) amending section (c) of section 308 by—

(A) striking out "Comptroller General" each place it appears therein and inserting "Commission", and striking "his" in the second sentence of such subsection and inserting "its"; and

(B) striking out the last sentence thereof;

(14) amending subsection (d)(1) of section 308 by—

(A) striking out "supervisory officer" each place it appears therein and inserting "Commission";

(B) striking out "he" the first place it appears in the second sentence and inserting "it"; and

(C) striking out "The Attorney General on behalf of the United States" and inserting "The Commission or the Attorney General on behalf of the United States"; and

(15) striking out "a supervisory officer" in section 309 (relating to statements filed with State officers) and inserting "the Commission".

(c)(1) Section 5314 of title 5, United States Code, is amended by adding at the end thereof the following paragraph:

"(60) Members, Federal Election Commission (7).".

(2) Section 5316 of such title is amended by redesignating the second paragraph (133) as (134), and by adding at the end thereof the following paragraphs:

"(135) General Counsel, Federal Election Commission.

"(136) Executive Director, Federal Election Commission.".

(d) Until the appointment of all of the members of the Federal Election Commission and its General Counsel and until the transfer provided for in this subsection, the Comptroller General, the Secretary of the Senate, and the Clerk of the House of Representatives shall continue to carry out their responsibilities under title I and title III of the Federal Election Campaign Act of 1971 as those titles existed on the day before the date of enactment of this Act. Upon the appointment of all the members of the Commission and its General Counsel, the Comptroller General, the Secretary of the Senate, and the Clerk of the House of Representatives shall meet with the Commission and arrange for the transfer, within thirty days after the date on which all such members are appointed, of all records, documents, memorandums, and other papers associated with carrying out their responsibilities under title I and title III of the Federal Election Campaign Act of 1971 as it existed on the day before the date of enactment of this Act.

(e) Subtitle H (Financing of Presidential Election Campaigns) of the Internal Revenue Code of 1954 (relating to financing of Presidential election campaigns) is repealed.

(f) The amendments made by this section shall take effect on January 1, 1975.

MAILING PRIVILEGES

SEC. 4. (a) Title III of the Federal Election Campaign Act of 1971 is amended by redesignating section 311 as 312 and by inserting after section 310 the following new section:

"SUSPENSION OF FRANK FOR MASS MAILINGS IMMEDIATELY BEFORE ELECTIONS

"SEC. 311. (a) No Senator, Representative, or Vice President shall make any mass mailing of a newsletter or mailing with a simplified form of address under the frank, as permitted under section 3210 of title 39, United States Code, during the period beginning ninety days before the date on which any Federal election is held in which he is a candidate and ending on the date of that election.

"(b) The Postal Rate Commission shall establish a reduced rate of postage for the class of correspondence, not exceeding four ounces in weight, sent by any candidate to any person in connection with the campaign of that candidate for nomination for election, or election. This special rate shall be available to a candidate only after the Commission certifies to the Postmaster General that the candidate meets the requirements of section 504.".

CRIMINAL PENALTIES

SEC. 5. Section 608 (a) of title 18, United States Code, is amended to read as follows:

"(a)(1)(A) No candidate may make expenditures from his personal funds, or the personal funds of his immediate family, in connection with his campaign for nomination for election, or election, to Federal office in excess of $1,000.

"(B) For the purposes of paragraph (1), 'candidate' means an independent candidate, a candidate who seeks the nomination of a minor party, as defined in section 501 of the Federal Election Campaign Act of 1971, or a minor party candidate.

"(2)(A) No major party candidate may make expenditures from his personal funds, or the personal funds of his immediate family in connection with his petition drive for purposes of title V of the Federal Election Campaign Act of 1971 in excess of $1,000.

"(B) No candidate who seeks the nomination of a major party, as defined in section 501 of the Federal Election Campaign Act of 1971, or who is the candidate of a major party may make any expenditures from his personal funds, or the personal funds of his immediate family in connection with his campaign for nomination, or election, to Federal office.

"(3) For purposes of this subsection, 'immediate family' means a candidate's spouse, and any child, parent, grandparent, brother, or sister of the candidate, and the spouses of those persons.".

REPEAL OF EQUAL TIME PROVISIONS AND THE CAMPAIGN COMMUNICATIONS REFORM ACT

SEC. 6. (a) Section 315 (a) of the Communications Act of 1934 (47 U.S.C. 315 (a)) is amended by inserting after "public office" in the first sentence thereof a comma and the following: "other than Federal elective office (including the office of Vice President)".

(b) (1) The Campaign Communications Reform Act is repealed.

(2) Section 312 (a) of the Communications Act of 1934 (47 U.S.C. 312 (a)) is amended by—

(A) inserting "or" after the semicolon in paragraph (5);

(B) striking out "; or" in paragraph (6) and inserting in lieu thereof a period; and

(C) striking out paragraph (7).

(3) Section 315 of the Communications Act of 1934 (47 U.S.C. 315) is amended by striking out subsections (c) through (f) and redesignating subsection (g) as (c).

INCREASE OF TAX CREDIT AND DEDUCTION FOR POLITICAL CONTRIBUTIONS

SEC. 7. (a) Section 41 (b)(1) of the Internal Revenue Code of 1954 (relating to contributions to candidates for public office) is amended to read as follows:

"(1) Maximum credits.—The credit allowed by subsection (a) for a taxable year shall be limited to $100 ($200 in the case of a joint return under section 6013).".

(b) The amendment made by subsection (a) applies to any political contribution the payment of which is made after December 31, 1974.

DESIGNATION OF INCOME TAX PAYMENTS TO FEDERAL ELECTION CAMPAIGN FUND

SEC. 8. (a) Section 6096(a) of the Internal Revenue Code of 1954 (relating to designation of income tax payments to the presidential election campaign fund) is amended to read as follows:

"(a) IN GENERAL.—Two dollars shall be paid over to the Federal Election Campaign Fund for every individual (other than a nonresident alien) whose income tax liability for any taxable year is $2 or more unless the individual designates that $2 shall not be paid over to the Fund. If a husband and wife file a joint return and have an income tax liability of $4 or more, $4 shall be paid over to the Fund unless they designate that $4 shall not be paid to the Fund."

(b)(1) The caption of part VIII of subchapter A of chapter 61 of the Internal Revenue Code of 1954 is amended to read as follows:

"PART VIII. DESIGNATION OF INCOME TAX PAYMENTS TO FEDERAL ELECTION CAMPAIGN FUND".

(2) The table of parts for subchapter A of chapter 61 of the Code is amended to read as follows:

"PART VIII. DESIGNATION OF INCOME TAX PAYMENTS TO FEDERAL ELECTION CAMPAIGN FUND."

(c) The amendments made by this section shall apply with respect to taxable years beginning after December 31, 1973. Any designation made under section 6096 of the Internal Revenue Code of 1954 (as in effect for taxable years beginning before January 1, 1973) for the account of the candidates of any specified political party shall be treated solely as a designation to the Federal Election Campaign Fund.

SUMMARY: "COMPREHENSIVE ELECTION REFORM ACT OF 1974" (S. 2943)

PROVISIONS

Candidates and elections covered

President: Primary and general (incorporates Presidential check-off fund).

Congress: primary and general.

Type of funding

Automatic full funding of all qualifying major party candidates with partial funding of minor and independent candidates on basis of vote performance. Campaign bills paid by and through Federal Election Commission.

Party organizations covered

National party (major and minor) automatically receives funding in presidential election year of up to 20% of amount allowed its presidential candidates. In all other years, it is up to 15% of that amount. Party may spend public funds for election activities such as voter registration, nominating conventions, get-out-the-vote drives. Bills paid directly by Federal Election Commission.

How administered

Seven member Federal Election Commission, appointed by President with consent of Senate to serve staggered seven year terms. Two recommended by Senate leadership, two by House. No more than four of seven of same political party. Responsible for administering, auditing, enforcing federal campaign finance program. Has full investigative, subpoena, prosecutorial powers. Commission specifically required to submit to Congress copies of all statements or responses to Executive Branch.

Executive Branch prohibited from censoring Commission comments or testimony.

Commission sets up accounting system for each qualified candidate, pays all bills directly, except for petty cash expenses of $25.00 or less.

Amount of funding

President: Primary: 15¢ x VAP* in each state. General: 20¢ x VAP in each state.

Senate: Primary: 15¢ x VAP (or $175,000 if greater). General: 20¢ x VAP (or ($250,000 if greater).

House: Primary: 25¢ x VAP (or Senate amount if state has only one Congressional district). General: 30¢ x VAP.

How qualify

Candidate agrees to file all necessary records and comply with audit requirements, certifying that he or she will not exceed spending and contribution limits.

President: Primary: Petition signatures of 1% of VAP in each primry state must be filed with Commission 210 days before primary, to be validated by Commission within 30 days.

General: Major party candidates automatically qualify for full funding.

Senate: Primary: Petition signatures of 1% of VAP in state must be filed with Commission 210 days before primary.

General: Major party candidates automatically qualify for full funding.

House: Primary: Petition signatures of 2% of VAP in district must be filed with Commission 210 days before primary (1% if single district state).

General: Major party candidates automatically qualify for full funding.

National party: Automatically qualifies for funding based on a percentage of the presidential candidate entitlement.

Candidate spending limit

Same as total entitlement allowed major party candidates (see "Amount of Funding"). In presidential primary, candidates can authorize his or her national committee to spend up to 10% of his or her total allowable limit in states entered, reducing own spending by that same amount. Unopposed primary candidates may spend only 20% of amount allowed opposed candidate.

Limits on individual private contributions

No private contributions can be given to or accepted by major party candidates or major parties in primary or general elections. (Except for $100 maximum contributions allowed in petition gathering, all contributions to be refunded later from primary entitlement). Limit of $100 on contribution to minor party, independent candidate (separate limit for primary, runoff, general). Minor party, independent candidates may accept private contributions up to overall spending limit.

Limits on contributions by political committee to Candidate

No contributions allowed to major party candidates or to major party. $100 limit on contributions to minor, independent candidates.

Treatment of minor and new parties/ candidates

Entitled to a fraction of major party funding based on ratio of minor/new party candidate votes received to average votes received by major party candidate. May raise proportionately more in private funds up to spending limit.

Can receive additional funding—up to total funding—after election on basis of performance.

Specific restrictions

Major party candidate must repay full entitlement if he or she receives less than 15% of votes in primary or 25% in general election.

Candidates may withdraw under certain conditions, repaying half of entitlement received.

Post election audit can require repayment of excess funds received by candidates.

Minor party candidate or his or her family can spend $1,000 on primary or general election (treated separately); major party candidate or family can spend $1,000 in connection with petition drive.

All private contributions to minor, independent candidates must be sent to Election Commission, fully identified.

Full reporting of petition drive contributions. Spending limits for petition drives:

House: 2¢ x VAP.

Senate: 1¢ x VAP or $7,500, whichever is more.

Limit of $100 on individual's contribution to petition drive.

Tax incentives for small contributions

Increase tax credit to 100% of contribution up to $100 ($200 on joint return). Provides automatic income tax payment to Election Fund of $2, unless taxpayer specifically designates "no".

Other provisions

Repeals Sec. 315 "equal time" requirements of Communications Act for all federal candidates.

Bans use of frank for mass mailings 90 days before any federal election. Directs Postal Service to establish special rates for all federal candidates.

Penalties

Up to $50,000/five years.

Civil penalty: Up to $10,000 per day per violation.

Estimated annual cost

$250 million (assumes three candidates in each party primary for every Federal office).

Effective Date: January 1, 1975.

*VAP—voting age population.

PROJECTED ANNUAL COST FOR PUBLIC FINANCING OF ELECTIONS UNDER THE PROVISIONS OF THE COMPREHENSIVE ELECTION REFORM ACT OF 1974

PRESIDENTIAL ELECTIONS	
Presidential primary elections	$31,419,450
Presidential general elections	13,964,200
Total annual Presidential costs	45,383,650
SENATE ELECTIONS	
Senate primary elections	45,113,064
Senate general elections	9,666,784
Total annual Senate costs	54,779,848
HOUSE OF REPRESENTATIVES	
House primary elections	109,062,150
House general elections	43,839,860
Total annual House costs	152,902,010
Total annual costs, all Federal elections	253,065,508

1. These are *annual* costs for all plans. In other words, the costs for Presidential elections are spread over four years, those for Senatorial elections over six years, those for House elections over two years.

2. The cost analysis presumes a major party primary in both parties with three candidates in *each* party primary. It assumes that presidential candidates will enter a primary election in each of the fifty states and the District of Columbia, although this could not happen now.

3. The analysis does not consider minor party allocations, or run-off primaries.

4. Figures have been calculated on the basis of population figures as of July 1, 1972, certified by the U.S. Department of Commerce.

PROPOSED FEDERAL CANDIDATE EXPENDITURE/ ALLOCATION LIMITATIONS

House of Representatives

Average Congressional District—324,541 (voting age population).

Primary (25¢ per voter): $81,135.

General (30¢ per voter): $97,362.

SENATE AND PRESIDENTIAL RACES

Geographical areas	Voting age population (18 years and over)	Primary (15 cents per voter)	General (20 cents per voter)
United States	139,172,000	$20,875,800	$27,834,400
Alabama	2,294,000	344,100	458,800
Alaska	194,000	175,000	250,000
Arizona	1,262,000	189,300	252,400
Arkansas	1,326,000	198,900	265,200
California	13,910,000	2,086,500	2,782,000
Colorado	1,560,000	234,000	312,000
Connecticut	2,083,000	312,450	416,600
Delaware	369,000	175,000	250,000
District of Columbia	527,000	175,000	250,000
Florida	5,087,000	$763,050	$1,017,400
Georgia	3,067,000	460,050	613,400
Hawaii	526,000	175,000	250,000
Idaho	487,000	175,000	250,000
Illinois	7,508,000	1,126,200	1,501,600
Indiana	3,477,000	521,550	695,400
Iowa	1,924,000	288,600	384,800
Kansas	1,538,000	230,700	307,600
Kentucky	2,191,000	328,650	438,200
Louisiana	2,348,000	352,200	469,600
Maine	683,000	175,000	250,000
Maryland	2,679,000	401,850	535,800
Massachusetts	3,937,000	590,550	787,400
Michigan	5,876,000	881,400	1,175,200
Minnesota	2,542,000	381,300	508,400
Mississippi	1,426,000	213,900	285,200
Missouri	3,223,000	483,450	644,600
Montana	468,000	175,000	250,000
Nebraska	1,021,000	153,150	204,200
Nevada	347,000	175,000	250,000
New Hampshire	513,000	175,000	250,000
New Jersey	4,986,000	747,900	997,200
New Mexico	657,000	175,000	250,000
New York	12,626,000	1,893,900	2,525,200
North Carolina	3,468,000	520,200	693,600
North Dakota	411,000	175,000	250,000
Ohio	7,130,000	1,069,500	1,426,000
Oklahoma	1,797,000	269,550	359,400
Oregon	1,487,000	223,050	297,400
Pennsylvania	8,174,000	1,226,100	1,634,800
Rhode Island	668,000	175,000	250,000
South Carolina	1,719,000	257,850	343,800
South Dakota	444,000	175,000	250,000
Tennessee	2,710,000	406,500	542,000
Texas	7,614,000	1,142,100	1,522,800
Utah	690,000	175,000	250,000
Vermont	304,000	175,000	250,000
Virginia	3,182,000	477,300	636,400
Washington	2,310,000	346,500	462,000
West Virginia	1,209,000	181,350	241,800
Wisconsin	2,965,000	444,750	593,000
Wyoming	226,000	175,000	250,000

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that S. 2943, introduced by Mr. CLARK today, be referred jointly to the Committee on Rules and Administration, Finance, and Commerce; that a bill introduced by Mr. SCHWEIKER be referred to the Committee on Government Operations, and that if and when reported, it be referred jointly to the Committees on Interior and Insular Affairs and Finance for consideration of matters falling within their respective jurisdictions.

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

By Mr. PEARSON:

S. 2944. A bill to provide for the assignment of Foreign Service officers to certain public organizations. Referred to the Committee on Foreign Relations.

Mr. PEARSON. Mr. President, the Foreign Service officers who represent the United States in countries around the world and perform vital foreign policy analysis in Washington are as fine a group of civil servants as this country has. Willing to serve anywhere in the world from Europe to dangerous assignments in Southeast Asia, time and again, Foreign Service officers have proven their expertise in the arts of diplomacy and execution of foreign policy. These men and women deserve the high esteem and thanks of us all.

Foreign Service officers recognize better than most that the Foreign Service and the Department of State are badly in need of reform. One of the most positive contributions made by Federal employees was the work done by the American Foreign Service Association's task forces which studied the Service and made recommendations for change. Those efforts at reform from within have already produced and will continue to produce positive changes in the Department of State and the Foreign Service.

The task of reform is, however, not yet complete. Too many outstanding young officers are leaving the Service, in part, because the number of qualified candidates for interesting, responsible, and rewarding positions far exceeds the availability of those positions. Young people are turning elsewhere for careers in foreign affairs because they, too, understand that the Foreign Service may not have jobs to match their training and aspirations.

The legislation I introduce today would help to alleviate this problem, and alleviate it in a positive, productive way. This bill would make four basic contributions to the Foreign Service and to the United States. It would reduce the number of officers competing for the limited number of responsible positions. It would utilize the talents and training of Foreign Service officers while providing badly needed skilled personnel to State and local governments and other public institutions in the United States. It would help to reacquaint the Foreign Service officers with their own country at a time when they are on the threshold of assuming their most responsible posts. Finally, it would provide a new means of informing Americans in all parts of the country about American foreign policy.

This bill is not complex. It provides that each Foreign Service officer serve 22 to 26 months in a position in the public service outside of Washington, D.C., between the 8th and 15th years of his Foreign Service career. At present, the Secretary of State has the necessary authority to assign officers to such service; this legislation simply makes such service mandatory unless the Secretary should waive its provisions in the interest of the United States. The officer may, of course, state preferences with respect to the type of organization and job to which he would be assigned and certainly should be encouraged to do so.

This bill would, in my opinion, offer several positive remedies to current problems. For the Foreign Service, it would provide interesting, rewarding positions for a larger number of officers. Those familiar with the Department understand how unfortunate it is for the bright, capable officer seeking responsibility to be given a task in the Department or abroad which underutilizes his talents and training. I believe that this underemployment of Foreign Service officers is, in large part, responsible for the low morale of the Foreign Service. In addition to that, as the officers seek responsibility, they sometimes attempt to secure a "piece of the action" of foreign policy decisions. This too often adds to the list of horizontal and vertical clearances and unnecessarily slows down the decisionmaking process in the Department of State. This bill would help to alleviate both of those serious problems.

The quality of the positions Foreign Service officers hold under provisions of the bill is of critical importance. The Government of the United States will be paying their salaries and other expenses; they are, therefore, virtually free help for State and local governments and other public institutions in this country. I would anticipate a high demand for their services. The personnel office and the officers themselves should be quite demanding concerning the positions and the responsibilities involved in the job.

It would not be in the interest of the Foreign Service officers, the Department or the host institution to ask for an officer unless the function he will perform is challenging and interesting to him. The positions may range from city manager of some small community to instructor in a community college. At this time, Foreign Service officers, skilled in techniques and administration and planning, would be valuable additions to the governments of small- and medium-sized American cities who are now faced with the responsibility of establishing priorities for the spending and administering of revenue sharing funds. But the important point is that the task be a mutually beneficial one for the officer and the institution.

I believe that the corollary benefits to a 2-year assignment in the United States are almost as beneficial as the job itself. It is vital that the men and women who represent the United States and help formulate and execute its foreign policy remain in touch with their own country and its people. This is no idle, populist statement; it has a sound basis in principle.

Part of the function of the Foreign Service officer is to explain what is happening in the United States to officials and citizens of foreign countries. This cannot be done properly if one only reads about the United States from the New York Times, the Washington Post, or the International Herald-Tribune. To interpret properly events in this country, a diplomat must have what can only be described as a "feel" for what is happening in the United States. To acquire this understanding, a Foreign Service officer must spend time in this country, but not in Washington, which, for all its merits and attractions, is not representative of the entire Nation.

Finally, a Foreign Service officer living in a small community or even some larger cities would be a reservoir of knowledge and experience about the foreign relations of this Nation that is seldom available to people outside of major metropolitan areas or university communities. To the extent that isolationism still exists, the experience and explanations of a foreign affairs professional could bring some of the intricacies of foreign affairs home to the people of this country.

This legislation provides a simple, positive answer to some very complex problems, and it does so at little or no additional cost to the American taxpayer. It is beneficial to the Foreign Service officers, to the Department of State, and to the country. I urge prompt consideration of this bill.

By Mr. BELLMON (for himself and Mr. BARTLETT):

S. 2945. A bill to repeal the Economic Stabilization Act of 1970. Referred to the Committee on Banking, Housing and Urban Affairs.

Mr. BELLMON. Mr. President, last month I traveled to about 40 counties in my home State, talking with people who own small businesses, who work in all sections of the economy, including agriculture, the oil industry, banking, retail stores, wholesalers, and public officials. While many problems concern the people of Oklahoma, the No. 1 problem is clear: The uncertain state of the economy. Today, to help bring more economic stability to the country. I am introducing a bill to repeal the Economic Stabilization Act of 1970. If the Congress acts on this bill, the decisions of the marketplace will be dictated by the law of supply and demand functioning in a free market rather than by the artificial restrictions of wage and price controls.

Roughly 2½ years ago, the President took a generally popular step when he announced a wage and price freeze on August 15, 1971. At that time, the freeze worked, as did phase II, which followed in November and lasted through 1972. Consumer prices in 1972, by which many economists judge the inflationary rate, rose only by 3.2 percent. That was in sharp contrast to the inflationary rate of about 6 percent in early 1971. It seems clear that up until mid-1973 the administration's controls were effective. However, at that point the causes of inflation apparently changed.

The controls had clearly worked for awhile, but in 1973 the inevitable inequities, distortions, and disincentives began to pile up. Several factors contributed to the ineffectiveness of the controls, which no administration and no Government could control. With the economy reaching nearly full employment, the general demand for goods and commodities rose to a point where it exceeded the supply available at then existing prices. Because of the control ceilings, business had no real incentive to increase production capacity, so the shortages worsened. A further contributing factor to the economic disarray was the explosion of food and raw com-

modity prices in the world market. We were placed in the position of attempting to control prices in the markets of the American economy which, because of increased international trade, were only subsectors of world markets. As the differences between world export prices and domestic controlled prices extended to more and more commodities at increasing spreads, incentives were created for American producers to sell their products on the world market rather than the domestic market. By maintaining price controls in our economy, within an environment of worldwide inflation produced by increased demand, more domestic shortages were produced than would otherwise have been the case.

Because of these three factors, today we have serious shortages which threaten the stability of our economy. The evidence is all around us: late delivery days on furniture, aluminum, fertilizer, bottled gas, paper, newsprint, food freezers, baling wire, cement, structural steel, oilfield equipment such as pipeline and mud pumps, cotton goods, copper, zinc, many chemicals, and even, on some items on specific days, food. The distortions we witnessed were perhaps most explicit last summer, when we saw the drowning of millions of baby chickens because it was cheaper to kill them than to raise them and sell them for food.

Perhaps the best description of the problem is contained in a survey produced by the National Association of Manufacturers. Of some 500 member firms, nearly all of them said they were having trouble getting supplies and mainly attributed their problems to controls; 85 percent predicted worsening shortages if controls continued, and most predicted that shortages would cease if controls were lifted. Two-thirds of those surveyed indicated that they would be encouraged to expand their own productive capacity after decontrol. A high percentage believe consumers will end up paying more over the long haul than they would have without controls. The National Associations of Business Economists found that economists at 900 companies favor decontrol by a ratio of 2 to 1. It is difficult to think of an industry that does not have some sort of shortage problem, and the cause of the problem in most cases has been an unrealistic supply and demand situation created by artificial prices not realistic with those existing in the world economy.

We have seen workers being laid off and production slowdowns because raw materials are being shipped out of the country at attractive export prices, rather than selling at domestic prices. The answer to this problem is not further trade controls or relaxation of price controls but rather ending the controls and returning to the free marketplace where goods are valued by the price which buyers operating in a free market are willing to pay. It is fair to ask whether or not in a free market situation, shortages and shutdowns will occur because of rising raw material prices and the possibility that specific products may be priced out of the market.

The answer is that if rising material costs decide a product's fate it would at least signify that those products were less important to consumers than other products bidding for the same materials. And if these increased material prices raise the prices of the products and the consumer vote begins to turn against those products, the businessman will at least have some time to try to improve his relative position by cutting costs, producing different products, improving his efficiency, and so forth. If he succeeds, it will be better for the American economy and the consumer will benefit.

However, under our system of controls, he does not have this chance. Rather, the businessman wakes up one morning and cannot get raw materials because U.S. prices are controlled and foreign prices are not. He finds himself the victim of artificially created market forces that are irrational and produce diseconomies in their impact.

It is clear, then, that after a period of success, the wage and price controls are failing because they are challenging fundamental market forces. In the long run, the continuation of wage and price controls will do more harm than good.

William J. Fellner, a member of the President's Council of Economic Advisers, has said:

> Any large-scale interference with the price structure beyond a very limited period, is a mistake.

Arthur Burns, Chairman of the Federal Reserve Board and recently reappointed to a second term, said:

> A control system can help for a time—and it did. But it is time to return to the free markets.

Dr. C. Jackson Grayson, Jr., a former Chairman of the Price Commission, argued in a recent article in the Harvard Business Review that—

> The free market system is in danger of collapse under central economic controls; we must put the brakes on now.

Grayson views with alarm the trend of economic controls and suggests that unless we return promptly to a market system "conceived on the concepts of competition, monetary reward, excellence, and change," we will "have helped to build our own cages" of a society with limited personal and economic freedoms.

In short, the controls are now counterproductive, and they are doing very little, relatively, to hold down general price levels and are creating shortages by holding back expansion of productive capacity and making many items unprofitable to produce.

It is fair that one would ask, "If prices are decontrolled, what can we anticipate?" Certainly prices will increase somewhat. On the basis of evidence of the last 2 years, however, it can be predicted that prices will rise even if controls are left on in the future, just as they have in the recent past. In the long run, the only way to curb inflation and stabilize the economy is to bring supply to a better balance with demand, which will happen only if the controls are ended, and to hold down the Federal deficit by operating under a realistic fiscal policy. This, of course, will put the burden upon our backs. Members of Congress will have to stand up against pressures of increased Federal spending and make hard decisions on where available funds will do the most good.

The past Chairman of the Council of Economic Advisers, Paul McCracken, has indicated that another probable effect of decontrol would be a higher rate of capital investment, which would accelerate economic growth, alleviate production bottlenecks, and make the United States more competitive in international markets. The effect on another of our pressing problems, the energy crisis, would also be significant. Although tremendous price increases have been allowed already under the control program, we have seen an immediate pressure on practically every consumer to conserve its use and reduce consumption of energy. There is no other form of rationing as quick and efficient as rationing by the marketplace and by the purse. The supply, on the other hand, can be increased by speeded-up transportation and deliveries, and can lead to the reopening and working of marginal oil wells which did not produce a profit margin at lower prices. Further, exploration will be stimulated, and funds will be provided for new refining capacity. Also, it will be possible to utilize recovery techniques which are not now economically feasible at recent prices.

Based on the above, it is clear that controls have caused serious disruptions and instabilities in the economy, and after a period of holding down inflation, they have failed to contain the inflationary rate in the United States. Until controls are ended, we can expect continued shortages, artificially reduced capacities, and continued inflation. Therefore, I urge the Senate to repeal the Economic Stabilization Act of 1970 and face up to the real solution for ending inflation by holding down the cost of Government and Federal spending.

By Mr. TALMADGE (by request):

S. 2946. A bill to amend the provisions of the Perishable Agricultural Commodities Act, 1930, relating to practices in the marketing of perishable agricultural commodities. Referred to the Committee on Agriculture and Forestry.

Mr. TALMADGE. Mr. President, by request, I introduce a bill relating to unfair practices in the marketing of perishable agricultural commodities, and I ask unanimous consent that the letter of transmittal from the Department of Agriculture be printed at this point in the RECORD.

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

DEPARTMENT OF AGRICULTURE,
Washington, D.C., December 21, 1973.

Hon. GERALD FORD,
President,
U.S. Senate.

DEAR MR. PRESIDENT: Enclosed for consideration by the Congress is a draft of a proposed bill to amend Section 2(5) of the Perishable Agricultural Commodities Act, 1930, relating to unfair practices in the marketing of perishable agricultural commodities.

The proposed bill would amend the Perishable Agricultural Commodities Act to provide the option of imposing either a monetary penalty, not to exceed $2,000, for violations of the misbranding provisions of the Act, or institution of a formal proceeding for suspension or revocation of the license issued

under this Act to trade in the fruit and vegetable industry. The only penalties which can presently be imposed for such violations are public disclosure of the facts and circumstances and/or the suspension or revocation of the license of the violator.

In utilizing the monetary penalty option, if the law is revised as set forth in the proposed amendment, we would expect that in most instances a warning letter would be issued on the first violation by a licensee. Monetary penalties would be assessed for violations after the first violation, where the violator and this Department consent to such procedure. The amount of the penalty assessed will depend on the nature of the violation. As we gain experience in this area, we will be able to judge the amount of penalty which best acts as a deterrent to possible violators. The authority to assess monetary penalties, if granted, will fill a gap in the law where either no penalty is imposed or suspension or revocation of the license is ordered. It is understood that the monetary penalty provision is to be in addition to other penalties provided in the law, and that the violations on which monetary penalties are assessed may be used as a part of the evidence to support an action to suspend or revoke the license of a person who engages in repeated and/or flagrant violations of this provision of the Act.

The proposed bill has been considered by the PACA-Industry Advisory Committee, an official advisory committee representing the various segments of the fruit and vegetable industry and established by the Department to counsel on all aspects of the Perishable Agricultural Commodities Act. The Committee has recommended its enactment.

The proposed legislation would not result in an increase in the cost of living or in an increase in food costs to consumers. Consumers would benefit if the legislation is adopted, since deterrence of misbranding and misrepresentation offers a measure of consumer protection.

Adoption of the proposed legislation should not result in an increase in the cost of administration of the Perishable Agricultural Commodities Act. Monetary penalties paid for violations of the misbranding provisions of the Act would be deposited into the Treasury of the United States as miscellaneous receipts.

In accordance with the provisions of Public Law 91-190, Section 102(2)(C) this proposed legislation would have no significant impact upon the quality of the environment.

The Office of Management and Budget advised that there is no objection to the presentation of this draft bill from the standpoint of the Administration's program.

Sincerely,

J. PHIL CAMPBELL,
Under Secretary.

By Mr. CHILES:

S. 2947. A bill to amend the Export Administration Act of 1969 to authorize the imposition of export controls when necessary to bring about adjustments in economic policies or actions by foreign governments. Referred to the Committee on Banking, Housing and Urban Affairs.

Mr. CHILES. Mr. President, I am introducing today proposed legislation which would amend the Export Administration Act of 1969 to provide authority, subject to careful review, for the President to contemplate and exercise the use of export controls as a means of seeking adjustment in foreign economic policy actions by other governments which may cause serious inflation shortages or unemployment in the United States. The Export Administration Act authority expires on June 30 of this year and the Committee on Banking, Housing and Urban Affairs will be reviewing this legislation to determine the desirability of its extension. I submit this legislation today in order to focus attention on the need to be able to respond with foreign economic policy actions of our own to meet the damaging economic effects that embargoes, price hikes, and productive restraints abroad may have on our own economy. I think there is a need to hold hearings on the need for such authority, the role of Congress in exercising and reviewing the use of such authority, and to examine specifically the exports that we sell to the oil producing nations to see what sort of leverage we may have to seek a downward adjustment in oil prices.

I also feel that it is vital to this Nation's economic interests to avoid international economic warfare. The purpose of this legislation is to provide us with the power to persuade other nations that unilateral action by them that is damaging to us is not in their interests. Nevertheless, the existence of such authority could in some circumstances be the instrument for the use of that authority, and that is certainly something we need to consider.

Today, Mr. President, all of us are against nuclear warfare, but at the same time we recognize that we do not want to be completely without defense; therefore, we want to make sure that our nuclear capabilities are always adequate that we will be able to respond, and that no nation that felt we were without adequate defense could take advantage of us or ultimately destroy us. Yet, at the same time, in an economic area, we seem to be without capability in order to respond when nations decide that they want to place tremendous taxes on their oil. Today it is oil; tomorrow it may be some other scarce material. These countries think it is perfectly proper for them to take that action. At this time, it seems that we are without the legislative authority to be able to respond.

I do not think this kind of economic warfare is wise or sound; but if we cannot engage in it, I think we are very much like a nation that has no nuclear capability, and we are going to be forced, as we see ourselves now forced, into sitting back and seeing exorbitant price rises because we are unable to respond.

I look at some of the letters I am receiving from people in Florida and see what is happening to them because of the large price increases and other problems with respect to energy. A tremendous hardship is now being placed on this Nation because of this situation.

It appears that at present we are taking no countermeasures and are not even able to bring those countries to the table so that we can talk about this policy. It makes me feel very strongly that we need to be able to respond, and then perhaps we can have sanity come from this situation.

Mr. President, we are entering a new era in world economic relations. It used to be that trade and financial flows between countries were a relatively less important aspect of foreign affairs than military, security and political relations. For the United States, the combination of our predominant economic strength and the small role of trade in our economic life shielded our economy from ups and downs of international trade and finance. We could be an unqualified advocate of free trade because of our strong competitive position and relatively great size.

Now all this is beginning to change. Economic relations are becoming the main focus of foreign policy as nations become more interdependent economically. The tremendous growth of Europe and Japan, and other countries as well, has created a more pluralistic world economy, in which the United States plays a relatively less dominant role. With this the competitive position of the United States has been challenged and the vulnerability of the United States to fluctuations in world economic conditions has increased. Furthermore, as economic interdependence has grown and military-security questions have become less primary, international economic questions have become highly political matters affecting as they do price levels, unemployment and growth internally in all countries. This is new. In the past foreign policies of other countries have affected our foreign policies and interests. Now foreign policies of other countries are affecting our internal policies and interests.

Mr. President, we have seen very concrete evidence of these changed world economic conditions and the tremendous upheaval they can cause in the recent rise in oil prices by oil producing nations, and the oil embargo and production restrictions imposed by the Middle East oil-producing nations. The effect that these foreign economic policy actions abroad have had on our economy here at home is the dominant political issue of the people of this Nation today. The effect on prices and jobs in the United States of these actions by the oil-producing countries is of tremendous concern.

During 3 weeks in Florida in early January I found the people at home to be most worried about the energy crisis and the effects it will have on employment and inflation in the United States. After returning to Washington I received a letter from a woman in Florida who described herself as an "irate taxpayer" and who told me to put some action where my mouth is because she does not see anyone in Government doing anything to insure jobs and better prices as oil shortages and oil price rises take hold. I feel it is necessary to speak out for this concern I found among the people of Florida.

At the present time there is no legal basis for our Government to respond to foreign policy decisions abroad with foreign policy actions of our own. I do not think that the United States can leave itself in the position of being affected by these foreign actions without having the legal authority ourselves to make an equivalent response. Other nations are living in an unreal world if they think that they are any less dependent on us than we are on them. On January 29 I introduced and the Senate passed a reso-

lution calling on our Government to communicate our concern to the oil producing nations for the effect their actions have had on our economy and to convey the fact that we can take reciprocal economic action.

Export controls is one instrument which can be the most effective in making an appropriate response to foreign economic actions which affect our economy. As the Export Administration Act now reads, export controls can now be used "to protect the domestic economy from the excessive drain of scarce materials and to reduce the serious inflationary impact of foreign demand." This language restricts the use of export controls to only those cases where there is a drain on our supplies and a serious inflationary effect caused by foreign demand. So three conditions have to prevail simultaneously for export controls to be legally involved. There has to be, first, a drain on our supplies, and second, an inflationary impact, soon caused by, third, foreign demand. So the law does not now cover foreign economic policy actions, like those taken by the oil producing nations, which raise price or control production or embargo exports of goods that due to their importance in our economy can affect employment, price levels, and supply in our economy as a whole.

The legislation I am introducing would enable the President to take equivalent foreign economic policy decisions to respond to such actions abroad in order to seek a favorable adjustment in these decisions by other governments. The legislation would provide an entirely new legal basis for implementing export controls. I think the consideration by the Congress of this legislation is vital to the interests of the United States and the well-being of the American people in this new economic era we are living in. We cannot allow these actions abroad to be taken without having the capacity to take action ourselves. Only if we have the authority to take reciprocal economic action will we have the power to persuade other nations that drastic economic action by them, as in the case of oil, which has damaging effects on our economy is not to their advantage to take because it will only result in equally harmful effects on them.

So I call for a thorough examination of the trading conditions and procedural practicalities involved in vesting the President with authority to use export controls for these purposes. This is a complicated matter fraught with dangers and difficulties. Hearings need to be held and careful consideration needs to be given to vesting the President with this new and far reaching authority. I do not believe that the Congress which is the branch of Government with the constitutional responsibility "to regulate commerce with foreign nations" should delegate this authority to the President without careful thought and without some measure of control over when this authority can be exercised. In the hearings I think we need to explore just how checks and balances in this area might be drawn.

Also in the hearings, there should be a thorough exploration of the trade relationship we have with the oil-producing nations to see what alternatives we have to exerting leverage. I am hopeful that extensive hearings can be held on all dimensions of this legislation as I believe that response of the United States to the oil price rise is vital to our domestic economic interests.

The legislation I introduce now follows up on the Senate resolution I introduced and the Senate passed on January 29 which reads:

S. RES. 249

Resolved, That it be the sense of the Senate that it be an urgent matter to communicate to the governments of Canada, Venezuela, and the Arab oil producing countries that the United States views with utmost concern recent oil price increases as detrimental to prices, real income and employment in the United States and that such actions by these countries should not be taken without regard for these effects on the life of the American people and for the possibility of reciprocal economic action by the United States which might adversely affect the economies of these countries.

Mr. President, I ask unanimous consent to have printed in the RECORD letters I have received from taxpayers, together with the text of the bill.

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

DEAR MR. CHILES: We've gone thru wars and wars we've supported all the allies with equipment and oil and "energy" and we've never gone thru anything like this. Think about it. The only country in the world really making it is Japan—you really want us to give up everything for everyone else in the world?

You got no guts or would have done something about this.

You've walked! Who's gonna buy our shoes if we walk and don't have jobs?

Put your action where your mouth was!

You better answer this.

IRATE CITIZEN.

PLANTATION, FLA.,
December 29, 1973.

Senator LAWTON CHILES,
New Senate Office Building,
Washington, D.C.

DEAR SENATOR CHILES: This letter concerns the economic policy of the oil producing countries towards the United States. I realize that I am certainly far from being qualified in the field of economics and foreign relations, but I feel the need to at least express my opinion.

The Arabs, of course, have cut us off completely. When they again turn on the spout, the price will probably double. Venezuela has increased their royalties from a little over $3.00 a barrel in January 1972 to over $17.00 a barrel effective January 1974. Even our Canadian "friends" are putting the screws to us. As usual, the American consumer will suffer by paying even more for energy.

I think this economic warfare is getting out of hand. These oil producing countries are basically agrarian and backward societies. Certainly they must depend on our technology to provide them with manufactured goods and machinery. If they can use their oil to their advantage, then let us use our technology likewise. If we pay their price without retaliating in some way, then who knows what they will do next year.

Our foreign policy has always been extremely generous. We rush to the rescue with money anytime someone yells help. But when we are in trouble, all we get is a kick in the teeth. I'm tired of this. From now on when our charity is requested, lets put a price on it.

Thanks for taking the time to read this letter. I wish you a Happy and successful New Year.

Sincerely yours,

CHARLES I. YOUNG.

PORT HURON,
November 6, 1973.

Senator LAWTON CHILES,
Senate Office Building,
Washington, D.C.

DEAR SENATOR: Canada, our "friendly" neighbor, just socked a 400% increase onto their export tax of crude oil. Sure doesn't ease our fuel crises and rising prices.

The U. S. should increase by 400% it's export tax on coal. Canada imports this natural resource from the U. S. by the millions of tons every year.

Another interesting fact few U. S. Taxpayers are aware of:

The St. Marys Canal at Sault Ste Marie, Michigan has cost U. S. Taxpayers millions of tax dollars to build; millions more are required annually to operate and maintain these canals. There are thousands of passages by Canadian vessels, being lifted from the level of Lake Huron to the level of Lake Superior . . . every year. These Canadian vessels are going from Canadian ports to Canadian ports and have no benefit whatsoever, not one red cent, to American Commerce. This is a free service for the Canadians . . . the bill is 100% paid for by American Taxpayers.

Americans do not receive reciprocity when an American vessel transits Canadian canals. It's time the U.S. take inventory of its financial relations with its so-called "friendly" neighbor to the North.

Very truly yours,

WM. E. TERRELL.

JANUARY 2, 1974.

LETTER TO EDITOR,
St. Petersburg Times:

Blackmail only brings more blackmail unless it is dealt with directly and courageously at the outset.

The outrageous increase in oil prices by Venezuela is pure blackmail. I think we as a nation should tell them to go to hell and get by on the 85% of total oil requirements we produce here. I know everyone can't do this, but I would be willing to put my car on blocks for all of 1974 if such action would be taken. I think thousands of others would do the same to protect the economic and social future of this country. It is too much the common thing today to take care of problems with Chinese Fire Drills day to day rather than looking to the long term pull.

If strong resolute action is not taken on this matter, next it may be Venezuela telling U.S. Steel and Bethlehem Steel the price of iron ore has been doubled. Then Peru may advise the copper companies the price of copper ore has been doubled, and similar action may be taken by the bauxite producing countries with the aluminum companies. The chaos caused by such action would be tremendous and inflation would be beyond imagination.

Cut off everything to Venezuela now—pharmaceuticals, manufactured equipment, food shipments, etc. If they do not wish to participate in sound international trade practices between nations to assure world progress and stability then we have no obligation to them.

The Arab nation should have enough sense to realize also that the balance of power in

the mid-East rests with the United States. If all those Shieks wish to hold on to their lush kingdoms, they won't do so by hurting the strength of the United States by economic measures.

Let's take some positive action now for the benefit of the future, by tightening our belts more than it looks necessary for current expediency.

JOHN W. FINLAY.

NORTH MIAMI, FLA.,
December 26, 1973.

Senator LAWTON CHILES,
U.S. Senate,
Washington, D.C.

DEAR SENATOR CHILES: I have become increasingly disturbed by recent news items that are of interest to all citizens of this country.

I would like to know the reason why the United States continues to supply all forms of aid (monetary, food, clothing, etc.) to those countries of the world that persist in perpetrating political, judicial, and even economic blackmail upon our nation.

Among the countries to which I refer are those that grant political asylum to murderers (such as terrorists who have killed many innocent Americans), specifically Lebanon, Jordan, Syria, Iraq, Egypt, Saudi Arabia, Iran, and most recently Kuwait. In return for our aid, these countries have refused extradition of these people to the country of criminal origin.

I feel that they have added injury to insult by taking advantage of our "energy crisis" by boosting their oil export prices by over 100%. Is this the kind of thanks that we are to expect for our efforts?

Agencies of our government, not to mention American private industry, have poured millions of dollars into the economy of Venezuela. During their many times of need, our country has not hesitated to flood Venezuela with assistance. But what thanks do we receive during our time of need? Boosted oil prices take every advantage of our economic energy situation. I might also remind you that this increase will particularly effect *your* home state, as Florida Power and Light Company utilizes Venezuelan oil in their electrical generators and power plants.

I can never remember the United States of America ever taking advantage of other countries during a time of crisis as we have been taken advantage.

My suggestion is to cut off all aid to those countries that refuse to reciprocate appropriate assistance with America. I think that this should include *any* country regardless of the nature of the blackmail . . . be it political, economic, or otherwise.

Perhaps these types of measures would give our nation a better image in the world. I do not believe that a "soft-touch" nation presents very much credibility to the world at large.

Perhaps these types of measures would also give our Congress more money to be wasted on inflated defense budgets and less to be wasted on ungrateful foreign aid.

With warm personal regards,

PAUL M. GOELD.

S. 2947

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 3(2) of the Export Administration Act of 1969 is amended—

(1) by inserting after clause (A) the following: "(B) to the extent necessary and with respect to the articles, materials, supplies, and information necessary or appropriate, to seek an adjustment in any economic policy or action of a foreign government which has or may have a serious domestic inflationary impact, which has caused or may cause a serious domestic shortage, or which has had or may have a serious adverse effect on employment in the United States,"; and

(2) by redesignating clauses (B) and (C) as clauses (C) and (D), respectively.

SEC. 2. Section 4 of the Export Administration Act of 1969 is amended—

(1) by inserting ", or the need to seek adjustments in economic policies or actions by foreign governments" after "scarce materials" in subsection (c); and

(2) by striking out "(B) or (C)" in subsection (e) and inserting in lieu thereof "(B), (C) or (D)".

SEC. 3. Section 10 of the Export Administration Act of 1969 is amended by adding at the end thereof the following new sentence: "Such report shall also contain—

"(1) an analysis of any economic policy or action of any foreign government affecting the price or availability of any article, material, or supply imported into the United States which is essential to the economy of the United States;

"(2) the effect of such policy or action on price, supply, or employment in the United States; and

"(3) any economic action proposed or contemplated by the United States Government with respect to such foreign economic action.".

SEC. 4. Section 14 of the Export Administration Act of 1969 is amended by striking out "1974" and inserting in lieu thereof "1975".

By Mr. DOMINICK (for himself, Mr. BENNETT, Mr. DOMENICI, Mr. MONTOYA, Mr. FANNIN, and Mr. HASKELL):

S. 2948. A bill to amend section 5(c) of the National Trails System Act. Referred to the Committee on Interior and Insular Affairs.

Mr. DOMINICK. Mr. President, on February 3, 1967, my colleagues, Senator JACKSON and Senator NELSON, and I introduced the National Trails System Act. This bill, which was passed and enacted on October 2, 1968, authorized the creation of the Pacific Crest Trail and the Appalachian Trail and the study of other trails for possible inclusion at a later date. Since the passage of the National Trails Act, we have witnessed the remarkable success of the Appalachian and Pacific Crest Trails. The beauty of these areas are enjoyed not only by hardy backpackers, but also the equally important day hikers. I feel the greatly increasing usage of these two trails warrants the consideration of others. This would relieve some of the pressure being experienced by both the Appalachian and Pacific Crest Trails and keep them as beautiful as they should be.

The bill I am introducing today would amend the National Trails System Act so as to provide for the inclusion of the Escalante Trail to the study category. I feel very strongly, as do my colleagues from New Mexico, Arizona, Utah, and Colorado that this trail should be considered as an excellent addition to the present system which is still in its infancy. There are several reasons for my enthusiasm. First, as we all know, in 1976 we will be celebrating the bicentennial of our great Nation. It would be well, however, to recognize that the United States was being brought to life that year not only on the east coast, but also in a very different manner thousands of miles to the west. In July of that historic year of 1776, only a few days after the signing of the Declaration of Independence, Father Silvestre Velez de Escalante with nine companions set out from Santa Fe, N. Mex., in search of a route to Monterey, Calif. Before his trek ended, he and his party covered 2,000 miles of wild territory, most of it unmapped, unexplored, and unseen by white man. In his own way, Father Escalante helped give birth to a part of America which now encompasses four States and over 8 million citizens.

Mr. President, the route Father Escalante took included some of the most beautiful and rugged areas left in the United States today. They started the trek from Santa Fe, which was then a city already over 200 years old. They stayed with well known trappers' routes at the outset. Following the Rio Grande and Chama Rivers, they rode northwest into Colorado. Crossing the San Juan to the Dolores, the party rode through southwestern Colorado, skirting the cliff-dwellers' ruins at Mesa Verde. Hoping to further religious education and trade with the Indians of the area, they made a detour to the east. The path grew more rugged as it crossed the Uncompahgre Plateau and went up the Uncompahgre and Gunnison Rivers. This detour brought praise from Father Escalante because of the rugged beauty of the territory and the mild manner of the nearby Sabuagana Indians.

This was as far as known trappers' routes could lead them, so onward to the northeast they went, breaking new paths. A pair of Laguna Indians joined the party and led it on one of the roughest detours of the entire trek. They rode west along Buzzard Creek, northwest on a narrow rocky path over Battlement Plateau and across the Colorado River, near what is now Una, Colorado. Next, the guides led the explorers up Roan Creek and Carr Creek both full of steep and treacherous arroyos. By a steep and fear-inspiring trail, they climbed the side of Roan Mountain, then north along 40 miles of Douglas Creek. On the steep gorged sides of Douglas Creek, Father Escalante notes the primitive pictographs painted by a long forgotten tribe of Indians. Finally, they reached the White River near Rangely, Colo., and left the State near the now famous Dinosaur National Monument. The explorers turned west along the Green and Duchesne Rivers, crossed the Wasatch Mountains and arrived at Utah Lake, then called Lagua de los Timponogos. After walking 200 more miles, they came to the estimated latitude of Monterey.

However, it was now October and snow was falling on the Sierras. Unable to cross during the bad season, they turned for home. The Virgin River and Hurricane Fault became their trail markers as they headed through Arizona and southern Utah. After a long and difficult search for a fiord, the party finally recrossed

the Colorado. The difficult part of the journey had ended so the fathers and their companions headed straight for Zuni and Santa Fe. This completed a journey of 2,000 miles and 5 months. The exploration aroused interest and stimulated trade with several tribes of Indians.

Mr. President, as I indicated before, I am enthusiastic about this particular trail for several reasons other than its historical appropriateness. This trail fits the criteria outlined in the National Trails Act particularly well. First, a national trail should incorporate the maximum of scenic, historic, natural, or cultural qualities of the area. We can readily see how this trail fits the historical criterion and anyone who has seen the territory can attest to its scenic and wilderness qualities.

Second, the trail should be located so as to provide the maximum outdoor recreation potential. The Escalante Trail passes through several national forests, wilderness areas, and national parks. This provides facilities, easy maintenance, and avoids mining areas, highways, and power transmission lines. Public access to the trail is also readily usable. This access, in many areas, is at intervals which would allow trips of shorter duration for those less inclined to the strain of lengthy backpacking.

National trails should adhere to an actual historical trail, be continuous, and of several hundred miles in length or longer. The trail follows as closely as possible the day-by-day trek of Father Escalante as recorded in his diary and is 2,000 miles of continuous land-based hiking.

In addition, I feel it would be appropriate to honor the Spanish-speaking heritage of our country as well as the English heritage. It would truly be fitting in the year of our National Bicentennial, to recognize the Escalante Expedition which opened up the great Southwest to Spanish- and English-speaking Americans.

In conclusion, Mr. President, let me urge speedy consideration of this bill so that all necessary studies and preparations may be made in order to designate this a part of the National Trails System by 1976, its bicentennial year, the Nation's bicentennial year, and Colorado's centennial year.

By Mr. BAYH:

S. 2949. A bill to amend title XVIII of the Social Security Act to include breast prosthesis among the items and services for which payment may be made under the supplementary medical insurance program. Referred to the Committee on Finance.

Mr. BAYH. Mr. President, probably the most dreaded disease of American women is breast cancer, which strikes approximately 80,000 women in this country each year. It is the single most common type of cancer occurring in this country. Unfortunately, the usual treatment for breast cancer is rather drastic. It involves surgical removal of the breast and usually of varying amounts of tissue in the chest and under arm. This surgery imposes both a physical and a psychological trauma on an afflicted woman.

Mr. President, we all look forward to the day on which a cure for all types of cancer is found. Short of that, we must continue to develop treatments for cancer which disturb as little as possible the normal configuration of the human body. But until medical science can achieve these goals, at least we can provide prostheses to replace parts of the body which must be removed to save people from this dread disease. These prostheses—artificial legs, arms, and eyes, for example—are truly a part of the treatment for the disease in that they at least partially restore the function and the appearance of a healthy human body. Surely any medical treatment or device which furthers this goal is a legitimate medical necessity.

I, therefore, find it incomprehensible, Mr. President, that our medicare program has interpreted a breast prosthesis for postmastectomy patients as a "cosmetic" device which it will not cover. Contrary to this very limited point of view, the breast prosthesis serves functions similar to those of any other replacement of a lost body part: Protective, psychological, and functional purposes. This type of prosthetic device should therefore be covered by medicare just as an artificial leg, arm, or eye is covered. The legislation I am introducing will accomplish this. Until our national effort to conquer cancer is successful, this legislation will at least improve the medical treatment now available to medicare recipients. Similar legislation has been introduced in the House by Congresswoman CARDISS COLLINS of Illinois. I am very pleased to join her in this important effort, and I urge the support of other Members of the Congress.

By Mr. BAYH:

S. 2950. A bill to amend title II of the Social Security Act to increase to $4,800 the amount of outside earnings permitted each year without deductions from benefits thereunder. Referred to the Committee on Finance.

Mr. BAYH. Mr. President, the central fact about social security is that, even with the increased benefits of recent years, it still does not provide enough income for retired people to live decently. Those who have no income other than their social security check live—strictly speaking—in poverty. In all too many cases welfare payments provide the only alternative to actual physical deprivation. And yet despite these undoubted facts, existing law makes it impossible for many older Americans to raise their standard of living to a comfortable level.

The obstacle here is the earnings limitation under title II of the Social Security Act. This provision now allows a beneficiary to earn $2,400 a year without reduction in benefits. Above that amount, however, he or she must sacrifice a dollar in benefits for every $2 earned. This means that a single person between the ages of 65 and 72 who is able and willing to hold down an even modestly paying fulltime job must give up every cent of the social security benefits to which a lifetime of work and as much as 35 years of paying into the trust fund entitle him.

This latter fact, Mr. President, leads me to an observation concerning the basic philosophical character of our social security system. At the insistence of President Franklin Roosevelt, the system was designed as a contributory insurance plan instead of simply—as some of his advisers urged—an old age benefit paid out of general revenues. Mr. Roosevelt's point, which he made very explicit, was that if people paid insurance premiums into a special fund out of their own earnings, no future generation of politicians could ever take it away from them by labeling it a Government "handout."

In other words, because of the way the system was consciously designed by one of our greatest Presidents, social security benefits today are a matter of earned right, not Federal largess. It, therefore, seems to me not only mistaken but improper for anyone to try to claim that benefits are and ought to be conditional upon an agreement not to be gainfully employed. Social security was not designed to include a "means test." Its benefits are not predicated upon how much private income one might have. One does not have to plead poverty in order to qualify for a monthly social security check. For those who have paid into the system over these many years, the benefit is a matter of right.

Mr. President, that is the philosophy underlying the social security system. Why then should there be an earnings limitation, which so weakens the automatic, rightful character of benefit payments?

The simply, pragmatic answer is that when the system was instituted in 1937 the Nation was still suffering from a fearsome level of unemployment. Jobs were in such scarce supply that the Government needed to do all in its power to discourage people from working when they did not absolutely have to work. The reasoning was that if you could give a 65-year-old man with grown children a decent pension, he ought not to continue to hold a job that was desperately needed by, say, a 35-year-old father with young children. So the Government said, in effect, "Take your pension or take your paycheck; you can't have both." We might also bear in mind that in those early years of social security, those who were retired or just about to reach age 65 had paid little or nothing into the trust fund. The rationale then for an earnings limitation, while it might not have been philosophically consistent, was at least understandable as a practical device to help deal with a critical emergency.

The situation today is very different. While unemployment is once again at an uncomfortably high level, most of it is concentrated among the very young and unskilled members of the work force, who for the most part are not competing for the jobs which are held by prospective

retirees. In other words, forcing a skilled older worker to retire before he wants or needs to will not open up a job for a teenage high school dropout. It will only remove one more productive, taxpaying citizen from the work force. And it will require him to accept a much lower standard of living than his talents and strengths should warrant.

One other factor in this unhappy situation needs to be noted. The earnings limitation penalizes only those social security recipients who earn wages or are self-employed. Pensions, no matter how large, are not counted in the limitation. Nor is interest and dividend income. The retired corporation executive can enjoy a pension of $50,000 a year and have investment income double that amount and still not lose one penny of social security. But the cabinetmaker or electrician who wants to continue his life's work and be paid for it may have to give up his entire social security check.

That is not fair. It is not sensible. It is not necessary.

Certainly, Mr. President, I do not begrudge the corporation executive the social security payment to which his own contributions entitle him. But I deeply resent the discrimination practiced against working people by a system that penalizes them for the fruits of their own labor.

There can be no doubt that, if we were designing a brand new social security system today, most of us would want to eliminate the earnings limitation altogether. Proposals to do so are introduced in every session of Congress. In practical terms, however, given the existing structure of social security financing, complete elimination of the earnings ceiling would, in my judgment, be too costly to be absorbed all at once. I, therefore, propose a very substantial increase—doubling the present amount of exempt earnings—with a view to complete elimination as soon as it is fiscally responsible to do so.

The bill I introduce today, Mr. President, would permit earnings of $4,800 a year without loss of benefits. In monthly terms, the beneficiary could earn $400 a month, instead of the present $200 a month, before his check is reduced. Above $400 a month, benefits would be decreased $1 for every $2 earned.

This would still leave us with some distance to go down the road to full equity for our older citizens who can and want to continue working. But it is certainly a very long step in the right direction. By enacting it now we can renew our commitment to that ideal which lies at the heart of President Roosevelt's great dream. By enacting it now we can reaffirm our intention to move as rapidly as possible toward the goal of true justice for all older Americans.

By Mr. BAYH:

S. 2951. A bill to provide for public ownership of certain documents of elected public officials. Referred to the Committee on Government Operations.

Mr. BAYH. Mr. President, as I have traveled through the small towns and cities of Indiana over the past several weeks, my constituents had much on their minds to communicate to their representative. As I listened to their troubles, their indignant complaints, their hopes, the one question that came through more clearly than all the rest was "Why don't you do something about all these things?" The bill I am introducing today is designed to correct one specific abuse about which a great number of my constituents were very unhappy—the use of documents prepared by an elected public official in the course of his official duties to avoid the payments of taxes on more than half a million dollars of income.

The papers of public officials are of inherent interest and, therefore of taxable value only because the individual involved held public office for which he was paid a salary out of public funds. In the case of Presidents and many other lesser officials, these papers are not personal in any real sense because they were generated by the flow of public business and were prepared in Government offices with the help of publicly paid secretaries and assistants.

Over the years neither custom nor the law have made clear how the papers of such public officials should be handled. George Washington took his papers with him when he left office and most other early Presidents followed the same practice. Some of these early letters and documents were donated to libraries and historical societies, others were eventually purchased by the Government from heirs, and still others became scattered and lost. Andrew Jackson and other Presidents or their heirs followed a different practice by giving their papers to the Library of Congress without receiving any financial compensation. Herbert Hoover began the modern practice of conveying Presidential papers to a special library, first to Stanford University and later to the Hoover Library in West Branch, Iowa. President Franklin D. Roosevelt followed the same practice by creating the Presidential library at Hyde Park, N.Y. Roosevelt treated his papers as public property, and after his death there was a a New York State court decision which upheld his interpertation.

In succeeding years, however, Presidents Eisenhower, Johnson, and Nixon, as well as Members of Congress and others have taken sizable tax deductions for the "gift" of their papers, papers which I believe were clearly public property.

In 1969 Congress put an end to such practice by making it impossible for any taxpayer, whether public official or not, to claim a charitable deduction for the gift of such papers, but the question of the ownership of such papers remains unclear.

The bill I am introducing today would settle the question of who owns such materials by clearly designating them as public property. The bill would require that all documents, correspondence, and other materials which were prepared by or for any elected Federal officeholder, which involve public business, and which would not have been prepared if the individual had not held public office shall be turned over to the National Archives within 180 days after the individual leaves office. The bill does not require any official to retain any particular documents, but to the extent he elects to do so, they become public property once he has left office. Nor would the bill interfere with the practice begun by President Hoover of placing Presidential papers in special libraries since the Archivist would be free to determine that such libraries were an appropriate depository. Finally, the present provisions of the law which permit the individual from whom the documents originated to place limitations on access to them for specific periods of time and for specific reasons would continue to be applicable.

The polls tell us, Mr. President, that public confidence in elected officials is at an all-time low. In my view, no single incident has done more in recent years to undermine this confidence than the manner in which President Nixon handled his income tax obligations. Whether these actions were technically legal has yet to be determined, but the American people have reached their determination on this conduct, and they do not like it. This bill will finally assure the citizens of the country that no longer will any elected representative be able to profit by retaining those materials generated because of his office.

I ask unamious consent that 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. 2951

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 "Public Documents Act".

SEC. 2. (a) Title 44, United States Code, is amended by adding at the end thereof the following new chapter:

"Chapter 39—Public Documents of Elected Officials

"Sec.
"3901. Definitions.
"3902. Papers of elected officials.
"3903. Preservation of public documents.
"3904. Judicial review.

"§ 3901. Definitions

"For purposes of this chapter—

"(1) 'elected official of the United States' means the President, Vice-President, Senator, and Members of (or Resident Commissioner or Delegate to) the House of Representatives, including any individual holding such office for any period by reason of appointment to such office or succession to such office; and

"(2) 'public documents' means, with respect to an elected official of the United States, the books, correspondence, documents, papers, pamphlets, models, pictures, photographs, plats, maps, films, motion pictures, sound recordings, and other objects or materials which shall have been retained by an individual holding elective office under the United States and which were prepared for or originated by such individual in connection with the transaction of public business during the period when such individual

held elective office and which would not have been prepared if that individual had not held such office; except that copies of public documents preserved only for convenience of reference, and stocks of publications and of public documents previously processed under this title are not included.

"§ 3902. Papers of elected officials

"Within 180 days after an elected official of the United States ceases to hold his office, the Administrator of General Services shall obtain any objects or materials of that elected official which the Administrator determines to be public documents within the meaning of section 3901(2) of this title, and such elected official shall transmit such documents to the Administrator.

"§ 3903. Preservation of public documents

"The Administrator of General Services shall deposit in the National Archives of the United States the public documents of each elected official of the United States obtained under section 3902 of this title. Sections 2101–2113 of this title shall apply to all public documents accepted under this section.

"§ 3904. Judicial review

"A decision by the Administrator of General Services that any object or material is a public document of an elected official of the United States within the meaning of section 3901(2) of this title shall be a final agency decision within the meaning of section 702 of title 5."

(b) The table of chapters, preceding chapter 1 of such title 44, is amended by adding at the end thereof the following:

"39. Public Documents of Elected Officials ---------- 3901".

By Mr. HUMPHREY:

S. 2952. A bill to provide for project grants for the development and demonstration of programs for rehabilitative, habilitative, personal support, residential, medical, dental, and mental health services for the chronically ill residents of identified population areas. Referred to the Committee on Labor and Public Welfare.

NATIONAL CHRONICARE DEMONSTRATION CENTER ACT OF 1974

Mr. HUMPHREY. Mr. President, the bill I am introducing today addresses the serious need to establish a comprehensive, efficient, and humane system to fulfill the health needs of chronically ill or disabled persons.

At the present time, over 700,000 Americans are long-term hospital patients, and over 1 million more persons are patients in nursing homes, and 90 percent of these patients are elderly persons. But there are almost 20 million additional people in our Nation who are not in an institution but have disabilities severe enough to restrict or prohibit their major activities.

The patient confined to a hospital bed over a sustained period faces the terrible burden of skyrocketing hospital costs. However, over half the costs of hospital care are accounted for in the treatment of chronic conditions. This is totally indefensible, in the light of recent Government studies establishing the fact that substantial savings could be realized by promoting the maximum use of residential, outpatient, and nursing home care as an alternative to hospitalization.

Across America, current expenditures for the treatment of chronic conditions amount to some $28 billion. Therefore, this area of health care demands major consideration as Congress approaches legislative action on establishing a program of national health insurance. And there can be no further delay in addressing this high-priority agenda, to assure every American the right to quality health care at the lowest possible cost.

We know that fundamental reforms must be undertaken in our health care delivery system if such a national health insurance program is to be effective, rather than result simply in cost inflation from increased demand placed upon existing and limited health care resources. Moreover, the quality of health care will suffer proportionately, unless there is a comprehensive program for the effective distribution and coordination of delivery system resources. Such a program must promote multiple approaches to health care and must emphasize alternatives to intensive care, or hospitalization. Certainly, a key part of this emphasis must be the extensive development of diagnostic services, preventive health care, outpatient and home health services, and comprehensive rehabilitation and counseling services to enable those who might otherwise be institutionalized to participate and contribute in their home communities.

All of these new directions for health care in America are reflected in the National Chronicare Demonstration Center Act of 1974. The bill I am introducing today is an expanded and revised version of legislation which I submitted toward the close of the 92d Congress and again at the outset of the 93d Congress as S. 393.

The present bill would provide for project grants for the development and demonstration of programs offering a comprehensive range of services to chronically ill residents of areas with different needs and health care delivery capabilities. Specifically, grants would be made by the Secretary of Health, Education, and Welfare to a limited number of community chronicare health centers serving rural, suburban, and urban populations, as demonstration programs to study and evaluate the scope of required services and associated costs, as well as the effective utilization of paraprofessional personnel.

In addition, two special test programs are authorized. One would evaluate a community chronicare health center project operated in conjunction with an existing health maintenance organization which is not currently providing long-term health care.

A second category of projects would be funded where a center is operated under contract with a State chronicare commission, to be appointed by the Governor of that State. The seven-member commission, composed of professional persons in medical administration, and representatives of the providers and consumers, respectively, of community chronicare health center services, would also have at hand a State chronicare data center to compile and evaluate information on services provided, available resources and facilities, and the allocation of expenditures in these projects.

The community chronicare health center would provide medical, dental, and mental health services for chronically ill persons, as well as rehabilitation, optometric, speech pathology, and audiology services and nutritional counseling. The point of entry into this system of health care would be a complete diagnostic service. But the community chronicare health center would also reach out into the community, providing home health services as well as outpatient preventive services.

What is presented here is a total program of personal care for the chronically ill. A key component of the chronicare system would be the therapeutic service team in each center, including a licensed physician, a registered professional nurse, a center administrator, a physical therapist, a mental health specialist, and a social worker. This team would establish and constantly monitor an individual total care plan for each patient.

Mr. President, the fundamental purpose of the National Chronicare Demonstration Center Act is to provide a solid foundation of hard facts and in-depth analysis for establishing a firm commitment to an ongoing program of long-term health care for the chronically ill. I believe this can and must be done without delay.

Mr. President, I ask unanimous consent that the text of this bill be included at this point in the RECORD.

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

S. 2952

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 "National Chronicare Demonstration Center Act of 1974".

FINDINGS AND DECLARATION OF PURPOSE

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

(1) long-term care has always been neglected in the development of the Nation's health care delivery system;

(2) present programs, such as medicare and medicaid, have neglected to provide adequate coverage for long-term care;

(3) any program of national health insurance must address the critical need for coverage of long-term care;

(4) most Americans lack direct access to nonhospital health care;

(5) society has been largely unwilling to deal with the problems of persons who are unproductive over extended periods because of poor health;

(6) outmoded laws or policies limit the realistic use of paramedical personnel, resulting in increased health care costs; and

(7) the nursing home industry has been the one health specialty which has accepted the responsibility for developing long-term care through the years.

(b) It is the purpose of this Act to establish demonstration programs to study and evaluate the—

(1) effect of diagnostic services in the detection of chronic conditions;

(2) breakdown of costs and expenditures by acute and chronic conditions;

(3) breakdown of services required by age, chronic condition, and impairment;

(4) role of midlevel medical workers and other paraprofessionals in caring for the chronically ill; and

(5) role of a comprehensive, integrated, midlevel health care delivery system designed for the chronically ill;

to provide a basis for a commitment to a lasting national program for long-term health care for the chronically ill.

PROGRAM ESTABLISHMENT

SEC. 3. (a) There are authorized to be appropriated $6,000,000 for the fiscal year ending June 30, 1974, $5,000,000 for the fiscal year ending June 30, 1975, and $4,500,000 for the fiscal year ending June 30, 1976, to enable the Secretary to make grants to any public or private entity to cover all or any part of the cost of a project, in an area of the country representative of a rural population, for the development or demonstration of programs designed to provide a combination of rehabilitative, habilitative, personal support, residential, medical, dental, and mental health services for the chronically ill residents of such area through a community chronicare health center.

(b) There are authorized to be appropriated $10,000,000 for the fiscal year ending June 30, 1974, $8,000,000 for the fiscal year ending June 30, 1975, and $7,000,000 for the fiscal year ending June 30, 1976, to enable the Secretary to make grants to any public or private entity to cover all or any part of the cost of two projects, in areas of the country representative of suburban populations, for the development or demonstration of programs designed to provide a combination of rehabilitative, habilitative, personal support, residential, medical, dental, and mental health services for the chronically ill residents of such area through community chronicare health centers.

(c) There are authorized to be appropriated $11,000,000 for the fiscal year ending June 30, 1974, $9,000,000 for the fiscal year ending June 30, 1975, and $8,000,000 for the fiscal year ending June 30, 1976, to enable the Secretary to make grants to any public or private entity to cover all of any part of the cost of two projects, in areas of the country representative of metropolitan populations, for the development or demonstration of programs designed to provide a combination of rehabilitative, habilitative, personal support, residential, medical, dental, and mental health services for the chronically ill residents of such area through community chronicare health centers.

(d) There are authorized to be appropriated $4,500,000 for the fiscal year ending June 30, 1974, $4,000,000 for the fiscal year ending June 30, 1975, and $3,500,000 for the fiscal year ending June 30, 1976, to enable the Secretary to make grants to any public or private entity to cover all or any part of the cost of a project which will operate in conjunction with an existing health maintenance organization which is not currently providing long-term health care and which will develop or demonstrate programs designed to provide a combination of rehabilitative, habilitative, personal support, residential, medical, dental, and mental health services for the chronically ill residents of an identified population area through a community chronicare health center.

(e) There are authorized to be appropriated $14,000,000 for the fiscal year ending June 30, 1974, $11,500,000 for the fiscal year ending June 30, 1975, and $9,000,000 for the fiscal year ending June 30, 1976, to enable the Secretary to make grants to any public or private entity to cover all or any part of the cost of two projects, for the development or demonstration of programs designed to provide a combination of rehabilitative, habilitative, personal support, residential, medical, dental, and mental health services for the chronically ill residents of an identified population area through community chronicare health centers, in conjunction with a State chronicare commission, and a State chronicare data center, as further provided under section 5 (b), (c), and section 6(c). Each of the two projects assisted under this subsection shall be located in the same State and one of the projects shall be located in a rural area.

(f) Each community chronicare health center utilized under a project assisted under this section shall serve an area with a population of no less than twenty-four thousand.

(g) Five of the community chronicare health centers utilized under a project assisted under this section shall serve a population area that is underserved by long-term health resources.

(h) Not more than 20 per centum of the amounts appropriated under any subsection of this section for any fiscal year may be used to make grants in that fiscal year under another subsection of this section; except that the sum of the amount of appropriations made available under this subsection for grants in any fiscal year under any subsection of this section and the amount appropriated under that subsection for grants in that fiscal year may not exceed 20 per centum of such appropriated amount.

ELIGIBILITY

SEC. 4. (a) To be eligible for a grant under section 3, an applicant must give satisfactory assurances of its capability of providing—

(1) diagnostic service (as described in subsection (b)),

(2) inpatient care,

(3) day care,

(4) rehabilitation service (on both an inpatient and outpatient basis), and

(5) outreach service.

The applicant must itself provide directly (not by contract) at least one of the abovementioned services.

(b) Diagnostic service shall be the point of entry into the system of health care provided by a community chronicare health center and must be available for initial entry or screening and for diagnostic workup on patients located within a facility.

ADMINISTRATION AND REVIEW

SEC. 5. (a) Each community chronicare health center assisted under this Act shall maintain a therapeutic service team which shall be responsible—

(1) for establishing and maintaining a total patient care plan following initial screening;

(2) for assesment of patient health status on a continuing basis; and

(3) for the involvement of additional ancillary service professionals for provision of required services.

(b) Each community chronicare health center assisted under section 3(e) shall enter a contract with a State chronicare commission to provide services, consistent with section 4. It shall be the responsibility of the commission to allocate funds in such a manner as will, in the judgment of the commission, reasonably assure the availability of needed services provided by the community chronicare health centers.

(c) Each State chronicare commission shall establish a State chronicare data center for the purpose of gathering and supplying information, with regard to one or more of the following:

(1) The diagnosis, treatment, and therapy provided specific beneficiaries or individuals.

(2) The resources and facilities available for the delivery of health care, including the available physical facilities (plant, equipment, laboratories, and beds) as well as the professional medical paramedical staff, and other personnel and other available resources.

(3) The proper distribution of funds for payment of materials, services, use of facilities, and other expenses used in the chronicare system.

(4) Such other information as the State commission shall determine is necessary for the administration of the Act.

DEFINITIONS

SEC. 6. For the purposes of this Act:

(a) The term "community chronicare health center" means a skilled nursing home, intermediate care facility, or home health agency, which may provide—

(1) primary physician's services;
(2) primary dentist services;
(3) rehabiltation services;
(4) outpatient preventive services;
(5) optometic services;
(6) durable medical equipment;
(7) drug prescribed on an outpatient basis;
(8) prosthetic and supportive devices;
(9) speech pathology;
(10) audiology services;
(11) nutritional counseling; and
(12) home health services,

(b) The term "therapeutic service team" means the combination of the following personnel working in a community chronicare health center—

(1) a licensed physician;
(2) a registered professional nurse;
(3) a community chronicare center administrator who shall serve as secretary to the team;
(4) a physical therapist;
(5) a mental health specialist; and
(6) a social worker.

Other paramedical personnel may be utilized in a manner prescribed by the Secretary in regulations.

(c) The term "State chronicare commission" means the combination of—

(1) three persons who are of recognized professional competence in fields related to medical and paramedical organization and administration;

(2) two persons who are representative of providers of community chronicare health center services; and

(3) two persons who are representative of consumers of community chronicare health center services.

The personnel shall be appointed by the Governor of the State where the commission is located, and shall receive such salaries and compensation for expenses as may be necessary for carrying out the functions of the State commission.

(d) The term "Secretary" means the Secretary of Health, Education, and Welfare.

REPORT

SEC. 7. The Secretary shall make a report to the President for transmission to the Congress within two years after the date of enactment of this Act stating the progress under this Act and making recommendations for such further action as may be required.

By Mr. MATHIAS (for himself and Mr. ERVIN):

S. 2954. A bill to amend the Economic Stabilization Act of 1970 to establish improved procedures for the implementation of that act, and to assure due process under that act. Referred to the

Committee on Banking, Housing and Urban Affairs.

Mr. MATHIAS. Mr. President, I am introducing today legislation to improve the fairness of the Government's wage-price program by guaranteeing business and the public the right to obtain information about the Cost of Living Council policies and rulings.

This bill is the result of hearings conducted by the Subcommittee on Separation of Powers during the first session of this Congress. Those hearings demonstrated that the public has experienced difficulties in obtaining basic information regarding decisions and guidelines from the Cost of Living Council. Such information is essential to the businessman who must know whether rules apply to him and under what circumstances he may seek exceptions, to the wage earner who faces Federal limitations on earning power, and to the consumer who deserves to know whether price increases are granted fairly or haphazardly. Among witnesses heard at these hearings who were critical of the way in which the wage-price program is being administered was Laurence H. Silberman, the President's nominee for Deputy Attorney General.

The immediate problems addressed by this bill, however, are not the whole problem. In addition to the very practical abuses which the bill addresses—reliance by the Council on unpublished rules which are kept secret, failure to give detailed reasons for granting or denying exemptions, failure to give notice or provide sufficient time for comment on proposed regulations before they are issued, and failure to publish internally or externally information that allows everyone to know what policies are, and whether they are being applied consistently across the Nation—this legislation also represents a response to a new trend in government regulation. That trend is the increasing power of the executive branch to control the economy. The administration's original energy bill, rejected last week by the Senate, was another example of this trend. The enormous power proposed for the energy administration would have reached each market transaction, just as that which the Economic Stabilization Act gives to the Cost of Living Council. I proposed and the Senate accepted an amendment to that energy bill with essentially the same provisions I am now proposing for the Cost of Living Council.

The bill which I propose is designed to:

Set a time limit by which the Cost of Living Council would be required to take action on requests for interpretations or modifications of rules or for exceptions or exemptions from rules;

Require the issuance of a statement of exhaustion of administrative remedies;

Require notice of at least 7 days and opportunity to comment on all proposed general rules;

Require public hearings in cases likely to have a substantial impact upon the Nation's economy or large numbers of individuals;

Require the publication of all rules or guidelines—including internal agency documents—which may form the basis for agency actions; and

Support each decision in individual cases with written opinion with findings of fact and an explanation of the rationale for the decision.

Economic intervention on the scale now permitted to the Cost of Living Council under the wage-price program is certain to have an impact on traditional values, such as the due process of law and the accountability of government for its actions, unless those values are rigorously preserved. The demands of an "emergency," no matter how great, should not lead to enormous grants of unfettered discretion to an insulated bureaucracy.

This legislation is an attempt to make the wage-price program fairer and less burdensome for the citizens who are regulated. If the program is to be extended in any form, it must be accompanied by workable procedures. No program will long retain, or deserve, popular support if its decisions are not arrived at by a process which appears open, fair, consistent, thorough, rational, enforceable and necessary. The preservation of these values is more, not less, important today than ever.

While recent actions of the Cost of Living Council in lifting some retail price controls will help some aspects of the problems addressed by this bill, such partial lifting has the potential for exacerbating other problems as regulation is applied to some and not to others.

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. 2954

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 207 of the Economic Stabilization Act of 1970 is amended to read as follows:

§ 207. Administrative Procedure.

"(a) The functions exercised under this title are excluded from the operation of subchapter II of chapter 5, and chapter 7 of title 5, United States Code, except as to the requirements of sections 552, 555(c) and (e), and 702 of such title, and except as to the requirements of section 553 of such title as modified by subsection (c) of this section.

"(b) Any agency authorized by the President to issue rules, regulations, or orders under this title shall, in regulations prescribed by it, establish procedures which are available to any person for the purpose of seeking an interpretation, modification, or rescission of, or seeking an exception or exemption from, such rules, regulations, and orders. Such regulations shall include provision for a statement of exhaustion of administrative remedies which must be issued within 60 days of a request therefor unless a grant or denial is made. If such person is aggrieved by the denial of a request for such action under the preceding sentence, he may request a review of such denial by the agency. The agency shall, in regulations prescribed by it, establish appropriate procedures, including hearings where deemed advisable, for considering such requests for action under this section, except that such agency shall issue no order which has the effect of reducing wages, or salaries in effect, or proposed to be in effect, in an appropriate employee unit unless such order is made on the record after opportunity for a hearing. Not less than 30 days after issuance of such an order a statement of explanation shall be directed to the affected parties and made available to the public. Such statement shall include a full explanation of the reasons why the existing wage or salary, or proposed wage or salary adjustment, does not meet the requirements of or the standards established by the regulations prescribed by the agency.

"(c) All rules, regulations, or orders promulgated pursuant to this title shall be subject to the provisions of section 553 of title 5, United States Code, except that all rules, regulations, or orders promulgated must provide for the following:

"(1) Notice and opportunity to comment which shall be achieved by publication of all proposed general rules, regulations, or orders issued pursuant to this title in the Federal Register. In each case, a minimum of 7 days following such publication shall be provided for opportunity to comment.

"(2) Any agency authorized by the President or by this title to issue rules, regulations, or orders under this title shall hold public hearings on those rules, regulations, or orders which are likely to have a substantial impact upon the Nation's economy or large numbers of individuals or businesses or when such hearings serve to inform the public or aid in obtaining information on actions taken or proposed to be taken. To the maximum extent practicable, such hearing shall be held prior to the implementation of such rule, regulation, or order, but in all cases, such public hearings shall be held no later than 60 days after the issuance of any such rule, regulation, or order, which would have a substantial effect upon the Nation's economy or on large numbers of individuals or businesses.

"(d) In addition to the requirements of section 552 of title 5, United States Code, any agency authorized by the President or by this title to issue rules, regulations, or orders shall publish in the Federal Register all internal rules and guidelines which may form the basis, in whole or in part, for any rule, regulation, or order. Such agency shall also support any grant or denial of a request for exception or exemption from rules, regulations, or orders provided for in subsection (b) above with a written opinion setting forth its findings of fact and a specific statement explaining the rationale for such grant or denial. Such opinions shall be published with such modifications as are necessary to ensure confidentiality of information protected under section 55(b) of title 5, United States Code.

"(e) All rules, regulations, or orders issued pursuant to this title shall include the following:

"(1) Findings of fact and a specific statement explaining the rationale for each provision contained in such rules, regulations, or orders; and

"(2) Administrative definitions of the terms used in this title when pertinent to the rule, regulation, or order."

By Mr. SCHWEIKER:

S. 2956. A bill to establish the Federal Energy Production Corporation, and for other purposes. Referred, by unanimous consent, to the Committee on Government Operations; and, when and if reported by that committee, jointly to the Committees on Finance and Interior and Insular Affairs.

FEDERAL ENERGY PRODUCTION CORPORATION ACT

Mr. SCHWEIKER. Mr. President, I am today introducing legislation which can begin almost at once to increase our supplies of energy using only domestic

sources. My bill would establish the Federal Production Corporation Act. Unlike other energy bills considered by the Senate, it emphasizes the immediate production of energy using processes currently developed, available, and capable of producing energy on a commercial scale in the immediate future. The bill would encourage the use of under-utilized energy sources or unconventional energy processes for production or exploration by having Government assist the private sector in underwriting some of the financial risk in bringing these sources on stream. The unconventional processes would include, but not be limited to, production of syncrude and liquid petroleum products from coal, production of substitutes for natural gas—including coal gasification—nuclear energy from geothermal resources, solar energy, production of hydrogen gas from water sources, and the use of agricultural and urban wastes.

The Federal Energy Production Corporation will take a moon-shot approach to putting on line additional energy production sources. By taking this approach, just as we did in responding to the challenge of Sputnik, we can quickly and easily demonstrate our ability to compete successfully with the foreign oil monopoly. I predict once we demonstrate our ability and commitment to increased energy production, oil prices will come down even before our new sources are operating at full production.

The following is a section by section analysis of the bill:

Section 1. Cites the Federal Energy Production Corporation Act and lists some of the energy sources which are to be considered by the Corporation.

Section. 2. Establishes the Corporation. The Board is composed of 15 Directors, 8 of whom shall be public officials representing the Secretaries or Administrators—or their representatives—of agencies with some involvement in energy. The remaining seven members are to be appointed by the President with the advice and consent of the Senate. Of these seven private members, three shall be from private industry engaged in the production of energy, and of these no two shall be from the same industry with regard to the energy source. Of the remaining four private members, one shall be from a citizen's group representing consumer interests, and one from a citizen's group representing environmental protection interests. The other two shall be from private life. The remainder of this section concerns the election of the Chairman of the Board, the definition of a quorum for conducting business, remuneration for private Board members, and the establishment of officers and employees of the Board.

Section 3. Requires the Corporation to determine within 1 year which underutilized or unconventional energy sources can be developed into energy production on a commercial basis and operating within a 24-month period of the enactment of the bill. The Board will have a variety of methods available to use in joining and assisting private industry in energy production, including the ability to enter into contracts and agreements, make grants, loan guarantees, price supports, guaranteed purchases or loans and other methods. This shall also apply to the exploration, production, or transportation of crude oil, natural gas, and coal resources.

Section 4. Details the guidelines under which the Board may receive applications and enter into financial agreements as well as the financial conditions of those arrangements. It also gives the Board authority to dispose of any energy it may acquire through price support or purchase agreements and to sell such energy in the marketplace. Revenues received from the sale of energy are to be deposited in a trust fund established in section 6 to carry out the purposes of the bill. Thus to a certain extent, funds to operate the program will be self-renewing.

Section 5. Enumerates further operating functions of the Corporation.

Section 6. Requires establishment of the Energy Production Trust Fund which the Corporation shall use in carrying out its duties. The trust fund shall be funded for fiscal year 1975 and the next following 4 years by congressional appropriations. A high level of funding would not only show immediate results through increased energy production but also demonstrate our commitment to domestic energy production, and as a member of the Appropriations Committee I would hope to further address this matter during the appropriations process.

Section 7. Requires the chairman of the Corporation to keep the Congress fully informed concerning all activities of the Corporation and to submit an annual report. All actions taken by the Corporation and the private sector will be done with the protection of all existing laws relating to every area of its operation including safety and environmental standards.

This bill can be a vital major step in providing in the shortest possible time tangible results by increasing immediately our own supply of energy to fill the vacuum while we wait for research and development programs to produce.

Mr. President, I ask unanimous consent to have printed in the RECORD following my remarks the text of the bill.

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

S. 2956

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) this Act may be cited as the "Federal Energy Production Corporation Act".

(b) As used in this Act, the term "unconventional energy source" includes, among others, the production of syncrude and other synthetic liquid petroleum products derived from coal, advanced power cycles for the generation of electricity from coal, the production of substitutes for natural gas, including coal gasification, the production of hydrogen gas from water sources, nuclear energy, the production of syncrude from oil shale, the production of useful forms of energy from geothermal resources, solar power, and agricultural and urban wastes.

SEC. 2. (a) For the purpose of developing and carrying out a comprehensive and aggressive program designed to make available to American consumers our large domestic energy reserves, including energy produced by environmentally acceptable processes from under-utilized or unconventional energy sources, there is hereby established the Federal Energy Production Corporation (hereinafter referred to as the "Corporation").

(b) The Corporation shall have a Board of Directors (hereinafter referred to as the "Board") whose membership shall be as follows:

(1) Secretary of the Interior;

(2) Administrator of the Environmental Protection Agency;

(3) Chairman of the Council on Environmental Quality;

(4) Chairman of the Atomic Energy Commission;

(5) Secretary of Transportation;

(6) Secretary of Commerce;

(7) Secretary of Housing and Urban Development;

(8) Chairman of the Federal Power Commission;

(9) seven members appointed by the President of the United States, by and with the advice and consent of the Senate.

(c) Of the members appointed pursuant to clause (9) of subsection (a) of this section, three shall be from private industries engaged in the production of energy, one shall be from citizens' groups representing consumer interests, one from a citizens' group representing environmental protection interests, and two from private life. With respect to such members appointed from private industries engaged in the production of energy, each such appointment shall be made from an industry engaged in such production from an energy source other than a source of the kind utilized by each of the other of such industries with respect to which such appointments are made.

(d) The Board shall annually elect one of its members to serve as Chairman. Pending the appointment of the members pursuant to clause (9) of subsection (b) of this section, five members shall constitute a quorum for the purpose of conducting the business of the Board. The President of the United States shall call the first meeting of the Board.

(e) Each member of the Board not employed by the Federal Government shall receive compensation at the rate of $300 for each meeting of the Board he attends. Each member of the Board shall be reimbursed for necessary travel and subsistence expenses incurred in attending the meetings of the Board.

(f) The Corporation shall have a President and such other officers and employees as may be named and appointed by the Board. Such officers and employees shall be compensated in an amount fixed by the Board. No individual other than a citizen of the United States may be an officer of the Corporation.

(g) In carrying out its functions under this Act, the Corporation shall have, in addition to the powers conferred by this Act, the usual powers conferred upon corporations by the District of Columbia Business Corporation Act. Leases, contracts, and other arrangements entered into by the Corporation, regardless of the place where the same may be executed, shall be governed by laws of the District of Columbia. The Corporation shall be subject to the provisions of the Government Corporation Control Act (31 U.S.C. 841).

SEC. 3. (a) It shall be the function of the Corporation, within the twelve-month period following the date of the enactment of this Act, to determine, on the basis of the best engineering and other information available to it, which of the under-utilized or unconventional energy sources are cur-

rently capable, by reason of existing technology, information, and data, of being developed into energy on a commercial basis, and which of such sources are likely to be so capable of being developed into energy on a commercial basis, within the twenty-four-month period following the date of the enactment of this Act.

(b) On the basis of its determinations pursuant to subsection (a) of this section, the Board is authorized to—

(1) enter into contracts or other agreements with any person, firm, association, corporation, or other entity, pursuant to which the Board shall, by means of grants, loan guarantees, price supports, guaranteed purchases, and low interest, short- or long-term loans, financially assist such person, firm, association, corporation, or other entity, from moneys available in the trust fund established by section 6 of this Act, in designing, constructing, equipping, operating and maintaining, in accordance with applicable law, a full-scale commercial facility or facilities to produce energy from under-utilized or unconventional energy sources determined by the Board under subsection (a) of this section to be currently capable of being developed into energy on a commercial basis, or from such sources so determined as likely to be capable of being developed into energy on a commercial basis within such twenty-four-month period; and

(2) enter into contracts or other agreements with any person, firm, association, corporation, or other entity engaged in the prospecting, exploration, development, production, or transportation of crude oil, natural gas, and coal resources pursuant to which the Corporation shall financially assist such person, firm, association, corporation, or entity, from moneys available in the trust fund established by section 6 of this Act, in carrying out, in accordance with applicable law, such prospecting, exploration, development, production, or transportation by means of grants, loan guarantees, price supports, guaranteed purchases, and low interest, short- and long-term loans.

SEC. 4. (a) In order to financially assist any person, firm, association, corporation, or other legal entity in carrying out any contract or other agreement entered into pursuant to pargaraph (1) or (2) of section 3 (b) of this Act, the Board may, in accordance with the provisions of this section, guarantee to non-Federal lenders making loans to any such person, firm, association, corporation, or entity, payment of principal of and interest on loans, made by such lenders, which are approved under this section.

(b) No loan guarantee under this section for any such purpose referred to in subsection (a) of this section may apply to so much of the principal amount thereof as exceeds 90 per centum of the cost of carrying out any such purpose.

(c) For each project for which a guarantee of a loan is sought pursuant to this section, there shall be submitted to the Board an application by any such person, firm, association, corporation, or entity seeking such guarantee. Such application shall contain such information as the Board may require to carry out the purposes of this section.

(d) The Board may approve such applications only if—

(1) it is assured that the applicant will keep such records, and afford such access thereto, and make such reports, in such form and containing such information, as the Board may reasonably require; and

(2) it determines, in the case of a loan for which a guarantee is sought, that the terms, conditions, maturity, security (if any), and schedule and amount of repayments with respect to the loans are sufficient to protect the financial interests of the United States and are otherwise reasonable and in accord with regulations, including a determination that the rate of interest does not exceed such per centum per annum on the principal obligation outstanding as the Board determines to be reasonable, taking into account the range of interest rates prevailing in the private market for similar loans and the risks assumed by the United States.

(e) (1) In the case of any such loan guaranteed under this section, the United States shall be entitled to recover from the applicant the amount of any payments made pursuant to any such guarantee under this section, unless the Board for good cause waives its right of recovery, and, upon making any such payment, the United States shall be subrogated to all of the rights of the recipient of the payments with respect to which the guarantee was made.

(2) Guarantees of loans under this section shall be subject to such further terms and conditions as the Board determines to be necessary to assure that the purposes of this section will be achieved, and, to the extent permitted by subsection (f), any of such terms and conditions may be modified by the Board to the extent it determines such modification to be consistent with the financial interest of the United States.

(f) Any guarantee of a loan pursuant to this section shall be incontestable in the hands of an applicant on whose behalf such guarantee is made, and as to any person who makes or contracts to make a loan to such applicant in reliance thereon, except for fraud or misrepresentation on the part of such applicant or such other person.

(g) The cumulative total of the principal of the loans outstanding at any time with respect to which guarantees have been issued under this section may not exceed such limitations as may be specified in appropriation Acts.

(h) With respect to any contract or other agreement entered into pursuant to paragraph (1) or (2) of section 3(b) of this Act, the Board is authorized to include as a part of such contract or agreement provisions pursuant to which the Board agrees to purchase any such energy so produced on a cost and reasonable profit basis, or to provide financial assistance through price supports in accordance with regulations prescribed by the Board. Any energy so acquired by the Board shall be disposed of in such manner and under such terms and conditions as the Board shall prescribe. Revenues received by the Board arising out of the disposition of such energy so acquired shall be deposited in the trust fund established by section 6 of this Act and shall be available for use by the Board in the same manner and to the same extent as other moneys within such trust fund.

SEC. 5. In carrying out its functions under this Act, the Corporation is authorized—

(1) to acquire by lease or otherwise, through the Administrator of General Services, buildings or parts of buildings in the District of Columbia for the use of the Corporation;

(2) to enter into and perform contracts, leases, cooperative agreements, or other transactions;

(3) to use, with their consent, the services, equipment, personnel, and facilities of Federal agencies, with or without reimbursement;

(4) to obtain services of experts and consultants in accordance with section 3109 of title 5, United States Code;

(5) to adopt and amend bylaws, consistent with the provisions of this Act, governing the operations of the Corporation.

SEC. 6. (a) There is hereby established in the Treasury of the United States a trust fund to be known as the Energy Production Trust Fund (referred to in this Act as the "trust fund"). The trust fund shall consist of such amounts as may be appropriated or credited to it as provided in this section.

(b) For the fiscal year ending June 30, 1975, and each of the next following four fiscal years, there is authorized to be appropriated to the trust fund such sums as may be necessary to enable the Corporation to carry out the provisions of this Act, such sums to remain available until expended.

(c) It shall be the duty of the Secretary of the Treasury to manage the trust fund and (after consultation with the Board) to report to the Congress not later than the 1st day of March of each year on the financial condition and the results of the operations of the trust fund during the preceding fiscal year and on its expected condition and operations during each fiscal year thereafter. Such report shall include the recommendations of the Board as to the amount of revenues needed by the trust fund during the following fiscal year to meet expenditures from the trust fund during such fiscal year. Such report shall be printed as a House document of the session of the Congress to which the report is made.

(d) It shall be the duty of the Secretary of the Treasury to invest such portion of the trust fund as is not, in his judgment, required to meet current wtihdrawals. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (A) on original issue at the issue price, or (B) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under the Second Liberty Bond Act, as amended, as hereby extended to authorize the issuance at par of special obligations exclusively to the trust fund. Such special obligations shall bear interest at a rate equal to the average rate of interest, computed as to the end of the calendar month next preceding the date of such issue, borne by all marketable interest-bearing obligations of the United States then forming a part of the public debt; except that where such average rate is not a multiple of one-eighth of 1 percent, the rate of interest of such special obligations shall be the multiple of one-eighth of 1 percent next lower than such average rate. Such special obligations shall be issued only if the Secretary of the Treasury determines that the purchase of other interest-bearing obligations of the United States, or of obligations guaranteed as to both principal and interest by the United States on original issue or at the market price, is not in the public interest.

(e) Any obligation acquired by the trust fund (except special obligations issued exclusively to the trust fund) may be sold by the Secretary of the Treasury at the market price, and such special obligations may be redeemed at par plus accrued interest.

(f) The interest on, and the proceeds from the sale or redemption of, any obligations held in the trust fund shall be credited to and form a part of the trust fund.

(g) Amounts in the trust fund shall be available, as provided by appropriation Acts, for carrying out the provisions of this Act, and shall remain available until expended.

SEC. 7. The Chairman of the Corporation shall keep the Congress fully and currently informed of all the activities of the Corporation and shall submit to the Congress an annual report.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that this bill introduced by Senator SCHWEIKER be referred to the Committee on Government Operations, and that when and if reported, it be jointly referred to the Committees on Interior and Insular Affairs and Finance for consideration

of matters falling within their respective jurisdictions.

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

ADDITIONAL COSPONSORS OF BILLS AND JOINT RESOLUTIONS

S. 1017

At the request of Mr. JACKSON, the Senator from Oklahoma (Mr. BARTLETT), the Senator from Idaho (Mr. CHURCH), the Senator from New Mexico (Mr. DOMENICI), the Senators from Arizona (Mr. FANNIN and Mr. GOLDWATER), the Senator from Colorado (Mr. HASKELL), the Senator from Idaho (Mr. MCCLURE), and the Senator from Montana (Mr. MANSFIELD) were added as cosponsors of S. 1017, the Indian Self-Determination and Educational Reform Act of 1973.

S. 1414

At the request of Mr. CHILES, the Senator from Utah (Mr. Moss) was added as a cosponsor of S. 1414, a bill to strengthen congressional control in determining priorities of appropriations and expenditures by a budget to be organized and submitted on the basis of national needs, agency programs, and basic program steps.

At the request of Mr. CHURCH (for Mr. CHILES), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Oregon (Mr. HATFIELD), and the Senator from Utah (Mr. Moss) were added as cosponsors of S. 1414, supra.

S. 2394

At the request of Mr. DOMINICK, the Senator from Colorado (Mr. HASKELL) was added as a cosponsor of S. 2394, a bill to authorize the acquisition of certain lands for addition to Rocky Mountain National Park in the State of Colorado, and for other purposes.

S. 2510

At the request of Mr. CHILES, the Senator from Georgia (Mr. NUNN), the Senator from Kentucky (Mr. HUDDLESTON), and the Senator from Tennessee (Mr. BROCK) were added as cosponsors of S. 2510, a bill to create an Office of Federal Procurement Policy within the Executive Office of the President, and for other purposes.

S. 2822

At the request of Mr. MATHIAS, the Senator from Oregon (Mr. HATFIELD) and the Senator from Utah (Mr. BENNETT) were added as cosponsors of S. 2822, a bill to encourage the preservation of open lands in or near urban areas by amending the Internal Revenue Code of 1954 to provide that real property which is farmland, woodland, or open scenic land and forms part of an estate shall be valued, for estate tax purposes, at its value as farmland, woodland, or open scenic land—rather than at its fair market value—if it continues to be used as such for at least 5 years after the date on which the estate tax return is filed.

S. 2846

At the request of Mr. MANSFIELD (for Mr. HART), the Senator from New Jersey (Mr. CASE), the Senator from Maine (Mr. HATHAWAY), the Senator from Alaska (Mr. GRAVEL), the Senator from New Jersey (Mr. WILLIAMS), the Senator from Florida (Mr. GURNEY), the Senator from Illinois (Mr. STEVENSON), the Senator from Kentucky (Mr. COOK), and the Senator from New York (Mr. JAVITS) were added as cosponsors of S. 2846, the Emergency Chlorine Allocation Act.

S. 2867

At the request of Mr. CHURCH, the Senator from Montana (Mr. MANSFIELD), the Senator from Oregon (Mr. PACKWOOD), the Senator from South Dakota (Mr. ABOUREZK), the Senators from Maine (Mr. MUSKIE and Mr. HATHAWAY), the Senator from Idaho (Mr. MCCLURE), the Senator from New Hampshire (Mr. MCINTYRE), and the Senator from Montana (Mr. METCALF) were added as cosponsors of S. 2867, a bill to amend the Rail Passenger Service Act of 1970 in order to expand the basic rail transportation system to provide service to certain States.

S. 2877

At the request of Mr. TOWER, the Senator from Maryland (Mr. BEALL), the Senator from Kansas (Mr. DOLE), the Senator from South Dakota (Mr. ABOUREZK), the Senator from Utah (Mr. Moss), the Senator from North Carolina (Mr. HELMS), the Senator from Rhode Island (Mr. PELL), the Senator from Oklahoma (Mr. BARTLETT), the Senator from Utah (Mr. BENNETT), the Senator from Colorado (Mr. DOMINICK), the Senator from Tennessee (Mr. BROCK), the Senator from Minnesota (Mr. HUMPHREY), and the Senator from Oregon (Mr. HATFIELD) were added as cosponsors of S. 2877, the Meeting House Preservation Act.

SENATE JOINT RESOLUTION 181

At the request of Mr. DOMINICK, the Senator from Idaho (Mr. MCCLURE) was added as a cosponsor of Senate Joint Resolution 181, designating the third week in April of each year as "National Coin Week."

SENATE RESOLUTION 272—SUBMISSION OF A RESOLUTION RELATING TO DISAPPROVAL OF CONGRESSIONAL SALARY INCREASES RECOMMENDED BY THE PRESIDENT

(Referred to the Committee on Post Office and Civil Service.)

Mr. HRUSKA submitted the following resolution:

S. RES 272

Resolved, That the Senate disapproves the recommendations of the President with respect to rates of pay, for the offices referred to in section 225(f)(A) of the Federal Salary Act of 1967 (relating to Members of Congress), transmitted to the Congress on February 4, 1974, pursuant to section 225(h) of that Act.

SURVEILLANCE PRACTICES AND PROCEDURES ACT OF 1973—AMENDMENT

AMENDMENT NO. 960

(Ordered to be printed and referred to the Committee on the Judiciary.)

INDIVIDUAL PRIVACY AND THE NATIONAL SECURITY

Mr. NELSON. Mr. President, the time has come to end the wiretapping abuses perpetrated in the name of national security. These national security taps today are not authorized by a judicial warrant. The Government is, therefore, free to determine whom it can tap and when it can tap.

Warrantless taps pose a grave danger to fundamental constitutional liberties. Recent events demonstrate that the individual's right to privacy has been and may continue to be violated by the Government's use of such wiretaps. Often they reflect nothing more than a desire to pry into an individual's private affairs. Generally they are not supported by concrete evidence to justify the invasion of an individual's privacy. And always they escape the scrutiny of the courts, the Congress and the public at large because the Government is not required to disclose their existence unless it prosecutes the individual involved—a rare occurrence in the history of national security wiretaps.

Congress should act now to end this intolerable situation. Every American citizen should be assured that his privacy will not be invaded unless a court has determined that the invasion is justified.

Last December I offered a bill (S. 2820) which would provide this assurance. The bill would prohibit the use of warrantless wiretaps against American citizens in national security cases. The basis of this legislative proposal is clear.

The fourth amendment to the U.S. Constitution prohibits Government invasions of a citizen's privacy without a judicial warrant. Supreme Court decisions make clear, moreover, that the fourth amendment protections generally apply to Government wiretaps.

Despite the clear meaning of the fourth amendment, the Government continues to authorize wiretaps without a judicial warrant. A couple of weeks ago the Justice Department reported that it had authorized three warrantless wiretaps for national security cases.

The danger of warrantless wiretaps is not confined to the criminal and truly subversive elements without our society. Warrantless wiretaps are a serious threat to everyone, regardless of his or her station in life. Many distinguished Americans, for instance, have been among those subject to national security wiretaps.

Those wiretapped in recent years include Dr. Martin Luther King, Jr., who was wrongly suspected of being a Communist dupe in the early 1960's; Joseph Kraft, the syndicated newspaper columnist; 17 newspapermen and Government officials who were suspected of leaking or reporting sensitive information in 1969—despite the fact that some of those tapped did not even have access to such information; congressional aides who knew reporters involved in the publication of the Pentagon Papers; and only last week the Washington Post revealed four more warrantless wiretaps conducted by the White House "plumbers" in 1972 against friends of a White House

to the Chairman of the Joint Chiefs of Staff of the U.S. Armed Forces.

These and other incidents show that often national security wiretaps have been used to protect an administration from adverse publicity rather than to protect the Nation against foreign attack or subversion.

The abuses of warrantless wiretaps have rightly aroused concern among the public. Numerous opinion polls indicate that more than 75 percent of the people now favor legislation to curb Government power to wiretap.

The vast majority of the public instinctively recognize that lack of control breeds an official state of mind that condones the Government's invasion of a citizen's privacy. This official attitude is a dangerous threat to freedom. It led to Watergate and other illegal acts of political espionage.

It is incumbent upon Congress to adopt measures to prevent future abuses and alleviate public concerns. S. 2820 provides Congress with a timely opportunity to meet its responsibility.

The basic purpose of the bill is to guarantee that the individual's constitutional rights and liberties do not fall prey to national security wiretaps. It would indeed be ironic if the Government's invocation of "national security" could justify a violation of those constitutional rights and liberties which the Government is supposed to make secure.

After the bill was introduced, comments from legal scholars and other authorities throughout the country were solicited by my office. Their responses, as well as the additional materials which they brought to our attention, were considered carefully. That consideration, in turn, has made clear that certain amendments are both necessary and appropriate to insure that the bill strikes a proper balance between constitutional liberties and legitimate national security needs.

Accordingly, I am introducing those amendments today. These amendments effect three basic changes in the bill.

First, before the Government could wiretap American citizens in national security cases, it would have to obtain a judicial warrant based on probable cause that a specific crime has been or is about to be committed. This change would help protect an individual's constitutional rights against national security wiretaps.

Second, before the Government could wiretap a foreign power or its agents, it would have to obtain a judicial warrant based on the belief that the tap is necessary to protect national security interests. The warrant standards for foreign powers and their agents would thus be less rigorous than those required for American citizens. This warrant requirement will not in any way undermine the Government's ability to protect against foreign attack or subversion; the Government will be able to wiretap foreign powers and their agents any time there is a need for such surveillance.

The justification for this warrant procedure is plain. The Government's desire to wiretap should be reviewed by a court. There should be no exceptions. Otherwise the exceptions may be stretched to sanction an unreasonable invasion of a citizen's privacy—a situation which would violate the rights and liberties guaranteed to every citizen under our Constitution.

Third, every American citizen wiretapped would be informed of the surveillance within 30 days after the last authorized interception. This change would assure every wiretapped American citizen the opportunity to protect against violations of his constitutional rights. The disclosure of the wiretap could be postponed, however, if the Government satisfies the court that the person wiretapped is engaged in a continuing criminal enterprise or that disclosure would endanger national security interests.

These amendments are essential to achieve the bill's stated purposes. Mr. President, I, therefore, ask that the amendments be referred to the Judiciary Committee so that the committee can consider them when it reviews the bill.

I. THE SCOPE OF THE FOURTH AMENDMENT'S PROTECTION

To appreciate the dangers of warrantless wiretaps, it is first necessary to understand the scope of the Fourth Amendment's protection. That amendment provides that—

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

This amendment thus restricts the Government's power over the individual. As James Madison observed, this amendment, as well as the other amendments in the Bill of Rights:

> Limit and qualify the powers of Government, by excepting out the grant of power those cases in which the Government ought not to act, or to act only in a particular mode. 1 *Cong. Journal* 483 (June, 1789).

In this light, the basic purpose of the fourth amendment is clear. It is designed to protect each citizen's privacy from unreasonable invasion by the Government.

The fourth amendment was borne from the American Colonies' bitter experience with their British rulers. The English King's officers—armed with nothing more than a general warrant and a desire to suppress political dissent—frequently entered an individual's home and rummaged through his personal effects. Those warrants, and the indiscriminate searches which they sanctioned, quickly became a subject of dread among the American Colonies. See N. Lasson, "The History and Development of the Fourth Amendment to the United States Constitution," chapters 3 and 4 (1937).

In drafting a constitution to govern their new nation, the American citizens were concerned that there be no resurrection of those indiscriminate searches by the Government. The fourth amendment was, therefore, adopted to meet that justified concern.

The fourth amendment's protection is twofold. On the one hand, it precludes unreasonable invasions of an individual's privacy by the Government. On the other hand, the fourth amendment guarantees that that privacy can be invaded only when there is a judicial warrant based on probable cause. The fourth amendment's twofold protection was aptly summarized in a recent issue of the Arizona Law Review:

> The fourth amendment was intended not only to establish the conditions for the validity of a warrant, but also to recognize an independent right of privacy from unreasonable searches and seizures. Justice Frankfurter, dissenting from the (Supreme) Court's decision in *Harris* v. *United States*, interpreted "(t)he plain import of this (to be) . . . that searches are 'unreasonable' unless authorized by a warrant, and a warrant hedged about by adequate safeguards."
>
> NOTE.—"Warrantless Searches in Light of *Chimel*: A Return to the Original Understanding," 11 *Ariz. L. Rev.* 455, 472 (1969).

It is quite clear, moreover, that the fourth amendment's protections were not to be suspended in cases of national security. When the fourth amendment was adopted, our Nation was only 11 years old. Foreign threats to the Nation's newly won independence remained ever present. Yet the fourth amendment provides for no exception to its application. The compelling conclusion is that the amendment should be applicable to all situations, including cases involving national security crimes. This conclusion is supported by innumerable constitutional scholars, including Justice William O. Douglas, who has stated:

> There is, so far as I understand constitutional history, no distinction under the Fourth Amendment between types of crimes. *Katz* v. *United States*, 389 U.S .347, 360 (1967) (concurring opinion).

Our Founding Fathers, of course, did not contemplate the advent of telecommunications. Consequently, the amendment does not expressly include wiretaps of telephones within the ambit of its protection. But there is no question that the constitutional right to privacy is no less important in cases where the Government listens to a telephone conversation than when it physically enters an individual's home.

In the 1967 decisions of Berger against New York and Katz against the United States, the Supreme Court held that the fourth amendment therefore generally requires the Government to obtain a judicial warrant before it can wiretap a citizen's phone. In issuing the Katz decision, the Supreme Court made clear that—

> The fourth amendment protects people, not places.

The soundness of the Berger and Katz decisions have been reaffirmed repeatedly by the Supreme Court. See, for example, *Alderman* v. *United States*, 394 U.S. 165 (1969). Most recently, in *United States* v. *United States District Court* (407 U.S. 297 (1972)), commonly referred to as the Keith case, the Court held that the Government could not wiretap American citizens without a judicial warrant—even when the citizens' activities threatened the domestic security of the Nation. Again, the Court made clear that wire-

taps must adhere to the safeguards delineated by the fourth amendment:

> Though physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed, its broader spirit now shields private speech from unreasonable surveillance.

The Supreme Court has not yet decided whether the fourth amendment's protections apply to cases involving foreign powers and their agents. In the Keith case, the Court stated explicitly that it did not consider those situations where American citizens have a "significant connection" with foreign powers and their agents.

Because the Court has not ruled on these "national security" wiretaps, the present administration maintains that it may install warrantless wiretaps in certain situations. In a September 1973 letter to Senator WILLIAM FULBRIGHT, chairman of the Senate Foreign Relations Committee, then Attorney General Elliot Richardson stated that the administration would continue to install warrantless wiretaps against private citizens and domestic organizations if the administration believes that their activities affect national security matters.

Mr. Richardson's comments apparently still reflect administration policy. A couple of weeks ago the Justice Department reported that it had authorized three warrantless wiretaps concerning national security matters.—See N.Y. Times, January 16, 1974, p. 18, col. 1— The Justice Department did not indicate whether the wiretaps included surveillance of American citizens. And that is precisely the problem of national security wiretaps.

The discretion to determine when such warrantless wiretaps are justified and properly executed has been the sole province of the executive branch. There has been no opportunity for the Congress, a court, or any other public body to examine the exercise of that discretion in order to prevent abuses. The results are not surprising. Warrantless wiretaps have produced and continue to produce the very evils which the fourth amendment was designed to eliminate.

II. THE HISTORY OF WARRANTLESS WIRETAPS

Warrantless wiretaps were first employed early in the 20th century. Almost from the very beginning, constitutional scholars and law enforcement officials recognized the serious dangers of warrantless wiretaps. In an early surveillance case, the venerable Justice Oliver Wendell Holmes referred to warrantless wiretaps as "dirty business." *Olmstead* v. *United States*, 277, U.S. 438, 470 (1928) (dissenting opinion.)

In 1931, J. Edgar Hoover, who by then had been FBI director for 7 years, commented that—

> While [the practice of warrantless wiretaps] may not be illegal. I think it is unethical, and it is not permitted under the regulations by the Attorney General.

In 1939 Mr. Hoover wrote to the Harvard Law Review that he believed wiretapping to be "of very little value" and that the risk of "abuse would far outweigh the value."

By 1939, however, pervasive reservations about wiretapping had inspired enactment of a law by Congress. In 1934, Congress passed the Communications Act. Section 605 of that act prohibits the "interception and divulgence" or "use" of the contents of a wire communication. From the moment of enactment, the provision seemed to erect a total prohibition to wiretapping and the use of information obtained from wiretapping. See *Nardone* v. *United States*, 308 U.S. 338 (1939); *Nardone* v. *United States*, 302 U.S. 379 (1937). This, at least, was the interpretation of civil libertarians acquainted with the legislative history. Indeed, subsequent efforts in the 1940's and 1950's to legalize certain kinds of wiretapping were repeatedly rebuffed by those in Congress who feared the consequences which wiretapping would have for civil liberties. See Theoharis and Meyer, "The 'National Security' Justification for Electronic Eavesdropping: An Elusive Exception," 14 Wayne L. Rev. 749 (1968).

On the eve of World War II, however, President Franklin D. Roosevelt became convinced that use of warrantless wiretaps would be necessary to protect the Nation against the "fifth column" and other subversive elements. Roosevelt, therefore, instructed his Attorney General, Robert Jackson, to authorize wiretaps against subversives and suspected spies.

But Roosevelt was not insensitive to the risks which wiretapping could have for constitutional rights and liberties. In a memorandum to Jackson dated May 21, 1940, Roosevelt indicated that he was aware of section 605 and had read the Supreme Court's interpretive decisions. Roosevelt basically agreed with the restrictions against wiretapping:

> Under ordinary and normal circumstances wiretapping by Government agents should not be carried on for the excellent reason that it is almost bound to lead to abuse of civil rights.

Roosevelt consequently instructed Jackson—

> To limit these investigations so conducted to a minimum and to limit them insofar as possible to aliens.

Roosevelt's sensitivity to the dangers of warrantless wiretaps did not necessarily rescue their legality. Many legal scholars have suggested that until enactment of title III of the Omnibus Crime Control and Safe Streets Act of 1968, all wiretapping was illegal. See, for example, Navasky and Lewin, "Electronic Surveillance," in hearings before Senate Subcommittee on Administration Practices and Procedures (U.S. Senate, 92d Cong., 2d sess., pp. 173–74, 180 (June 29, 1972). Theoharis and Meyer, for instance, observed that until 1968:

> All wiretapping violated the absolute ban of section 605 of the Federal Communications Act of 1934, and all other electronic eavesdropping which resulted in trespass of a constitutionally protected area was prohibited.

The questionable legality of wiretapping did not deter its use after World War II. In the 1950's and 1960's the Government's reliance on warrantless wiretaps mushroomed. No precautions were taken, though, to minimize the dangers to civil liberties recognized by Roosevelt. Concern for "national security" consequently led to the use of warrantless wiretaps against political dissidents—including Dr. Martin Luther King, Jr., who was wrongly suspected of being an unwitting dupe of the Communists.

The use of warrantless wiretaps had become a monster with its own momentum. Even the President did not always know the full extent to which such taps were used. Thus, upon learning of the taps on Dr. King and others, President Lyndon Johnson became irate.

On June 30, 1965, Johnson issued a directive placing severe restrictions on the use of warrantless wiretaps. Johnson initially made clear his general opposition to warrantless wiretaps:

> I am strongly opposed to the interception of telephone conversations as a general investigative technique.

Johnson nonetheless ordered that wiretaps be permitted in national security cases—but only with the specific authorization of the Attorney General. Johnson apparently believed, in good faith, that authorization of warrantless wiretaps by the Attorney General would prove to be an adequate safeguard for the individual's constitutional right to privacy and other constitutional liberties.

Sadly, but not unexpectedly, Johnson's belief proved to be illusory. Recent events have demonstrated that warrantless wiretaps—no matter how benign the Government's motives—cannot insure the sanctity of the individual's right to privacy. Reference to the examples cited in my statement of December 17, 1973—41864—makes this clear:

> On December 5, 1973, Eugene La Roque, a retired rear admiral in the U.S. Navy, revealed that the Pentagon currently has a unit which is authorized to engage in the same kind of surveillance activities conducted by the "Plumbers Unit" in the White House. The purported basis of these activities is a need to protect "national security." Rear Adm. LaRoque emphasized that there is currently no procedure for Congress, the courts, or the public to determine the scope—or lawfulness—of the Pentagon unit's surveillance activities.
>
> In a report issued in October 1973, a House subcommittee found that certain White House officials invoked national security considerations to make the CIA their "unwitting dupe" in the burglary of Daniel Ellsberg's psychiatrist's offices and in other unlawful surveillance activities.
>
> Recently it was learned that in 1969 the administration installed warrantless taps on 13 government officials and 4 newsmen for the purported reason that these individuals were leaking or publishing sensitive foreign intelligence information. In virtually all the cases there was little or no concrete evidence to justify the taps. In many cases the evidence shows that the individual tapped did not even have access to such information. Indeed, in at least two cases the taps were continued after the individual had left Government service and had joined the Presidential campaign staff of Senator Muskie.
>
> In 1969 the White House authorized the burglary of the home of newspaper columnist Joseph Kraft so that a warrantless tap could be installed. The alleged basis for this action was again national security. But there was and is no concrete evidence to establish that

Mr. Kraft was acquiring or reporting any information which compromised our national security.

Testimony before the Senate Watergate Committee revealed that the White House authorized warrantless wiretaps "from time to time" when it was conducting an independent investigation of the publication of the "Pentagon papers" in 1971. The taps were placed on numerous citizens, including aides of Members of Congress, whose only connection with the "Pentagon papers" was a personal relationship with some of the reporters involved. Again, the taps were justified on national security grounds and, again, there was and is no concrete evidence to support the need for the taps.

In 1970, the White House conceived and drafted a broad plan which proposed warrantless wiretapping, burglary, and other insidious surveillance practices. The staff assistant responsible for the plan stated in a memorandum to the President that certain aspects were "clearly illegal." Nonetheless, the plan was approved on the basis of national security, only to be scrapped shortly afterward when FBI Director J. Edgar Hoover objected.

In addition to these abuses, the Washington Post disclosed last week four more warrantless wiretaps conducted by the White House "plumbers" in 1972 against American citizens. The presumed basis for these taps was again national security. But there was no involvement of foreign powers or their agents. Nor were the taps in any way necessary to protect our Nation from foreign attack or subversion. The taps were instead justified on the grounds that a White House official was distributing certain information to the Chairman of the Joint Chiefs of Staff of the U.S. Armed Forces. In order to stop this distribution, the "plumbers" believed it necessary to wiretap the official's friends.

These abuses of warrantless wiretaps underscore the wisdom of the fourth amendment's protections. It would be naive to assume that the Government can make a disinterested judgment as to whether a planned search by Government agents is reasonable. The Government cannot properly be both advocate and judge of its own.

Our Founding Fathers recognized this problem and adopted the fourth amendment. That amendment contemplates that a disinterested court will decide whether searches desired by the Government are reasonable. See, for example, the Keith case; *Coolidge* v. *New Hampshire*, 403 U.S. 443 (1971). The need for this disinterested judgment is no less necessary in cases involving the national security than it is in other cases. This essential point was advanced eloquently by Justice Douglas in the Katz case:

> Neither the President nor the Attorney General is a magistrate. In matters where they believe national security may be involved they are not detached, disinterested, and neutral as a court or magistrate must be. Under the separation of powers created by the Constitution, the Executive Branch is not supposed to be neutral and disinterested. Rather, it should vigorously investigate and prevent breaches of national security and prosecute those who violate the pertinent federal laws. The President and the Attorney General are properly interested parties, cast in the role of adversary, in national security cases. They may even be the intended victims of subversive action. Since spies and saboteurs are as entitled to the protection of the Fourth Amendment as suspected gamblers like petitioner, I cannot agree that where spies and saboteurs are involved adequate protection of Fourth Amendment rights is assured when the President and Attorney General assume both the positions of adversary-and-prosecutor and disinterested, neutral magistrate. 389 U.S. at 359–60 (concurring opinion).

In short, regardless of how beneficient the Government's intentions, warrantless wiretaps—whether in "national security" cases or in any other kind of case—pose serious dangers to the right to privacy as well as other constitutional rights and liberties.

III. AMENDMENTS TO PROTECT AGAINST WIRETAP ABUSES IN NATIONAL SECURITY CASES

The history of warrantless wiretaps for "national security" cases demonstrates the need for corrective action. For too long Congress has closed its eyes to the abuses of those wiretaps—perhaps in the hope that the country would be better served if implicit trust were placed in the executive branch to safeguard constitutional rights. The history underlying the fourth amendment should have given Congress pause before being so trusting.

But whatever the rationale for past inaction, the Watergate scandals make clear that Congress must act now to insure the preservation of precious constitutional rights—especially the right to privacy. Invocation of "national security" should not enable the Government to wiretap without regard to traditional constitutional limitations. These amendments provide Congress with an opportunity to assure the sanctity of those limitations.

The amendments effect three basic changes in S. 2820, the bill offered last December.

First, before the Government could wiretap Amreican citizens in national security cases, it would have to obtain a judicial warrant based on probable cause that a crime had been or was about to be committed. The crime involved, moreover, would have to be one affecting this Nation's security. Such crimes include those under the Atomic Energy Act, treason, espionage, and sabotage.

This change merely reasserts the traditional safeguards provided by the fourth amendment. That amendment states that the Government cannot invade an American citizen's privacy without first obtaining a judicial warrant based on probable cause. The history of the amendment suggests that, except in certain matters—such as housing inspections—the "probable cause" requirement must relate to the commission of a crime. See, for example, *Wyman* v. *James*, 400 U.S. 309 (1971); *Camara* v. *Municipal Court*, 387 U.S. 523 (1967).

The history of the fourth amendment also underlies the need for prior judicial authorization for national security wiretaps. In United States against Brown, Circuit Judge Goldberg explained the importance of the court's role in supervising such wiretaps:

> It remains the difficult but essential burden of the courts to be ever vigilant, so that foreign intelligence never becomes a *pro forma* justification for any degree of intrusion into zones of privacy guaranteed by the Fourth Amendment. 484 F. 2d 418, 427 (1973) (concurring opinion).

The Watergate scandals should teach us that the courts cannot carry this essential burden unless prior judicial approval is required for national security wiretaps.

The amendments offered today provide a second basic change: Before it can wiretap foreign powers or their agents, the Government would have to obtain a judicial warrant. This warrant would be issued if the Government satisfies a judge only that the wiretap is necessary to protect the national security. The Government need not establish that the commission of a crime is involved. The standards for foreign power taps, therefore, would be less rigorous than the standards applied for American citizens.

This second change is to insure that the power to wiretap foreign powers is not abused in a manner which infringes on the rights of American citizens. A power to conduct warrantless wiretaps for foreign powers and their agents might enable the Government to violate the constitutional rights and liberties of American citizens. The recent past provides many occasions when legal restrictions on Government wiretapping have been ignored or misinterpreted. Those abuses, in fact, have inspired deep public concern that individual privacy can be violated at any time by Government wiretaps. Public opinion polls reveal that more than 75 percent of the public now favors a curb on the Government's power to wiretap.

Many of those most familiar with foreign power wiretaps share this concern. Former Attorney General Ramsey Clark, for example, recently testified at a congressional hearing:

> Certainly there should be absolutely no use of wiretap or electronic surveillance without a court order under any circumstances. . . . Foreign as well as domestic.

Morton Halperin, a former member of Secretary Henry Kissinger's National Securty Council staff, is another individual who shares this view.

There should be no concern that a requirement of judicial warrants for foreign power wiretaps will undermine the security of this Nation. Courts will be most responsive to legitimate requests for foreign power taps; as a result, there will be no restriction on the Government's ability to protect the Nation against foreign attack or subversion. Moreover, the implementation of title III of the Crime Control Act—which requires judicial authorization for domestic criminal wiretaps—demonstrates that judges will jealously guard any sensitive information made available to them.

In short, judicial warrants for foreign power wiretaps will have no adverse consequences for this Nation's security. Indeed, former Attorney General Clark has testified that the impact of such warrants on national security "would be absolutely zero."

The third basic change provided by the amendments concerns national security wiretaps on American citizens. Within 30 days after the last authorized

interception, the Government would have to disclose the existence of the surveillance to those citizens tapped. This disclosure could be postponed, however, if the Government satisfies the court that the individual involved is engaged in a continuing criminal enterprise and that disclosure would endanger national security interests. This option for postponement would prevent disclosures from undermining the Government's ability to protect the Nation against foreign attack or subversion.

This change again merely codifies the traditional safeguards afforded by the fourth amendment. From the beginning, it was assumed that the courts would protect the individual's right to be secure from unreasonable searches by the Government. In proposing adoption of the fourth amendment and the other amendments in the Bill of Rights, James Madison outlined this role to be played by the courts:

> Independent tribunals of justice will consider themselves in a peculiar manner the guardians of those rights; they will be an impenetrable bulwark against every assumption of power in the Legislative or Executive; they will be naturally led to resist every encroachment upon rights expressly stipulated for in the Constitution by the declaration of rights. 1 *Cong. Journal* 440 (June, 1789).

The courts could guard the right to privacy in one of two ways. Either the courts could refuse to issue a warrant authorizing a Government search; or the courts could respond to an individual's complaint that the Government had conducted an unconstitutional search.

The latter response of course presumed that the individual would know that the Government had in fact conducted a search. In the early days of our Republic the Government agents would generally knock at the individual's door, present the warrant, and conduct the search. Having knowledge of the search, the individual could complain to a court that the warrant was insufficient—or, perhaps, that the Government executed the search despite the lack of a warrant. This opportunity to complain existed even when the American colonies suffered under British rule. Indeed, if the colonials were not informed of the indiscriminate searches conducted by the British, they would have had no basis to believe that adoption of the fourth amendment was necessary. See N. Lasson. "The History and Development of the Fourth Amendment to the United States Constitution," chapters 3 and 4 (1937).

The advent of telecommunications has changed all this. Warrants can be issued and searches conducted without the subject ever learning of them. Unless the Government decides to prosecute the individual tapped, it need not make any disclosure to the individual at any time. For this reason, few of the American citizens tapped for national security reasons in the last few decades have ever learned of the Government's surveillance—even though in some cases it continued for years.

The fourth amendment's protection against Government invasion of individual privacy is weakened if a citizen can be kept ignorant of Government wiretaps. Without knowledge of those wiretaps, the individual is stripped of all opportunity to complain to a court that they have violated his rights. Telecommunications have enhanced considerably the Government's power to snoop on its citizens; telecommunications should not become an excuse to avoid constitutional safeguards.

IV. CONCLUSION

For decades the Government has used warrantless wiretaps to serve its view of the national security. These wiretaps have always posed a fundamental danger to the freedoms guaranteed by our Constitution. The Watergate scandals and other recent events have exposed that danger in a dramatic and clear fashion.

We should not fail to heed the warning signs. Constitutional provisions empowering the Government to protect the Nation's security were never thought to justify the subversion of individual freedoms afforded by other constitutional provisions. As Judge Ferguson declared in the United States against Smith, a case concerning the use of warrantless wiretaps for national security purposes:

> To guarantee political freedom, our forefathers agreed to take certain risks which are inherent in a free democracy. It is unthinkable that we should now be required to sacrifice these freedoms in order to defend them. 321 F. Supp. 424, 430 (1971).

Congress cannot and should not tolerate governmental violations of the individual's constitutional right to privacy by wiretaps or any other means. That right to privacy, as well as other constitutional liberties, are the cornerstone of our democratic system. If those rights and liberties are eroded, the very fabric of our constitutional system is imperiled. Congress should, therefore, act now to protect our cherished rights and liberties from abusive national security wiretaps.

Mr. President, I ask unanimous consent to insert in the RECORD the text of this amendment.

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

AMENDMENT NO. 960

On page 3, line 5, strike out after "of" the following: warrantless".

On page 3, line 20, strike out after "are" the following: "designed"; and substitute in lieu thereof the following: "intended".

On page 3, line 21, insert the following after "power": "and to undermine the security of the United States.".

On page 3, line 25, insert the following after "agents": ", pursuant to the procedures delineated in Section 2518A,".

On page 4, strike out lines 1 through 4 inclusive, and substitute in lieu thereof the following: "(b) Section 2511(3) of title 18, United States Code, is amended by deleting the second sentence.".

On page 4, strike out lines 5 through 15, inclusive, and substitute in lieu thereof the following:

"(c) Section 2511(3) of title 18, United States Code, is amended by striking out the third sentence and adding in lieu thereof the following:

'Notwithstanding any other provision of this chapter, neither the contents nor the evidence derived therefrom, of any wire or oral communication intercepted through application of this subsection shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in a Federal or State Court, except in civil proceedings against foreign agents.' ".

On page 4, before line 16, insert the following new section: "Sec. 4A. Section 2516 of title 18, United States Code, is amended by deleting subsection (a); subsection letters "(b)", "(c)", "(d)", "(e)", "(f)", and "(g)" of Section 2516 shall be deleted and respective subsections shall be identified as "(a)", "(b)", "(c)", "(d)", "(e)", and "(f)".

On page 4, line 21, strike out the following: "(1)".

On page 5, line 4, strike out the following: "gathering of intelligence in-".

On page 5, strike out lines 5 through 11, inclusive, and substitute in lieu thereof the following: "investigations of the offense as to which application is made, when

(1) there is probable cause to believe that the individual(s) whose oral or wire communications are to be intercepted has committed or is about to commit an offense punishable by death or by imprisonment for more than one year under

(a) sections 2274 through 2277 of title 42 of the United States Code (relating to enforcement of the Atomic Energy Act of 1954), or

(b) one of the following chapters of this title: Chapter 37 (relating to espionage), Chapter 105 (relating to sabotage), and Chapter 115 (relating to treason); and

(2) such interception will probably provide or has provided evidence concerning the commission of that offense.".

On page 5, line 19, insert after "section" the following: "2511(3) or section".

On page 5, line 21, insert after "tion" the following: ", or, in cases involving section 2511(3), a judge on the Federal District Court for the District of Columbia,".

On page 6, line 8, strike out the following: "type of".

On page 6, line 9, insert after "munications" the following: "with as much particularity as is possible and practical,".

On page 6, line 11, insert after "intercepted;" the following: "and (iv) in cases involving application of section 2516A, details as to the particular offense that has been, is being, or is about to be committed.".

On page 6, line 12, insert after "A" the following: "detailed".

On page 6, line 14, strike out after "they" the following: "reasonably".

On page 6, strike out line 20 and substitute in lieu thereof the following: "the described communications have been first ob-".

On page 7, line 17, insert after "section" the following: "2511(3) or section".

On page 7, line 22, insert after "sitting," the following: "or, in cases involving section 2511(3) when application has been made to a judge on the Federal District Court for the District of Columbia, anywhere within the territorial jurisdiction of the United States,".

On page 8, line 2, insert after "section" the following: "2511(3) or section".

On page 8, line 5, insert after "section" the following: "2511(3) or section".

On page 8, line 8, strike out after "or" the following: "reasonably".

On page 8 strike out line 9, and substitute in lieu thereof the following: "likely to succeed if tried or to be too dangerous; and".

On page 8, strike out lines 13 through 15, inclusive, and substitute in lieu thereof the following: "or are about to be used by the subject whose wire or oral communications are to be intercepted.".

On page 9, line 14, insert after "making" the following: "anew".

On page 9, line 15, insert after "section." the following: "In making this new finding under subsection (3), the judge shall, in cases involving section 2516A, require the applicant to furnish additional information and evidence independent of that relied upon

in granting the initial order and which, standing alone, would satisfy the requirements of subsection (3).".

On page 10, strike out lines 10 through 24, inclusive.

On page 11, strike out lines 1 through 22, inclusive.

On page 11, before line 23, insert the following: "(7) The contents of any wire or oral communication intercepted by any means authorized by section 2511(3) or section 2516A shall be subject to the requirements of section 2518(8)(a). Applications made and orders granted under this chapter shall be sealed by the judge. Custody of the applications and orders shall be wherever the judge directs.

(8) Notwithstanding any other provision of this chapter, any individual, other than a foreign agent, whose wire or oral communications have been intercepted through application of section 2511(3) or section 2516A shall, not less than thirty days after the expiration of a judicial order authorizing such interception, be furnished a copy of the court order(s), and accompanying application(s), under which such interception was authorized or approved, and a complete and accurate transcript or other record of the intercepted communications, such transcript or record to also include the date(s) and time(s) at which such interception occurred; provided that, upon application of the Attorney General, or any Assistant Attorney General specifically designated by the Attorney General, the judge who authorized or approved the interception may postpone the disclosure of such intercepton if he is satisfied that the individual whose communications have been intercepted is engaged in a continuing criminal enterprise or conspiracy and disclosure of the interception will endanger vital national security interests, such postponements to be as long as the judge deems necessary; and, provided further, that any interception, disclosed pursuant to this subsection and which involves application of section 2511(3), need not disclose the foreign power or agent whose wire or oral communications were intended to be or were intercepted, nor those facilities at which the interception was intended to or did take place.

(9) (a) Notwithstanding any other provision of this chapter, any aggrieved person in any trial, hearing, or proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, a State, or a political subdivision thereof, may move to suppress the contents of any intercepted wire or oral communication, or evidence derived therefrom, on the grounds that—

(i) the communication was unlawfully intercepted;

(ii) the order of authorization or approval under which it was intercepted is insufficient on its face;

(iii) the interception was not made in conformity with the order of authorization or approval; or

(iv) subsection 2511(3) requires such suppression.

Such motion shall be made before the trial, hearing, or proceeding unless there was no opportunity to make such motion or the person was not aware of the ground of the motion. If the motion is granted, the contents of the intercepted wire or oral communication, or evidence derived therefrom, shall be treated as having been obtained in violation of this chapter.

(b) In addition to any other right to appeal, the United States shall have the right to appeal from an order granting a motion to suppress made under paragraph (a) of this subsection, or the denial of an application for an order of approval, if the United States attorney shall certify to the judge or other official granting such motion or denying such application that the appeal is not taken for purposes of delay. Such appeal shall be taken within thirty days after the date the order was entered and shall be diligently prosecuted.

On page 11, line 23, after "SEC." strike out the following: "7"; and substitute in lieu thereof the following: "6".

On page 12, line 6, after "SEC." strike out the following: "8"; and substitute in lieu thereof the following: "7".

NOTICE CONCERNING NOMINATIONS BEFORE THE COMMITTEE ON THE JUDICIARY

Mr. ROBERT C. BYRD. Mr. President, the following nominations have been referred to and are now pending before the Committee on the Judiciary:

William M. Johnson, of Georgia, to be U.S. marshal for the southern district of Georgia for the term of 4 years (reappointment).

John W. Spurrier, of Maryland, to be U.S. marshal for the district of Maryland for the term of 4 years, vice Clarence A. Butler, resigned.

Thomas F. Turley, Jr., of Tennessee, to be U.S. attorney for the western district of Tennessee for the term of 4 years (reappointment).

On behalf of the Committee on the Judiciary, notice is hereby given to all persons interested in these nominations to file with the committee, in writing, on or before Monday, February 11, 1974, any representations or objections they may wish to present concerning the above nominations, with a further statement whether it is their intention to appear at any hearing which may be scheduled.

ADDITIONAL STATEMENTS

THE HONORABLE JESSE HELMS: SPEAKER FOR FREEDOM

Mr. HANSEN. Mr. President, the annual Freedom Day rally held at Taipei, Taiwan, is regarded as a curiosity by many in America, where we have for so long taken our freedoms for granted.

Freedoms are not taken for granted in the periphery of large and powerful nations dominated by communism.

Our distinguished colleague from North Carolina (Mr. HELMS) was a featured speaker at this year's world Freedom Day rally in Taipei, January 23. The date is significant to the entire free world, and especially among Asian peoples, because it marks the anniversary of the day in 1954, when more than 14,000 soldiers from Communist-controlled China who had been captured by United Nations forces in the Korean war, declined the opportunity to return to mainland China and live under the Mao Tse-tung Communist government.

These soldiers, given their free choice by the United Nations, chose freedom over communism, and made the decision to join the people of the Republic of China, headquartered on Taiwan. Their decision was a severe international blow to the myth the Communists had tried to create—that life in a Communist society, a tyrannical society, was tolerable. As our colleague pointed out, "the natural laws of human nature cannot be repealed," and "when given a choice, men will always choose freedom."

This year, more than 15,000 people jammed the Freedom Hall in Taipei to hear our distinguished colleague's remarks, which were relayed throughout the Republic of China by live broadcast, and transmitted to the United States and other countries by satellite. This wide broadcast paid tribute to the power of an idea—the idea of freedom. Those thousands on Taiwan who heard the speech of the junior Senator from North Carolina daily are confronted with the abundance which freedom has provided them; and they can never forget the losses which their own relatives have suffered at the hands of Communist tyrants in other lands. Those behind the Iron and Bamboo Curtains who may have heard the address by broadcast probably can only wonder what this strange word, "freedom," is all about.

Our colleague referred in his speech to the contagious quality of the idea of freedom, and to the courage of the Chinese people in the face of tyranny. His message is inspirational, and I ask unanimous consent that it be printed in the RECORD so that all Members will have the opportunity to consider his words.

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

FREEDOM DAY RALLY—TAIPEI

MY DEAR FRIENDS: I come today to thank you on behalf of my fellow countrymen who believe, as you do, that the nations of the Free World must stand together in defense of the liberties of man. And I salute the Republic of China—which to me will forever be the only real China, and the only China that is interested in a true and lasting peace.

This day marks an epochal event in the history of modern mankind. For on this day, twenty years ago, 14,340 Communist soldiers, captured during the Korean War, chose to live under the government of the Republic of China rather than return to those areas of China dominated by the Communist regime of Mao Tse Tung.

Think of that, my friends. These were the crack troops, the heavily indoctrinated and motivated troops, molded by every trickery of brainwashing developed by Communist ideology. They had performed to the utmost for the Communist cause. Thousands of their comrades lay dead in the campaign they had fought. But the moment that they were given the choice, they chose freedom.

But is it really so remarkable that they chose freedom? Isn't it the natural instinct of mankind to choose freedom, if and when given the choice? Is there any man alive, anywhere in the world, who would not leap at the chance to throw aside a tyranny that controls his every action, that destroys his personal and family relationships, that attempts to dictate even his very thoughts?

My friends, the evidence is very clear. The fourteen thousand prisoners of war made their decision in 1954. But in Germany, the Communists are shill shooting at men who make the same decision every day at the Berlin Wall. And thousands brave the cold waters for the exhausting and dangerous swim to Hong Kong. Meanwhile, men who want their freedom in the Soviet Union are thrown into mental hospitals and jails.

Occasions like this remind us of the eternal truth that the natural laws of human nature cannot be repealed. No treaty, no communique, no diplomatic agreement can permanently abrogate the natural laws.

When given a choice, men will always choose freedom.

We need to remember this because there are some who would have us believe that tyranny is good for people. Tyranny, the people are told, can feed their bodies. The people are told that tyranny can build factories and tyranny can sweep the streets. People who live under tyranny are told that they ought to be grateful that tyranny is so good to them. And those who tell us this propose to deal with tyranny by drinking toasts to each other.

My good friends, I come today as one United States Senator who does not believe in tyranny, and as one who is proud to join hands with you in every way, at any time, to combat the forces of tyranny in the world, wherever they may be.

My good friends let us be plain. Not all Americans agree that the United States policy of dealing with the Communist regime on China's mainland as though they were legitimate rulers has been a triumph of statecraft and diplomacy. You must remember that some Americans often confuse actions with wisdom. In the brief history of our Nation, a quarter of a century is a millenium, while in the rich history of the Chinese people, a millenium is only a moment's pause.

But a policy that is so fraught with error cannot long endure. The novelty of secret diplomacy and dramatic shifts in alliances is fading. As the fruits ripen, their taste is surprisingly bitter.

We set out on a policy of stepping up trade with the Soviet Union so as to increase mutual understanding. But we found out that the Communists understood the capitalist markets perhaps better than we. With typical Communist duplicity, they secretly negotiated for feed grains while they secretly bought our wheat in such huge quantities that a market of surplus turned into a market of scarcity. Food prices in the United States went up twenty-two percent in one year. Now the United States, which emptied its granaries for political reasons, is faced with the possibility that it may have to import wheat this year.

We set out on a policy of bringing the Vietnam War to a close. But the costly victories on the battlefield were swept aside by the secrets of the conference table. The tragic result was an incredible document giving *de facto* recognition to the enemy in the South, leaving even the enemy troops and supply lines effectively in place. It is only the heroic determination of the people of South Vietnam that has kept the enemy from launching its long-planned assault on the free regions of the country.

We set out on a policy of détente with the Soviet Union so that the two so-called super-powers could work together to bring peace to the world. But while we were speaking daily to officials of the Soviet Union about peace, the Soviet Union was shipping arms of war to the Arab Nations and laying plans for war. And not only did war break out because we were blinded by the illusions of détente, but the economic systems of the free world have been placed in jeopardy and the freedoms of our people have been under constraint. In my view, if we had worked directly to satisfy the legitimate grievances of all peoples in the Middle East we would have been much more quickly successful in preventing war than by pursuing the illusions of détente.

My friends, if I speak in criticism of some of my country's policies, I do so because it is a sign of hope. The American people are learning that foreign policy and domestic policy are no longer separate categories. The politics of the negotiation table abroad affect the menu of the dining table at home. We are learning, the hard way, that you cannot simultaneously and separately out-double-deal the two greatest masters of duplicity and expect to divide anything except our own freedoms.

And that is why the United States needs the firm friendship of the Republic of China. Oh, it is true that there are differences in the amount of territory our respective governments control, and the size of our economic and military power. But the United States needs the Republic of China more than the Republic of China needs the United States. For size and economic power will not be the determining factors in the struggle for the survival of freedom. History is filled with the records of great and powerful civilizations that have ceased to exist. The determining factors are the will to resist and the conviction of the rightness of your cause. Maintain the conviction and the American people will not be able to abandon you.

For who really represents the Chinese people? Is it a regime that imposes its power through force and thought control? Or is it the government of the Republic of China which encourages each man to work out his own destiny?

Is it the ideology tyranny that has swept away centuries of Chinese culture and philosophy? Or is it the Republic of China where universities are flourishing, art treasures are protected, the theater is recreated, and poetry is cherished?

Are the Chinese people represented by a morally corrupt regime, torn with purges and executions, that wipes out individual property and choice of livelihood? Or is their true representative the government that enables the farmer to buy and till his own land, the businessman to use his own initiative, and the worker to choose his employment? In my mind, there is no choice between freedom and tyranny. For my part, my choice is the Republic of China.

The Republic of China can be proud of its accomplishments here on Taiwan. But never forget that your economic success is strong only because it grows out of individual freedom. And your freedom is strong only when it is based on a determination to stand up against tyranny as well as against the foolish mistakes of your friends. You are a beacon in a world that sometimes is not sure of its bearings. Do not forget that history has appointed you to set an example for the free world; the American people need that example, and they will never be able to forget your courage.

DOES DAYLIGHT SAVING TIME SAVE ANYTHING?

Mr. STENNIS. Mr. President, I am not persuaded that year around daylight saving time is a good thing for the Nation. Advancing the clocks during the wintertime causes a great deal of disruption and inconvenience in American households. Worse yet, it creates some dangers for American schoolchildren.

I did not favor the Emergency Daylight Saving Time Energy Conservation Act of 1973 when it was proposed. I did not vote for it in December when it was passed by the Senate. I am a cosponsor of legislation to terminate year-round daylight saving time.

When the Daylight Saving Time Act was proposed, it was said that a 3-percent saving in oil or the equivalent of 2 percent in total energy would result, because of reduced demands for electricity. It was said that better traffic safety would result, and that there would be a reduction in crime.

As for savings in electricity, about the best argument that can be advanced is that people who shop after work would have some daylight left in which to do so. This is manifestly correct, but it does not necessarily follow that electricity will be saved. The lights are going to be on in the supermarket in the late afternoon anyway, whether it is fully dark yet or not. And in the mornings when families have to get up and get started for work and to school in the pitch dark, they end up with lights on in every room in the house. Schools turn on their lights and turn up their furnaces an hour earlier than they usually would. It may well be that more electricity is being used in the early morning than is saved in the evening.

I might point out that as to shopping in the evening, there are many people in this country who do most of their shopping on Saturdays anyway, and who do not follow the urban practice of evening shopping.

As to better traffic safety because the evening rush hour would be in daylight, I submit that anyone who works full hours and drives any distance to work in the winter is going to drive in some darkness either in the morning or in the evening, and it would seem that which it might be would not have a great effect on traffic safety. Reducing highway speeds has had a much greater effect on traffic safety.

Concerning the crime rate and daylight saving, about all that can be said is that street criminals would have to get up earlier or stay out later. A man motivated to street robbery as a way of living is not apt to be a clock watcher. Here again it would seem that the validity of the reasoning can be questioned.

I have not seen any convincing evidence that energy savings are at present being effected as a result of the change in time. There is ample evidence, however, of adverse effects of advancing the clocks.

By far the worst effect is the danger to school children in the dark hours of the early morning. There have been a number of accidents in which school children have been injured or killed. There has been some increase in crimes relating to children. These hazards are simply something that should not be permitted to continue. Young children should go to school in daylight and come home in daylight.

The problem of the schools is not one that can be solved by varying school hours for primary schools, and junior and senior high schools. In many school districts the schedules are already spread out because of the requirement for busing and the limited number of buses available to school districts. If school opening hours are delayed, secondary schools may end up with no daylight for post-school-hour athletics. Family schedules are built around coordinating work hours and school hours. There simply is not a real solution to the school problem except to go back to the regular winter system of standard time for all our population.

So Mr. President, a realistic evaluation of our experience to date with winter daylight saving time shows that there are apparently no realistic benefits demonstrated. There are genuine draw-

backs. There are some real dangers to schoolchildren. The people are conforming because it has been imposed on them and they have no choice. But they do not want it. I say let us do away with winter daylight saving and get back to a system we know will work and which I believe the American people desire. The sooner Congress can do this the better.

If it should not prove possible to pass legislation to go back to 6 months of standard time and 6 months of daylight saving, then I would advocate a compromise of 8 months of daylight saving and 4 months of standard time. This would be preferable to the present year-round daylight saving time.

ENERGY CRISIS IN MARYLAND

Mr. BEALL. Mr. President, on December 27, 1973, my distinguished colleague from Maryland (Mr. MATHIAS) and I held hearings in Baltimore to determine the effect of the energy crisis on Marylanders. Representatives from business, labor, environmental, scientific, and the academic communities testified, and provided us with a complete, and unfortunately a grim, picture of tne energy shortage in our State.

Because the problems facing Marylanders are not unique I intend to place selected copies of testimony we received at the hearings in the RECORD for the benefit of my colleagues, whose States face similar problems.

Today, I ask unanimous consent that the testimony of Dr. James Sensenbaugh, Maryland State superintendent of schools, be printed in the RECORD. Dr. Sensenbaugh points out the tremendous problems facing the State educational system, and I recommend his remarks to my Senate colleagues.

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

STATEMENT OF JAMES A. SENSENBAUGH, STATE SUPERINTENDENT OF SCHOOLS, AT PUBLIC HEARING ON ENERGY CRISIS BEFORE SENATORS MATHIAS AND BEALL, AT THE FEDERAL BUILDING, BALTIMORE, MD., ON DECEMBER 27, 1973

When the young people of Maryland return to school on January 7, the schools will have conserved upwards of 10 million gallons of fuel oil by our estimate, compared with consumption to that date last year. The saving represents about 15% of our estimated need for the whole school year as calculated before the fuel crisis came upon us.

We would like to take credit for the entire saving as a consequence of our conservation measures, but that would be unfair. We must give some credit to a benign Providence for one of the mildest falls in 20 years. Also contributing were two snow days in December and three extra days of Christmas holiday ordered by the Governor—January 2, 3, and 4. The three extra days will be made up during spring vacation or in June.

Our measurements are not yet so sophisticated that we can isolate the saving creditable to our conservation efforts, but as an educated guess I would say somewhere between 1 and 2 million gallons.

The schools are taking very seriously their responsibility to conserve fuel. On November 2 the school superintendents of the state resolved unanimously to take four fuel-saving actions:

To reduce classroom temperatures to 68°;

To reduce nighttime temperatures to lower settings;

Depending on the recovery characteristics of heating plants;

To maintain heating plants at peak operating efficiency;

To develop a conscious concern for conservation among all those using school facilities.

Those basic resolves, now only seven weeks old, seem rather unsophisticated to us today as we discover and implement new ways to save fuel. Some school systems have reduced temperatures in non-instructional areas (like cafeterias and gymnasiums) to 60°. At least two whole systems have dropped classroom temperatures to 65°. We're not stowing books on classroom heater units any more. We're keeping doors and windows closed. We're checking automatic door closers. We're repairing broken windows quickly.

In other energy areas we're encouraging staff car pools, turning off idling bus engines, eliminating artificial light where natural light is adequate; and finding out almost every day other ways, big and little, to save energy.

The State Board of Education involved students more directly in a resolution passed on November 28, urging them to use the school bus instead of the private automobile to get to and from school. Student and parent support is expected.

We recognize that the energy crisis may get worse and that it may be with us a long time. Priorities established now may fix our status for years. The superintendents of the state made clear in their November 2 resolution their concern for the integrity of the daytime instructional program. They urged that it be the last affected activity. Before they would curtail daytime programs, they said, they would prefer to take the following actions:

1. Eliminate non-instructional activities, such as evening and weekend programs, including athletic events, some of which may be rescheduled to daytime hours.

2. Eliminate evening adult education classes.

The Washington Post, in a December 10 editorial, makes the case for the schools' priority:

"We pass an unflattering judgment upon ourselves if we shut the schools while every other kind of public facility—stores and theaters, bars and bowling alleys, offices and all the rest—keep rolling merrily along. There is one obvious principle that ought to guide us in the difficult decisions over conservation: the best places to save fuel are those where the effects will be least permanent. If we are cold this winter in our homes and offices, springtime will remedy it. But if our children's school year is chopped up by bizarre and unfamiliar schedules, the deficit will be cumulative and the arrival of warm weather will not cure it."

That is *our* position. But we are mindful that the crisis may worsen. In response to a request from the Governor's Public School Energy Task Force we have collected data from local school systems on the additional savings in fuel to be accumulated if it becomes necessary to make further and undesirable decisions with respect to the schools.

If we operate the schools only four days a week the weekly saving is estimated at 160,000 gallons of heating oil of all types, with additional savings of 1.3 million cubic feet of natural gas, 1.8 million kilowatt hours of electricity, and 78,000 gallons of transportation fuel.

If we eliminate all evening and weekend activity our weekly saving for all types of heating oil would be about 371,000 gallons; additionally about 1.9 million cubic feet of natural gas, 3.1 million kilowatt hours of electricity, and 23,000 gallons of transportation fuel.

If we close the schools down completely during the coldest period of the year, our weekly fuel oil savings would be just under a million gallons, plus 55 million cubic feet of natural gas, 10 million kilowatt hours of electricity, and 330,000 gallons of transportation fuel.

In the extraordinary circumstances that any of these extreme measures should become essential, we would opt for the elimination of the evening program. Not only is it less disruptive than either of the other two possibilities, it promises greater savings, except in transportation fuel, than the four-day week option.

We have heard public criticism of the conservation actions we have taken so far. Why, our correspondents ask, are the schools making sacrifices while department stores remain open late every night, while sports arenas and movie houses conduct business as usual, and while non-essential business and industry go unregulated? Why, indeed! The schools have taken the initiative in conservation measures. We challenge other elements of our society to match our accomplishments. And at the same time, we believe we have done almost as much as it is possible for us to do without damaging the instruction program. We believe that in any establishment of priority allocations the schools and other agencies that deal in human services should be high on any priority list.

We would finally urge two courses of action at the national level:

1. Establishment of priority allocations with due consideration to the schools so that we may plan our programs intelligently.

2. Establishment of firm price controls for heating oil. We cannot afford to engage in price competition for scarce supplies with others whose resources are greater than ours. Our national priorities cannot be permitted to yield to those best able to pay.

BUREAUCRACY OF FCC YIELDS TO PRESSURE GROUPS, FRUSTRATES LOCAL BROADCASTERS

Mr. HELMS. Mr. President, I suppose it will do no good, but I am constrained to offer a few comments for the record about the Federal Communications Commission, and specifically as to the schizophrenia suffered by the FCC in its efforts to perform as the guardian of the broadcast airways.

I do not suggest that the FCC is any worse than any other Federal agency. But, sadly, it is scarcely any better. On the one hand, the FCC lets the television networks get by with murder in the distribution of biased news and propaganda. On the other hand, local stations are required to march to the beat of bureaucratic drums so laborious and restrictive that first, many stations are afraid of their own shadows, and second, absurd and costly paper work, that does nobody any good—and which the FCC could not possibly examine—is imposed upon local broadcasters.

I realize, Mr. President, that very few Members of this Senate have the foggiest notion, for example, about a "log inspection procedure" recently adopted by the FCC. Most Senators, I suspect, would not know a broadcaster's log from a Chinese translation of the Declaration of Independence. Neither would more than 99 percent of the rest of the American people.

It is an operational tool, used by broadcasters—but now the FCC has ordered that this daily document be pre-

pared and put on constant public display, so that it can be examined by every two-bit pressure group that comes down the pike.

A few weeks ago, just after the FCC order was handed down, I saw a letter written by a very talented and dedicated lady who is a part of the management of station WRAL-TV in Raleigh, N.C. Her name is Mrs. Louise S. Stephenson, office manager of WRAL-TV. She eloquently describes her own frustrations and bewilderment in confrontation with the rigidity of this latest FCC directive. Senators, if they have time to read it, may be fascinated.

I ask unanimous consent, Mr. President, that excerpts of Mrs. Stephenson's letter be printed in the RECORD at the conclusion of my remarks.

There being no objection, the excerpts were ordered to be printed in the RECORD, as follow:

EXCERPTS FROM LETTER WRITTEN BY MRS. STEPHENSON OF WRAL-TV

This latest defeat has really gotten to me. It appears that the FCC has abandoned the industry at every turn in knuckling under to every demand of every pressure group. Sane arguments based on practical realities are drowned by the clamor of a better-organized bunch of trouble-makers.

I do not believe a single one of the pressure groups could survive in the marketplace. Nor would they tolerate for long the unreasonable requirements they have been able to convince the FCC are entirely reasonable for the rest of us. Will the next step be to have all of us in commercial television "public servicing" simultaneously so that the only viewer escape from the do-gooders is the "off" switch?

I'm sure members of the FCC Bar Association must be discouraged with this never-ending diet of set-backs even though the attorneys are not the direct victims of the ensuing upheavals.

For whatever it's worth I think the time has come for those of us who, with monotonous regularity, have to wrestle with new demands to stop running scared, to abandon traditional concepts of attacking the ridiculous with reason based on experience, and to go on the offensive for a change. Let's do something revolutionary: attack the sacred cows!

Why don't we suggest, for example, that the machinery to satisfy the needs and demands of the pressure groups is all ready tooled up and available to do their bidding—prime time and all. If it is so all-fired imperative that they have proper exposure via TV and radio, utilize that resource known as educational TV and radio, or the Public Broadcasting System—which comes complete with government control which would enable them to regulate and inundate with paper work to their heart's content. Educational broadcasting could use a "pick-me-up" (look at the audience figures and the silent hours) and if this type of service is in the demand the FCC is convinced it is, here's their chance to forge ahead with it—and probably with the full cooperation of commercial stations insofar as programs production expertise is concerned. Assuming the educational station situation is as adequate elsewhere as it is here in North Carolina, everybody should win: the stations, the pressure groups, and those who find this type of programing to their liking.

And let's stop pussyfooting around with respect to audience figures. If there is one overwhelming fact of life in broadcasting, it's audience figures. Saying they are not relevant, or cannot be discussed in FCC matters, is like saying guilt or innocence is an improper area for exploration in the courtroom. After all, this is where the proof of the pudding is spelled out. The absence of significant local numbers seemingly could have the effect of minimizing the great-public-uprising aspects of the propaganda peddlers and legal "eagles" who pounce on any and every thing broadcasting does or does not to. (I'll bet there's not a half-dozen people in Raleigh who would know who-the-hell the National Citizens Committee for Broadcasting might be, let alone that this organization was able to prevail presumably in behalf of a significant segment of the population with a requirement as onerous [and expensive] as public access to program logs—as a means for better broadcast service.)

Last but not least, let's propose dispersal of the members of the Federal Communications Commission. One in each of six regional offices and the chairman in Washington. This would put them a lot closer to the folks they're supposed to regulate; might create some empathy with the industry; would certainly fragment the efforts of lobbyist-types who gravitate to wholly Washington-oriented agencies. (This way they'd have to do their selling job region by region with some semblance of support.) The Commissioners could have quarterly meetings in Washington!

I know this may sound as if I've really flipped, but they've tackled the seemingly impossible and certainly the highly unlikely and pulled it off. Why can't we? We know we can't lick them on the accustomed terms so why not take off on some innovative tactic? If nothing else we might keep them busy working on the defense for a while, and therefore off of our backs.

NEW DEFENSE ALTERNATIVES REQUIRE CLOSE CONGRESSIONAL STUDY FOR STRATEGIC AND BUDGETARY IMPLICATIONS

Mr. CHILES. Mr. President, the Secretary of Defense, James R. Schlesinger, during the early part of January has been discussing various options that he feels ought to be considered within U.S. defense strategy. He has talked about orienting U.S. nuclear missiles toward Soviet silos so as to be in a position to knock out Soviet retaliatory capacity without hitting civilian localities directly as would now be the case. This shift to what Secretary Schlesinger calls a counterforce capacity would require expenditure by the United States for research and development of missiles with more manuevering capability.

These discussions of U.S. defense strategy by the Secretary have opened a considerable controversy over the strategic implications of such a shift in relation to the SALT talks, first strike capability, and United States-Soviet military build-ups. I think these issues should be thoroughly explored by the Congress in all their various ramifications so that we are fully informed and aware as we play our role in determining the Nation's defense policy.

From my experience in reviewing budget reform and procurement legislation now before the Senate, I would like to call attention to the fact once again that decisions regarding research and development, though in and of themselves of relatively minor cost, are almost always a trigger for much larger expenditures down the road on major programs. Research and development seem inevitably to provide enough of a foothold for the start of a program that the step from R. & D. to the full-throttle go-ahead is much easier than the initial step to undertake R. & D. in the first place. This fact is the way that the tail gets to wagging the dog in our Federal budget, not just in defense but in social programs as well. Because of this as a general matter I think we in the Congress need to be especially careful about authorizing research and development expenditure on anything because once we do that a constituency gets put together and some sunk costs are made which people always want to get some results from rather than scrap the program and we are off and running on a program despite ourselves. In particular, the strategic alternatives discussed by the Secretary of Defense require our closest scrutiny not only from the point of view of national defense but also from the point of view of the budgetary implications.

My real concern is often a major shift in policy or a new major weapons system decision is made by the initial inclusion of a small sum of R. & D. expense and Congress never debates and decides the major issues. We can lose perspective and control over budgets and defense policies if we focus only on pieces of the budget—agencies, R. & D. items, and weapons—without asking what purposes—what missions—what goals—these pieces are ultimately going to serve. What we need is a functional budget that relates these pieces to specific programs or purposes.

I am confident that Senator MCCLELLAN and STENNIS are planning to examine these matters with great thoroughness in their respective committees and I add my support to their efforts.

For the information of my colleagues I ask unanimous consent to have the following article and editorial printed in the RECORD.

There being no objection, the article and editorial were ordered to printed in the RECORD, as follows:

SCHLESINGER AND DEBATE ON NUCLEAR STRATEGY

(By John W. Finney)

WASHINGTON, January 21.—Should the United States be able to fight a nuclear war as well as deter one? That question has been raised by Secretary of Defense James R. Schlesinger, as he tries to stir up a national debate on future American nuclear strategy.

For 20 years, the strategy has been built around deterence. Initially known as "massive retaliation," it later came to be called "mutual assured destruction"—or MAD by its detractors.

For all the variations in name, the idea remained basically the same: if one side had enough nuclear power to absorb a surprise attack and still retaliate with devastating force, the other side would never dare attack. In effect, a position of mutual deterrence developed between the United States and the Soviet Union.

Mr. Schlesinger is not proposing abandonment of this deterrent strategy. But he wants to add a new idea, called a counterforce strategy.

LIMITED NUCLEAR WAR

In essence, the counterforce strategy contemplates an ability to wage a nuclear war short of an all-out exchange between the two

superpowers. Rather than attacking cities, as is envisioned under the strategy of mutual assured destruction, the two sides would be able to strike at military targets, such as airfields, production centers or even missile silos.

The rationale Mr. Schlesinger offers for this shift in nuclear strategy is that although the Soviet Union is deterred from an all-out attack on the United States, it might be tempted to strike at American military targets. In such a situation, he argues, the President should have some other option than retaliating against Soviet cities, knowing that in return the Soviet Union would be able to attack American cities.

Thus, Mr. Schlesinger concludes, the United States must be able to strike at Soviet military targets. He presumes the Soviet Union will have a similar ability if it does not already.

PUBLIC PRONOUNCEMENTS

Mr. Schlesinger has chosen to herald this change in strategies with public pronouncements starting almost from the time he took over as Secretary of Defense last July. Before a group of reporters two weeks ago, he volunteered that there had been a change in strategies so that some intercontinental missiles were now aimed at Soviet military installations as well as at cities.

Then, last week, he announced a reorganization of the Pentagon's command and control system as part of the move "to develop a wider variety of strategic options for the President in crisis situations."

What Mr. Schlesinger, in his professional way of discussing nuclear war games, has yet to make clear is how this counterforce differs from the present abilities of the United States strategic forces.

As Mr. Schlesinger acknowledges, the United States has more warheads than it needs to destroy Soviet cities and industries under the strategy of massive assured destruction. For some years, the surplus has been aimed at Soviet military installations.

PSYCHOLOGICAL EFFECT

In effect, therefore, the United States already has a counterforce ability, and the question arises as to what is new in Mr. Schlesinger's proposal.

Part of the answer given by associates of Mr. Schlesinger is that the well-publicized shift is as much psychological as it is real, as much name as fact.

The target of the Schlesinger publicity is the Soviet Union. The Schlesinger theory is that the way to deter the Soviet Union from a counterforce strike is to publicize that the United States can retaliate against Soviet military targets. Indeed, associates suggest that one reason Mr. Schlesinger is so intent on stirring up debate on the subject is to underscore this message to the Soviet Union.

To an extent, this exercise is also linked to the arms negotiations with the Soviet Union. In the absence of an agreement Schlesinger fears that the Soviet Union, by marrying its larger missiles to advanced multiple warheads, could by 1980 have a greater counterforce ability than the United States.

WHAT IS NEW

Mr. Schlesinger is therefore trying to get across the message that if the Soviet Union does not agree to make the two nations basically equivalent in strategic arms, the United States is prepared to match the Soviet Union step for step in building up its counterforce weapons.

If only as a hedge against failure of the talks on strategic arms, however, the Schlesinger proposal does contemplate some changes in the present nuclear arsenal. It is at this point that his proposal becomes embroiled in controversy.

What is new about the Schlesinger counterforce idea is that it provides for development of more accurate missiles and warheads that would be able to attack Soviet missile silos. The Defense Department, for example, wants to develop such "silo killers" for the Trident submarine missile that on the last part of their trajectory could change course.

ACADEMIC VIEW

Academic strategic planners generally agree that the United States needs more flexibility than just a strategy of mutual assured destruction. While this suggests the need for some counterforce ability, most of the experts, including some on whom Mr. Schlesinger leans for advice, believe such flexibility should not extend to an ability to attack Soviet missile silos.

The reasoning is that "silo killers" destabilize the nuclear balance by raising fears that a nation is seeking a "first strike" ability to knock out the retaliatory force of the other side in a surprise attack.

Mr. Schlesinger's response to this objection is that since both the United States and the Soviet Union have invulnerable retaliatory forces in their submarine-based missiles, neither side can acquire a first-strike ability.

In the nuclear balance, however, perceptions can be as important as abilities. Five years ago, the United States started off on an abortive multibillion-dollar program to develop a missile defense system because it thought the Soviet Union was seeking a first-strike ability against its land-based missiles.

ARGUMENT OF CRITICS

Similarly, it is argued by some critics of the Schlesinger proposal, the Soviet Union might be tempted to build up its own nuclear forces or to use them in a crisis situation if it thought that the United States, under the name of counterforce, was developing "silo killers" capable of knocking out its land-based retaliatory force.

One suggested solution to the action-reaction cycle is to get rid of the land-based missiles, whose vulnerability makes both sides feel insecure. But this is a step that neither side is willing to take, partly because each now wants to use the land-based missiles as counterforce weapons.

Mr. Schlesinger has still not explained why he presumes that a counterforce attack, which with its radioactive fallout would probably kill millions of civilians, would not lead inevitably to an all-out nuclear exchange.

This, in turn, gets to a basic question of why must it be presumed that the present strategy of massive retaliation will not continue to deter any nuclear attack, including the use of counterforce weapons. It is around this question that the debate will revolve in the coming months.

NUCLEAR TARGETING

Defense Secretary Schlesinger's explanation last week of the Administration's altered nuclear strategy answered some—but not all—of the major concerns advanced by its critics.

The new strategy involves re-targeting some Minuteman intercontinental ballistic missiles (ICBM's) for a "counterforce" role of striking at Soviet military installations, including missile sites, as well as cities. If this were to lead to an American pre-emptive first-strike capability—and a similar capability on the Soviet side—the advantages of shooting first might create such nuclear nervousness on both sides that an atomic exchange might be triggered in a crisis.

Mr. Schlesinger has now indicated, however, that the American objective remains crisis stability and avoidance of hair-trigger nervousness, through a continued strategy of deterrence based on a "second-strike" force capable of surviving a Soviet "first strike" and of retaliating against Russian cities. He told a news conference that the Administration was not now seeking to develop "a major counter force capability"—although he held that possibility open if the Strategic Arms Limitation Talks (SALT II), which resume next month, do not bar such a capability for the Soviet Union.

Also reassuring was Mr. Schlesinger's statement that expansion or improvement in the present arsenal of nuclear weapons would not necessarily occur—presumably if adequate limitation of Soviet forces can be achieved in SALT II. The Defense Secretary is taking the position that the size and character of the American nuclear forces will be "primarily paced" by the force structure developed by the Soviet Union.

The danger is that once an improved weapon is developed, the pressures to deploy it become almost irresistible, as former Defense Secretary McNamara warned the nation after leaving office. Moreover, MIRV multiple warhead missiles can only be brought under control by limiting flight tests and development, to head off a second generation of bigger, more accurate warheads. The United States developed the MIRV, but now, as the Soviet Union catches up, it has suddenly become the chief threat to American security.

What must be avoided now is another "action-reaction" cycle of research and development in the MIRV race that carries the United States and the Soviet Union beyond another point of no return. American nuclear superiority, by Mr. Schlesinger's own testimony, cannot be overtaken before the early 1980's by the current Soviet build-up. Warnings to Moscow to avoid a new MIRV race and to negotiate seriously in SALT undoubtedly are justified.

But if Mr. Schlesinger really means to let any future American build-up be "primarily paced" by the Soviet force structure, there is no need to rush ahead with some of the programs now under way, such as the incredibly costly Trident nuclear-missile submarine. This is designed to meet a hypothetical anti-submarine warfare threat, the character of which not only is not known but cannot even be guessed right now.

Above all is the need to hold back in development and testing of bigger, more accurate MIRV warheads. Instead of replacement and improvement of American and Soviet nuclear war capabilities, which one day might tempt a nervous leader into their use, the aim should be to limit, to reduce, and even to eliminate those capabilities by progressive cutbacks in MIRV-tipped, land-based ICBM's on both sides.

NEBRASKA WILDLIFE FEDERATION RESOLUTION

Mr. HRUSKA. Mr. President, recently a letter came to my office from Charles D. Peebler, Jr., president of the Nebraska Wildlife Federation, transmitting certain resolutions adopted in the annual meeting of this organization.

The subject matter of three resolutions had to do with wilderness areas in Nebraska. In separate resolutions, the following were the subject matter: Valentine and Crescent Lake Natural Refuges; Niobrara River; and Platte River.

At Mr. Peebler's request, I ask unanimous consent that the text of these resolutions be printed in the RECORD at the conclusion of my remarks.

It should be observed that the Nebraska Wildlife Federation is affiliated with the National Wildlife Federation. Its officers and members are to be commended for their deep and continued interest in the Nation's natural resources and environment—in their advancement, improvement, and preservation.

Such subjects are of high priority in our Nation's overall program. The resolutions are timely.

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

RESOLUTION NO. 1—WILDERNESS AREAS IN NEBRASKA

Whereas, the wild and wilderness areas of this state, the country, and the world are rapidly being destroyed by the encroachment of man; and

Whereas, it is recognized that such areas are necessary as sanctuaries for the survival of native flora and fauna; and

Whereas, in a world which is increasingly urban, such areas are also essential for the well being of mankind; and

Whereas, it is recognized that one of the best and surest ways to protect and preserve these areas not already despoiled is to officially designate them wilderness areas;

Now, therefore be it resolved that the Nebraska Wildlife Federation, at its annual meeting assembled December 8, 1973, in Grand Island, Nebraska, hereby commends that the appropriate Federal and state agencies for giving emphasis and priority in establishing designated wilderness areas in Nebraska, with particular emphasis and priority placed on designating portions of the Valentine and Crescent Lake National Refuges as wilderness areas.

RESOLUTION NO. 2—NIOBRARA RIVER

Whereas, the Niobrara River is one of the few remaining rivers still having significant stretches of water not already irreparably despoiled or altered by impairments or channelization; and

Whereas, such a natural area should be considered both a state and national heritage; and

Whereas, the protection and continued existence of such a heritage should receive the utmost support of all individuals and organizations concerned with the preservation of our environment; and

Whereas, without this protection these remaining natural stretches will inevitably be despoiled under the guise of progress;

Now, therefore be it resolved that the Nebraska Wildlife Federation, at its annual meeting assembled December 8, 1973, in Grand Island, Nebraska, hereby strongly recommends and urges that the presently remaining wild portion of the Niobrara River be granted the protection necessary for its continued existence as a natural area by being designated a wild or scenic river.

RESOLUTION NO. 3—PLATTE RIVER

Whereas, the Platte River, for much of its course through Nebraska lies within major migratory flight paths for many species of ducks and geese and is used extensively by these species during their annual migrations; and

Whereas, the Platte River Valley from Grand Island to North Platte serves as the staging area for a large portion of the Sand Hill Crane and Whooping Crane populations during their annual migrations; and

Whereas, the destruction or alteration of any significant portion of this ecosystem would be highly detrimental to many of these species; and

Whereas, the potentially disastrous effect of the alteration of this ecosystem on the population of the whooping crane (an endangered species) and the Sand Hill crane populations could contribute materially to the decline and/or possible extinction of one or both of these species; and

Whereas, the Midstates Project will alter or destroy significant portions of the Platte River ecosystem;

Now therefore be it resolved that the Nebraska Wildlife Federation, at its annual meeting assembled December 8, 1973, in Grand Island, Nebraska, hereby strongly opposes the Midstates Project and recommends that it be permanently abandoned.

TESTIMONY OF SENATOR CLARK BEFORE THE HOUSE AGRICULTURE COMMITTEE

Mr. HART. Mr. President, recently the able Senator from Iowa, Mr. DICK CLARK testified before the House Agriculture Committee on H.R. 11955, a bill to regulate the trading of futures contracts on a variety of commodities. His thoughtful remarks on this $500 billion industry are of value and interest. Thus, I request unanimous consent that his remarks be printed in full in the RECORD.

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

TESTIMONY OF SENATOR RICHARD CLARK

Mr. Chairman and members of the Committee, I have come before the House Agriculture Committee this morning on behalf of myself and Senators Hugh Scott, Philip A. Hart and Clifford P. Case.

Like you, we are concerned about futures trading because of the impact on the lives of every American—and the lives of people all over the world. It affects the price the farmer receives for his produce, the price middlemen pay for raw goods and the price the housewife pays for food on the supermarket shelf. The impact of futures trading is so pervasive and important that it merits the careful and cautious attention of the Congress.

The commodity trade has received a great deal of attention in the last year. Members of the Congress certainly have taken a growing interest in it and, more importantly perhaps, so have the American people.

These hearings are focusing on H.R. 11955, one of a number of comprehensive bills that have been introduced by members of both parties in both Houses to correct the abuses—real and threatened—which have come to light. This Committee no doubt is considering all of these proposals, and my testimony this morning reflects the provisions of S. 2837, legislation that we have cosponsored. We recognize that our legislation—as with most proposed legislation—does not represent the last word when it comes to improving the regulation of the commodity trade.

Right now, for example, we are waiting for the results of an unprecedented, year-long investigation by the General Accounting Office (GAO) of the commodity trade and the government's regulation of it. As you know, GAO also did a study of the Commodity Exchange Authority (CEA nine years ago, recommending a number of important improvements. When this report is finished, it will be made available to the Congress. I understand that the report will analyze the pending bills and may recommend additional legislation. Any proposals which are not in present bills, I plan to introduce as supplementary legislation. I would hope that this Committee would consider the GAO study before reporting out H.R. 11955.

In the final analysis, the best bill probably will be an amalgam of the best of these many proposals.

The House Agriculture Committee should be commended for the many days of hearings it is holding on futures trading and the hard work that has gone into H.R. 11955. The legislation has many attractive features—no other bill sets up an insurance corporation to protect customers, for example. Nevertheless, this bill does contain some provisions that give us some cause for concern. In addition, it does not cover some areas we believe are essential to the operation of fair markets.

If there were only one thing that could be done to strengthen the regulation of futures trading, it would be to remove regulatory authority from the Department of Agriculture. This should be done for a number of reasons. First and foremost, a futures contract is not a transaction in agricultural products. When commodity exchanges were opened in the United States in the 1700's, they did indeed serve as a marketplace for the actual exchange of goods. Gradually, that function has all but vanished. Delivery of goods now takes place less than three percent of the time. In reality, futures contracts are a bet, a bet on what the price will be in the future. They certainly are not identical to a security or an insurance policy, but they are more like them than a transaction for the purchase or sale of agricultural products. Because a futures contract is so unique, it is important that the market be regulated by an independent body.

Almost 30 percent of the products, the tangibles or intangibles, which support futures contracts have not been regulated by the Department of Agriculture previously. This is because they have little relation to United States agriculture products. They include such items as silver, nickle, plywood, silver coins, propane, pepper, copper, diamonds and foreign currencies.

Some testimony has stated that 90 percent of the volume of trading is United States agricultural products. We find the figure to be closer to 70 percent, and based on the success of the new monetary market at the Chicago Mercantile Exchange expect that the percentage of trading in nonagriculture commodities will increase. Recently, a contract in ship charters was announced and contracts have been proposed in home mortgages and petroleum. Thus, we question the jurisdiction of the Department of Agriculture over these nonagriculture commodities.

Certainly, the size of the commodity trade itself warrants a special, independent agency even if nothing else does.

Right now, there are 14 active commodity exchanges, and in the last fiscal year alone, $268 billion worth of regulated commodities was bought and sold in this country. That matched the entire federal budget for the same fiscal year. If unregulated commodities are included, the total volume is close to $400 billion and expected to reach $500 billion for calendar year 1973. By comparison, the New York Stock Exchange had only $200 billion in business. With so much at stake, the commodity trade certainly deserves a bit more attention from the Federal government, and that attention should come from a regulatory commission with the stature and independdence of the Securities and Exchange Commission.

Right now, the commodity trade is "regulated"—in the loosest sense of the world—by an agency of the Department of Agriculture, the Commodity Exchange Authority. The CEA has been severely criticized for inadequate regulation by the General Accounting Office, newspapers, Congress and even by those who are regulated by it. Perhaps its lack of effective enforcement is due to insufficient personnel and funds. But one doubts that this is the only reason—especially when we recall that the General Counsel of the Department of Agriculture ruled that the CEA had the power to seek injunctions, but the CEA refused to exercise it. They said such power was not specifically spelled out by Congress.

H.R. 11955 does not appear to sufficiently remedy these problems. While the bill provides for higher pay for top-level employees, its own lawyers and four part-time public members on the Commission, these are relatively small changes. The personnel of the present Commodity Exchange Authority are transferred automatically to the new commission. The Secretary of Agriculture or his designee will be the chairman. Commissioners still may be part-time employees.

Under the Commodity Exchange Act today, there is a commission, called the Commodity Exchange Commission, whose members are the Secretary of Commerce, the Attorney General, and the Secretary of Agriculture who acts as chairman. H.R. 11955 expands the commission to five members, retaining the Secretary of Agriculture as chairman with four members selected from the general public. Under present law, the commissioners serve only part time, as may they under H.R. 11955. This is not acceptable in our judgment.

As long as the commissioners are part-time employees, there is little assurance that they will do more than routinely approve the decisions of the Secretary of Agriculture, just as the present commission has done. The full commission has seldom met in the past. Under H.R. 11955, it need only meet once a month. At first glance, it might seem that four public members of the commission would be preferable to the Secretary of Commerce and the Attorney General, but the bill also requires that they be "knowledgeable in futures trading" without further elaboration. Doesn't this mean that the members necessarily will have to be chosen from the industry that they are supposed to regulate? This certainly has been the disturbing trend on all too many other Federal regulatory agencies—and one not to be encouraged as this legislation does. We believe that it would be preferable merely to require that the Commission members be chosen from the public.

Thus, we would hope that this Committee might reconsider the approach in this legislation, creating instead an agency totally independent from the Department of Agriculture with full-time commissioners chosen from the public.

The framework of the bill also causes some concern. It is in the form of amendments to a law which already has been amended 18 times, a law which is repetitive and almost unintelligible. To add another 78 pages to that law, may invite problems. It will increase the ambiguity of the law, make it more difficult to determine the intent of Congress and thus make it more difficult to monitor the performance of the commission. As with all too many of our laws, it will be so complex that only a handful of men and women will completely understand it.

The bill permits the Commission to grant antitrust immunity, providing that anyone who acts in accordance with a rule, regulation or order of the Commission, or one approved by it is exempt from antitrust laws. This provision assumes that the Commission members will have sufficient expertise in the complex antitrust laws to evaluate every rule, regulation and order for its antitrust implications. Today, many lawyers devote their entire careers to the area of antitrust law. The Department of Justice maintains a division of some 300 attorneys just to deal with the antitrust laws. The Federal Trade Commission has an equally large and qualified staff. This provision would transfer authority over the antitrust laws from the Department of Justice, the Federal Trade Commission and the federal courts to the Commission. We cannot ignore the fact that the Department of Justice has a suit pending against the Chicago Board of Trade, charging it with illegally fixing commission rates. Under this bill, if the Commission approved price fixing by the Chicago Board of Trade, the Department of Justice suit would be mooted. Such a broad delegation of power—especially in such an important area as antitrust—is not warranted.

The bill also permits floor brokers and futures commission merchants to trade for their own accounts under rules promulgated by the Commission. Iowa Congressman Neal Smith testified before your Committee on the subtleness and multitude of deceptive practices and abuses possible in trading for one's own account and at the same time trading for a client. In his bill, H.R. 11195, he prohibited this kind of trading. A study released by Yale University a few months ago also recommends that floor traders be prohibited from trading for their own accounts. As the "Yale Legislative Services Report on Commodity Exchange Reform" said, "it is well known that clever manipulation of stop, buy, or other market orders can be used to manipulate prices by unscrupulous traders." The Securities and Exchange Commission prohibited such trading in 1964.

Some have argued that in thin markets floor brokers may need to trade for their own accounts to provide liquidity. This argument is unpersuasive. First, there is no requirement that a broker trade for his own account when the market is thin. If he does so, it is completely voluntary, and it can be safely assumed that he does so because of a monetary benefit, not out of charity. Moreover, brokers more often trade in the liquid markets rather than the thin ones. The Securities and Exchange Commission has solved the liquidity problem by creating specialists who deal only for their own accounts and are required to do so whenever the market is thin. The Yale Study recommends specialists as the solution to any similar liquidity problems on futures markets.

No one is suggesting that floor traders be eliminated. Rather, it is simply proposed that a person be required to make a choice—between trading for himself and trading for others. If the floor trader does provide any liquidity, he would be available to do so. Some may argue that not enough people trade solely for their own account. However, there seems to be no evidence to support that. In fact, an official of the Chicago Mercantile Exchange has said that on that exchange almost all specialize as brokers or traders.

While H.R. 11955 provides for injunctions, it requires the Attorney General to take the case to court and prohibits ex parte temporary restraining orders. The inability of the Commission to go directly to the courts could result in delay and, it will give the Attorney General veto power in an area in which he has no expertise. In an area as complex as futures trading, it would seem more appropriate to permit the Commission to seek an injunction instead of leaving it to the Attorney General. Not surprisingly, the Securities and Exchange Commission has the power to seek its own injunctions.

The bill's provision forbidding a court to issue a restraining order ex parte also raises questions. Rule 65(b) of the Federal Rule of Civil Procedure provides that a temporary restraining order may be issued ex parte, for up to ten days, if an attempt is made to give notice to the adverse party and if immediate and irreparable harm will result before the adverse party can be heard. If H.R. 11955 provisions are designed to protect the adverse party, it would seem Rule 65(b) already does so. To require the Commission to wait for the adverse party in a situation that demands immediate action and would result in irreparable harm would negate the entire purpose of temporary restraining orders.

The bill also requires the Commission to approve all bylaws, rules, regulations and resolutions of an exchange except those relating to margins. While, generally speaking, an exchange is in a better position to set margins than the Commission, we think the Commission ought to have the power to yellow margins. An exchange might set a margin at an unreasonably low amount—or no margin at all. In such a case the Commission would be powerless to act.

There are a number of provisions in S. 2837 which I hope you will consider.

A requirement that exporters and importers report to the Commission the status of negotiations for exports and imports and of sales and purchases abroad (Sec. 209). This would forewarn the Commission of large foreign sales and purchases which may affect futures trading and permit the Commission to take action to prevent a chaotic market.

A requirement that daily records be kept by exchanges showing the time of a trade, the price, the contract, the name of the trader and that this information be available to the Commission (Sec. 208). Such information would alert the Commission to large trades by particular traders or to patterns of trades which might be a sign of market manipulation or of large foreign sales.

A requirement that a foreign trader post a surety bond before he is permitted to trade in United States exchanges (Sec. 303(b)). Such a requirement would help ensure that foreign traders are subject to the jurisdiction of United States courts. During recent volatile markets, there have been charges that foreign traders, immune from United States jurisdiction, traded on United States exchanges and may have manipulated prices. If they use United States markets they should be subject to United States laws—just as domestic traders are.

A requirement that futures commission merchants determine that traders are financially able and suitable to trade futures contracts and advise traders of the speculative nature of the contracts (Sec. 301(1) and (2)). To protect the market from those who can't meet the financial obligations (and protect those persons from themselves) futures contract merchants must do more than take a potential trader at his word. The Securities and Exchange Act regulations have a similar requirement.

A requirement that the exchanges give prior approval to advertising and that all advertising warn of the speculative nature of futures trading (Secs. 201(3) and 306). This also would help keep speculators out of the market who do not understand it and who cannot meet its financial obligations.

Require members of a clearinghouse to maintain adequate minimum capital and margin requirements (Sec. 201(b)(2)(A)). The clearinghouse members are the most crucial people in the financial functioning of the exchange. While a clearinghouse may require adequate financial backing out of self interest, the Commission should have power to police it.

Require that a member of the consuming public be represented on the Commission (Sec. 104(a)). Certainly, futures markets affect consumer prices. Therefore, consumers ought to have a voice in regulation. Consumer representation would help to eliminate the bias that is built into H.R. 11955 by requiring that all members of the Commission (other than the Secretary of Agriculture) "be knowledgeable in the commodity trading business."

Require fair representation of members of the public on the Board of Directors of exchanges (Sec. 201(b)(2)(A)). Public members should be on the board because they have a direct interest in their operations.

Mr. Chairman, no one should underestimate the importance of this work—here in the House Agriculture Committee and the Senate Committee—in reforming the regulation of the commodity trade. After spending the earlier part of this month in Iowa, it is obvious to me that both the farmer and the consumer are very much aware of the significance of the commodity trade and its impact on their lives. And they certainly don't have much confidence in the way things are now.

The Senate Agriculture Committee sponsored hearings in two of Iowa's beef producing centers several weeks ago, and Congressman Mayne and I both had the opportunity to listen to more than 40 representatives of the industry—farmers, packers, retailers, whoesalers—and virtually without exception, they were seriously concerned about the role of the commodity trade.

They strongly suspect that manipulation on the commodity exchanges has resulted in higher grain prices, higher beef prices, and shortages. And, after the infamous Soviet Wheat Deal, I don't think they're willing to trust the Department of Agriculture any longer with regulation of such an important industry. They realize that just as a political party or an Administration cannot investigate itself neither can an industry police itself. They expect vigilance. They know that vigilance requires independence and strength from a government agency, and because the commodity trade deals not in pieces of paper, but in their food, the people of this country are entitled to nothing less.

Thank you.

NATIONAL AVIATION FACILITIES EXPERIMENTAL CENTER, POMONA, N.J.

Mr. CASE. Mr. President, 15 years ago the Federal Aviation Administration elected to locate its research center, the National Aviation Facilities Experimental Center (NAFEC), at Pomona, N.J.

The site was selected because of the special advantages which Atlantic County offers.

Although the Federal Aviation Administration has undertaken a review of NAFEC, I am confident that the considerations which led to the location of NAFEC at its present site are as valid today as they were 15 years ago.

For this reason I have worked with the officials and citizenry of Atlantic County and Atlantic City in bringing their case to retain NAFEC to the attention of FAA Administrator Butterfield.

I was pleased when the Administrator returned the study team's review and asked the team to work with local officials in finding ways to strengthen the economic and operational effectiveness of the facility.

So that my colleagues may know the full support that NAFEC has in New Jersey, I ask unanimous consent to print the following resolution in the RECORD.

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

ASSEMBLY RESOLUTION No. 15—STATE OF NEW JERSEY

An Assembly Resolution memorializing the Secretary of Transportation of the United States to desist in plans to transfer the National Aviation Facilities Experimental Center, or any part thereof, from Pomona, New Jersey

Whereas, The Federal Aviation Administration has indicated that it is considering plans to move its existing installation known as NAFEC from its location in Pomona, New Jersey, and

Whereas, Municipal, county and State leaders, together with the community at large, have expressed opposition to the transfer on grounds that it is most injurious to the economy of Atlantic county and New Jersey, and not in the best interests of the Nation; now, therefore,

Be it resolved *by the General Assembly of the State of New Jersey:*

1. That the General Assembly hereby expresses its opposition to the movement of the National Aviation Facilities Experimental Center, or any part thereof, from Pomona, New Jersey, as inimical to the economy of this State.

2. That the Secretary of Transportation of the United States be, and is hereby, respectfully requested to direct the Federal Aviation Administration to cease and desist in its present plan to move the National Aviation Facilities Experimental Center from New Jersey.

3. That authenticated copies of this resolution, signed by the Speaker of the General Assembly, and attested by the Clerk be transmitted to the Secretary of Transportation.

4. That further copies of this resolution be transmitted by the Clerk of the General Assembly to each member of the Congress of the United States elected from the State of New Jersey.

PREDATOR CONTROL

Mr. HANSEN. Mr. President, tomorrow afternoon, 20 of my distinguished colleagues in the Senate, and Congressman W. R. POAGE, chairman of the House Agriculture Committee, will be meeting with Secretary Morton to discuss the Interior Department's objectives with respect to controlling predators.

I am concerned that some people have misconstrued this meeting to be primarily a plea for relaxation of the Executive order prohibiting the use of toxicants in predator control; its real purpose is to obtain factual information on the Department's research and control efforts.

It is the responsibility of the Interior Department to provide protection for livestock and wildlife from wanton depredation. We want to know how the Department proposes to do this, and what methods of control can best be utilized to come to grips with the problem.

Furthermore, I am troubled by the state of hysteria that has come about as a result of certain accusations in newspaper editorials and environmental newsletters that we are responding to the "political muscle" of the National Wool Growers Association. The fact is the ranks of the Wool Growers are so decimated by economic factors brought about in significant degree by predators that they have very little political muscle. The industry, nevertheless is important to the State of Wyoming and to the Nation.

So long as I am in the Congress I intend to do my best in representing my State and Nation.

Wyoming has experienced severe depredation problems for several years. So that my colleagues in the Senate might be able to recognize the seriousness of this situation in Wyoming, I ask unanimous consent to have the Wyoming Senate Enrolled Joint Resolution No. 1 of the 42d legislature of the State of Wyoming, 1974 session, requesting the Environmental Protection Agency, the Department of the Interior, and the President of the United States to provide the State of Wyoming with a means of controlling predatory animals which threaten deer, antelope, sheep, and cattle, printed in the RECORD.

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

ENROLLED JOINT RESOLUTION No. 1

A joint resolution requesting the Environmental Protection Agency, the Department of Interior and the President of the United States to provide the State of Wyoming with a means of controlling predatory animals which threaten deer, antelope, sheep and cattle.

Whereas, predatory animals are causing losses in the deer and antelope populations in the State of Wyoming, and

Whereas, predatory animals are causing great financial losses to the sheep industry in the State of Wyoming, and

Whereas, the cattle losses in the State of Wyoming are increasing due to predatory animals, and

Whereas, rabies occurs in Wyoming and increased predatory animal populations provide the reservoir for outbreaks of rabies, and

Whereas, the Environmental Protection Agency, the Department of Interior and the President of the United States have banned all effective and economical means of control of predatory animals and have not provided any alternative methods of control as was promised and also have denied all applications for emergency relief action which had been promised.

Now therefore be it resolved by the Legislature of the State of Wyoming that the Director of the Environmental Protection Agency, the Secretary of the Department of Interior and the President of the United States be requested to provide the State of Wyoming adequate relief immediately.

Be it further resolved that the Legislative Service Office transmit copies of this resolution to each United States Congressman and United States Senator, the Director of the Environmental Protection Agency, the Secretary of the Department of Interior and the President of the United States.

THE ENERGY CRISIS

Mr. HATHAWAY. Mr. President, there have been a number of predictions lately about the potential effect of the energy crisis on all segments of our national economy. In Maine, as elsewhere, we are already experiencing heating oil shortages and rising gasoline prices, with the worst of the winter yet to come. But the inconvenience of cooler houses and restricted Sunday driving cannot compare to the tragedy of a significant increase in unemployment—something we are now told to expect before the end of 1974. And, as past experience has taught us, when the national economy sneezes, New England gets pneumonia. During the last nationwide recession, many areas of Maine had unemployment levels of twice the national average, with some in the neighborhood of 20 percent.

I applaud the efforts of the administration to make industrial fuels a high priority in order to minimize the impact of the energy crisis on jobs. But, ironically, this policy, which necessarily limits nonessential travel, could well have the effect of further exacerbating the troubles of northern New England. I refer, of course, to the essential part which tourism plays in the economics of Maine, New Hampshire, Massachusetts, and Vermont. In the three Northern States, almost 10 percent of the total jobs are directly or indirectly related to the tourist industry. Close to 3 million automobiles entered Maine alone between May and October of last year, considerably more than half of which were visitors to our State. I am quite confident that the figures for New Hampshire and Vermont are comparable.

But the best estimates now are that the height of the gasoline snortage—with skyrocketing prices and closed stations—will hit sometime this summer, during the peak of the New England tourist season. The economic and human consequences of this, Mr. President, could be catastrophic. I am told, for example, that the Maine tourist figures I just mentioned mean more than $500 million in annual income to the State and generate the equivalent of more than 24,000 year-round jobs. This is not a trivial problem; solutions will require imagination and serious effort by all concerned.

One of the best approaches I can think of would be the initiation of autoferry service via Amtrak to Boston and Portland. Such service could originate in either Cleveland or Washington or both. Upon disembarkation at Boston or Portland, visitors to New England would have their cars and campers for travel within the region without the long initial drive presently necessary. I realize that there are technical problems involved such as limited overpass height and a general lack of passenger equipment. But in times of crisis, these are the kinds of problems we have traditionally been able to surmount.

At this moment Amtrak is preparing for the initiation of autoferry service this spring and summer—but the new service is slated for the Midwest to Florida run—the same route which is on the drawing board for the successful private Autotrain company. Mr. President, why do we need duplicate service to Florida, especially in the summer, when there is no service at all into New England?

Why cannot Amtrak use the equipment it is assembling for the Florida run in New England in the summer and Florida in the winter? This would appear to me to be a more rational use of scarce and vitally important resources and I intend to elicit Amtrak's views on the matter. This question may at first glance appear unimportant, but I would remind my colleagues, and Amtrak, that in many areas, vacations are serious business.

By way of conclusion, I would like to introduce an article on this subject by Red Chaplin of the Boston Sunday Herald-Advertiser of January 27, 1974, and ask unanimous consent that it be printed in the RECORD.

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

RAILROADS CAN HELP CAMPERS

(By Red Chaplin)

Somewhere there must be a junior executive in either the recreational vehicle industry, a tourism promotion bureau, or Amtrak or perhaps another railroad, whose boss has told him to come up with new ideas.

This writer would like to propose an idea that can help all three industries, and maybe get the junior executive who pushes it a fat promotion. In fact, we'll donate our idea as this column's contribution to keeping things going in spite of the fuel crisis.

The problems faced by all three industries—and faced by the public that might benefit—have to do with moving large numbers of people long distances to get to vacation areas. The gas shortage threatens cutbacks if not an end to use of recreational vehicles and less business for tourist areas. And everybody knows the railroads need help.

My idea is a simple one. Transport recreational vehicles and their owners by train to vacation areas! I can visualize an "Amtrak Vacation Special", made up of flat cars for the vehicles and dining cars and coaches for the people, loading up at Boston. As it travels south more RV's and their vacationing owners board at New York, Philadelphia, etc. headed for Florida and other southern watering spots.

This summer, similar trains could head up into northern vacations areas in Maine, New Hampshire, Vermont and other New England states. There could be trains to take camping families and their equipment to the Mexican and Canadian borders, or cross country to the U.S. west coast.

The customers would not need gasoline for the trip, only enough to get to the loading area, and from the point of unloading to their campground. Think of the fuel savings!

And there are customers. Over four and one-half million travel trailers, truck campers and motor homes are registered in the United States. There are another nine to ten million families who camp by tent or rent equipment. Recent surveys of this market indicate that it has an extremely high degree of dedication. People owning camping equipment say that they intend to keep on using it as much as ever—even if they have to camp close to home because of gasoline supplies. Why should they have to, when vacation areas are crying for the business and the railroads need help?

Finding ways to keep Americans camping is a good way of saving energy. A family of four will use one-fifth the energy resources while camping that their average suburban dwelling consumes when they're home. Saving 80 percent of the nation's energy resources is a worthy goal! Every family that can be delivered to a campground this summer will help the energy crisis by that much.

There are a couple of small tourist businesses in Mexico that are already using trains to transport recreational vehicles and their owners. Admittedly, these are package tours with everybody getting on and getting off at the same time. This alone would be workable here, but its only a matter of scheduling and loading according to destination to provide for people disembarking wherever they want to.

Who will be the first to see himself named in this column as the imaginative businessman who put his idea into effect?

CURRENT U.S. POPULATION

Mr. PACKWOOD. Mr. President, I would like to report that, according to U.S. Census Bureau approximations, the total population of the United States as of February 1, 1974, is 211,759,102. In spite of widely publicized reductions in our fertility levels, this represents an increase of 80,257 since January 1—that is, in just 1 month. It also represents an increase of 1,463,464 since February 1, 1973.

Over the year, therefore, we have added enough additional people to fill a city the size of Milwaukee and Indianapolis combined. And in just 2 short months, we have added as many people as now reside in Wilmington, Del.

I KNEW BRANDEIS

Mr. HUMPHREY. Mr. President, in these troubled times it is gratifying to be reminded that there remain many good and wonderful people in this great land of ours.

It is, therefore, with pleasure that I take this opportunity to say a few words about a friend and constituent who has devoted much of his 80-plus years to the service of the people of Minnesota and the United States. I speak of Mr. Alex Kanter, whose honesty and integrity in the practice of law have been well recognized in my State, and who has participated actively for many years in the Jewish War Veterans Department of Minnesota.

I have received an article written by Alex Kanter entitled, "I Knew Brandeis." It is an historical piece and of great interest.

Mr. President, I ask unanimous consent that this article be printed in the RECORD.

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

I KNEW BRANDEIS

(By Alex Kanter)

All of the great things of life come into being because some man or woman has a dream, a vision, an idea, coupled with courage and foresight. The great man neither breaks the ground nor gleans the harvest; he is the sower who casts the seed upon the field already to receive it and make it grow.

When a man establishes in his thoughts and conduct the proper relation between himself and the rest of the world, he is always good and often great. Brandeis was erudite and wise, distinguished as an American and as a Jew was such a man.

Brandeis was a dreamer of dreams. He lived in an era when Jews in transition—snug and secure—did not want to becloud their emancipation by allowing themselves to dream with him. They thought him radical.

Looking back over the flood of years which pass with the fleetness of an express train, we often feel that on many an occasion Brandeis must have thought of the lines of Rabbi Ben Ezra, "Now who shall arbitrate—ten men who love what I hate, shun what I follow, slight what I respect, ten men whose eyes and ears watch me—they this thing and I that—who shall my soul believe?"

In our student days at the university we worked after school in the office of George Loftus, a member of the Grain Exchange and an outstanding national authority on Interstate Commerce. Under his guidance we rose to the position of the company's rate clerk. Our office a cubby hole, its furnishings a desk, a rickety chair and a bow-legged stool; rate tariffs crammed the shelves.

It was in the era when the Seattle-Spokane rate case was pending in the United States Supreme Court. Brandeis, in his capacity as Amica Curia, met with Loftus to gather statistical data. It was to this little office that Loftus brought Brandeis, saying, "I want you to meet a great American; he is one of your people and he is in your hands. Have him meet the people of your faith." But the so-called upper strata of the people of our faith were cool and hesitant and neglected our pleas. For me this meeting grew into a life-long friendship. I admit that Loftus told Brandies that I was in a position to give him whatever statistical data he needed. We spent days and days checking and evaluating freight rates.

Ordinarily, as a rule, we brought a cheese sandwich from home as our lunch, but Brandeis insisted we eat with him. We went to a coffee shop with counter service in the Grain

Exchange. Brandeis instructed the waitress to add pie and ice cream to whatever the order—then a luxury. Evening after evening we spent talking to Brandeis in his hotel room or just walking.

One could talk more openly to Brandeis than to one who comes to the Temple after eating bacon. We told him how the North Side was amazed that six boys from the heart of the Ghetto, their fathers pack peddlers, wagon peddlers, entered high school at one time, and the people on the Avenue said that it truly must be a Messianic age for such a miracle to happen. We told him that when the butcher asked Mother that now that we had entered high school, what we were going to be, she told him that he was trying to divert her from complaining that there were too many bones in the meat that he sold her. To this the butcher said, "If I throw in a piece of liver with the order, will you tell me?" Mother replied, "Yes, he is going to be a professor."

Brandeis explained that life is like a house with many windows; that he very much would like to visit an area where one can feel the heartbeat and pulse of the people, so on foot we tarried to the North side, the then heart of the Ghetto. Here the language spoken was the traditional Yiddish; in the stores they sought articles they were accustomed to buy in the old country; the signs on the butcher shops were written in Hebrew characters—the papers they read were Yiddish. They thought in their own language, worshipped according to the rituals to which they were accustomed; all other atmosphere was foreign to them—a people whose whole world had no larger horizons than the little town in which they were born in some obscure part of Europe.

A visit to the North Side without dropping in at Brochin's Delicatessen, a stone's throw from the "Shul" (synagogue), is like a sumptuous dinner without dessert. At Brochin's the Jews of the city actually rubbed shoulders, even if one be a socialite he was still possessed of a stomach—and where else was there a place where one could get the best pastrami, smoked meat, bagel, and lox than at Brochin's? One of social status might be noticed nudging a less fortunate creature in search of a herring—if in his opinion the smoked white fish was fresh.

Brandeis was fascinated as to what we observed, and then said, "Now you know what I mean by an open window."

We went across the street to the old "Shul". It was explained to him that daily, men, scholarly men, at times hungry, regardless of the clime, at sunset wend their way to the Beth Hamadrash (study chapel) to pour over the Talmud, and split hairs over the interpretation of Mamonades, Spinoza, Socrates, and even delve into Copernicus and Darwin. Brandeis commented that these men were thirsty for knowledge—a thirst never quenched. When it was pointed out that there was another study group of men, not so learned, the Mishna group, he said, "Here there is only one aristocracy—that of learning."

To best describe the character of Brandeis, we recall an incident in Child's Restaurant. He noticed that some aged patriarchs, their heads covered with skull caps, ordered dry toast and tea in a glass. Brandeis changed his order to toast and tea.

On leaving the North Side, he expressed a desire to met with the Jewish students at the University, then some seventy in numbers; so we took ourselves by trolley to the campus of the University of Minnesota, where we met them in front of the old Library Building. What did Brandeis tell them? He told them that they must evaluate to the elders the culture which they had accumulated—it was something that must be shared.

The face of Brandeis beamed when informed that three nights a week students conducted a night school in the vestry room of the old Synagogue, where pack peddlers, wagon peddlers, patriarchs with flowing beards, and women wrapped in shawls, predominated the class. He was even told of Herschel, the aged patriarch of four score and ten, who said he came to class for one reason—that when he approached the gates of heaven he could recite the "Shma" in English.

Brandeis was not without a sense of humor and enjoyed a little banter. Once when he was sitting in a coffee shop, Dr. Kallen ordered a glass of hot milk, but became perturbed when the waiter said they had no hot milk. Brandeis suggested to the waiter that if they had milk they could warm it. Kallen said he never thought of that.

On another occasion one Chana, a wag of national repute, approached Brandeis to spell out Chana der Bewooster (well-known). When Brandeis replied he did not know, Chana said, "A fine man they make for a judge—he cannot even spell 'Chana der Bewooster'."

SOME PLAIN FACTS FROM AN EXPERT: HARRY THORSON

Mr. HANSEN. Mr. President, I have received a letter from a man who I regard as one of the Nation's most knowledgeable in the area of sound business practice for the independent petroleum operator, and I would like to share some of his views with my colleagues.

The letter is from Harry Thorson of Newcastle, Wyo., and he is among Wyoming's most successful businessmen in the mineral industry. Harry Thorson knows as much about the petroleum industry from the independent's standpoint as any man in this country—having spent more than 50 years of his life in the business, and working his way up from laborer to head of his own company.

Mr. President, I ask unanimous consent that Mr. Thorson's letter, which capsules some sound advice for the Congress of the United States, be printed in full in the RECORD.

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

Hon. CLIFFORD P. HANSEN,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HANSEN: "Knowing you (Hansen) are a Member of the Energy (Interior) Committee in the Senate, I was shocked beyond belief when I listened to the remarks of the Chairman of the Committee, Senator (Henry) Scoop Jackson, on a television interview last Sunday, Januray 27. Although Senator Jackson belongs to a different political party than I, he had always impressed me as a conservative and able Senator, who did his homework, know what he was talking about, was sincere, and was dedicated to doing what was best for our country.

"As one who has worked more than 50 years in the oil industry, I am able to speak from experience.

"My first work was for the Illinois Pipeline, a division of the Marathon Co., where I worked for nine years. Then, for 10 years I was production and drilling superintendent for the largest independent in the Osage Oil Field in Weston County, Wyo. In 1941, I secured my own oil production and have battled in the oil game as an indepedent ever since. I have served as a director of the Rocky Mountain Oil and Gas Association for 25 years, and was a member of the National Petroleum Council for two years, 1958 and 1959.

"Senator Jackson makes a lot of fuss about the oil producers' profits in 1973. Granted, they were larger than in 1972. But he must not forget about the many lean years, especially back in the 1930s, when high gravity oil sold for 40-cents per barrel in the mid-continent. He should also remember that most oil producers pay a royality of 15 to 20 per cent of the production to the landowner. Much of this royalty goes to the Federal Government in the Rocky Mountain states, and also to the states, on state land. No depletion is collected by producers on royalties paid.

"In addition to royalties, most states have a severance tax of from 1 to 5 per cent. As a result, the producer has to give away a fourth of the oil he produces before any money is available for expenses and drilling new wells.

"Senator Jackson should know that while percentage depletion permits mineral producers to deduct a percentage of their gross income from each producing property in computing taxable income, the deduction is limited to 50 per cent of the net income from the property, before deducting depletion. Consequently, a great deal of crude is produced without anyone taking depletion.

"Stripper wells (those producing less than 10 barrels per day) account for 13 per cent of our national production. Senator Jackson and the others on the Committee should know there are many small independent producers who make their livelihood from producing stripper wells, while providing employment for many others.

"Senator Jackson should know also that the oil producers in this country pay a greater proportion of school, county and state taxes than any other business. A great deal of time and money has been expended by the oil producers in development of secondary recovery methods. Some of these ventures have been successful, and others have not. Nevertheless, millions of barrels of oil have been recovered by secondary recovery, that otherwise would have been lost. The producer pays the same royalty and taxes on the secondary oil as well as the primary.

"It is well for Senator Jackson, and you other Members of the Energy Committee, to know that the pipe to case these wells, and production equipment, constantly increase in price. Unless stripper wells can be produced at a profit, they will be abandoned, and the equipment sold—and no more oil will come out of these locations.

"One reason this country finds itself in an energy crisis is the restrictive position the Federal Power Commission has taken in pricing natural gas at the well head. The restrictive measures the Bureau of Land Management has placed on the leasing of federal land, including oil shale lands, has contributed further to the dilemma, as well as the many impractical rules the U.S. Geological Survey forces compliance with by producers—and, on top of all this, the Congress gave us OSHA (Occupational Safety and Health Act).

"The idea that Senator Jackson suggests—that all profits be put back into the search for new oil—is entirely academic, and not practical. Just give the industry a fair chance, and some day they will figure out a way to recover most of the 70 per cent of the oil that is now left underground. Through their endeavors, and with new technology, many new fields will be discovered.

"In closing, let me say to all of you: don't forget the stripper wells. Don't fence us in with a lot more laws and regulations that make it more difficult to operate."

Sincerely,

HARRY THORSON.

NATIONAL HEALTH POLICY

Mr. HUMPHREY. Mr. President, in response to my request, subsequent to hearings last year on the costs of health care by the Subcommittee on Consumer Economics of the Joint Economic Committee, a study paper, entitled "An Approach to National Health Policy," was prepared by two witnesses at these hearings, Dr. Eugene S. Mayer and Mr. Glenn Wilson, of the School of Medicine at the University of North Carolina.

Dr. Mayer is an assistant professor in the division of family medicine and Mr. Wilson serves as associate dean of community health services.

A workable and responsible national health plan is of paramount importance in the United States today. I believe that this outline of certain basic requirements under such a plan, provided by these gentlemen whose competence is well recognized, contains valuable insights and recommendations, and merits the attention of Senate and House colleagues.

Mr. President, I ask unanimous consent that this study paper be printed in the RECORD.

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

AN APPROACH TO A NATIONAL HEALTH POLICY[1]

INTRODUCTION

The highly elastic demand for health services and the highly inelastic supply of personnel, determined largely by the guild nature of health professional organizations, lie at the heart of the American dilemma of making quality health services both available and accessible at a socially acceptable price.

Historically, government at the local, state, and federal level has responded to this dilemma as a financier of health services and as an underwriter of the cost of training health manpower. Viewed in this perspective, it is not difficult to understand (1) why more than half of the recent cost increases in health have been pure inflation and (2) why accessible health care is unequally available to the American people. Insurance companies and Blue Cross/Blue Shield also have evolved a role of laissez-faire paymaster for services provided with little, if any, potential for impact on the nature, scope and organization of these services. Indeed, Blue Cross/Blue Shield and the commercial insurance companies have developed as a conduit collecting money from the public and passing it along to those legally entitled to collect it. To assume financial responsibility for demand generated outside their control, while underwriting the cost of supply created by professionals, appears to be unwise public policy.

We have had twenty years of relative affluence in meeting generated demand, frequently category by category. In addition, the government has provided generous support in behalf of image fulfillment of the various guilds. This has led to the development of an intransigent, complex, highly articulate series of political power groups. Development of a rational national health policy will not evolve easily nor can it emerge out of simplistic politically expedient solutions. Each of the foregoing factors must be dealt with directly.

THE APPROACH

Health services have traditionally been examined from the health professional's perspective of financing, facilities, organization, manpower, research and utilization. The inevitable conclusion has been that there are too few people working in health fields, and that we need more research, more facilities and more financing. Only recently has there been reasonable attention to the notion that better organization is necessary. If the nation is to develop a national health policy that is in the public interest and which influences the above factors in a coordinated manner, it appears that policy formulation needs to start with a set of criteria more oriented to the consumer than to the provider of service.

It must be accepted that any national health policy will necessarily entail making certain assumptions and ultimately establishing some value judgments. While unanimous agreement on the criteria is unlikely, the best available must be determined. Then it will be essential to review our existing national experience to develop some range of quantification for these criteria which can at least carry us through the decade of the nineties. At a minimum, those responsible for public policy would have at least some tangible objectives by which the policy could be measured.

CRITERIA

The following are offered as appropriate consumer-oriented criteria:

1. *Availability and Accessibility of Service*—Some definition of accessibility and availability which can be measured in quantifiable terms appears to be essential. Since these factors relate to both the geographic and temporal proximity of services, a series of questions can be formulated. For example, how near, either in terms of time or distance, should primary medical care be to every citizen? (One half hour? One hour?) What should be the longest any person should have to wait for urgent or emergency medical services? What should be the maximal delay for routine annual checkups? These criteria also deal with a much more complex set of social, cultural and economic questions and although services may be in the neighborhood, these services may not be available because the hours of work of the individual and the hours that services are available are not compatible. Services may not be available because the individual is black, poor, etc.

2. *Scope of Services*—Some definition of the scope of the overall program with the establishment of priorities appears essential. It appears improbable, even prior to quantifying the demand for all health services, that a national health policy can provide all services. For example, can complete psychiatric services be available and accessible to the entire population?

3. *Cost*—Some estimates of the socially acceptable percent of the gross national product which is to be devoted to health would appear necessary in order to establish the parameters of a national health policy. For example, is seven, eight, or nine percent of the gross national product the socially acceptable level? Is there no limit?

4. *Continuity*—Some definition of the consumer's potential for receiving emergency service, primary care, secondary care and highly specialized care in some orderly fashion must be developed. It is an important element if one wishes to have more than episodic, uncoordinated services which are frequently duplicative and wasteful.

5. *Quality*—Some yardstick and machinery for the evaluation of quality is an important consideration. There is a developing body of knowledge on this subject which needs to be brought together in the definition of national health policy.

RECOMMENDATIONS

Once these criteria have been agreed to and then sufficiently defined, an important second step would be to make some short- and long-term projections of the demand for services, category by category, illness by illness, on an age and sex specific basis for the nation. Although this would undoubtedly have to be expressed as a range of services, a review of the existing experience would make it possible to project the demand for specific types of services and to provide some objective basis for evaluating policy.

Further examination of the organizational structure of health services and further elaboration of the self-policing guilds in health appears essential if a national health policy is to be successful. Public policy is unlikely to be served so long as a self-appointed body controls entrance into the structure, generates its own demand and publicly articulates the need for more or less personnel, once the demand has been generated.

Based upon the demand assumptions, projections could then be made on the number of specific personnel required in each area to meet the demand and to estimate the physical resources required. One could also project population movements within the country so a systematic approach to the distribution of personnel would be possible.

It appears appropriate, if there is to be a national public policy for health to define, for purposes of that policy at least, the range and scope of services to be available in primary and specialty care for all citizens. In the absence of such definitions, one finds an unequal and often inappropriate assortment of primary and specialty care in various centers. This directly relates to our existing problems with the duplication of expensive physical facilities and equipment and with the inefficient use of personnel.

Having established the criteria by which policy and program would be evaluated, and having established the assumptions for demand and the personnel to meet that demand, priorities could then be established to implement the program. One could project estimated need, the geographic location of need, the priorities of need and then stimulate the training of personnel and the allocation of resources in order to meet the need previously agreed upon. One could also develop guidelines which would identify which aspect of the program is to be managed at the local level, the regional level and the federal level and permit a delineation of the role of government and the private sector in managing the health care system.

Essentially, this proposal suggests criteria needed for the development of a comprehensive national health policy from the perspective of the consumer. It also indicates the need for further elaboration and definition of these criteria. It then moves to the need for a quantification of the determinants for these services. In summary, it is proposed that this information would make it possible to establish priorities and permit those responsible for a national health policy to stimulate financing, facilities, organization, manpower and research, based upon the criteria previously agreed upon.

The need for a rational national health policy is clear. It appears most appropriate for this to come from the Congress with assurance that such a policy be followed over a sufficient period of time and with sufficient consistency to allow for an accurate measure of the impact of the policy.

[1] Developed for the Joint Economic Committee Subcommittee on Consumer Economics by Mr. Glenn Wilson, Associate Dean, Community Health Services and Eugene S. Mayer, M.D., Assistant Professor, Division of Community Medicine, Department of Family Medicine, School of Medicine, University of North Carolina

THE ENERGY EMERGENCY ACT

Mr. FANNIN. Mr. President, today the conference reconvened on S. 2589, the Energy Emergency Act. This body has twice rejected the conference report dated December 20, 1973.

On December 21 the conference report was set aside and a substitute in the form of title II to the Wild and Scenic Rivers Act passed the Senate.

Just last week the Senate again rejected the conference report by sending it back to conference. The Senate refused to accept the result of the conference work with just cause. We need not here repeat at length the many infirmities of the conference report. The following list of its inadequacies should suffice.

1. *Section 103*—Establishes a Federal Energy Emergency Administration, into which all powers under the bill (and some previously existing powers now held by the President) are placed.

Establishes an independent agency with virtually no administrative authorities, no viable staff structure, no funding authorization, and no provision for continuity with existing activities under FEO. Would establish a marginal, if at all operable, agency.

Should be deleted in favor of well-tracked, separate Congressional action (S. 2776, passed Senate; H.R. 11793, report to House Floor) proceeding on course.

Deleting this provision should also be accompanied by deletions of "Administrator" throughout the bill and substituting "President" where appropriate.

2. *Section 105*—Provides a staged system of Congressional approval/disapproval for energy conservation plans proposed by the Administrator (President): (a) until March 1 plans are effective immediately, subject to disapproval by either House within 15 days; (b) between March 1 and June 30 plans must lie over for 15 days before taking effect, subject to disapproval by either House; (c) after June 30 plans must be approved through legislation.

The staging in this bill poses administrative difficulties. While we do not object to Congressional participation in conservation plans, there should be a uniform system of submission to Congress which permits the voicing of objections within 15 days. The objective would be to provide consistency and yet allow sufficient administrative flexibility.

3. *Section 107*—Requires promulgation of a contingency plan for allocating energy-related supplies and equipment, which must be submitted to Congress before it can take effect under the same staged system applicable to conservation plans.

This should be authorized, as with conservation plans, rather than directed to be done within 30 days. This will permit greater responsiveness to rapidly changing conditions.

The submission to Congress ought to be modified as suggested with respect to Section 105, above.

4. *Section 110*—Provides a mechanism designed to discourage windfall profits and price gouging. The Renegotiation Board is established as the agency which will receive petitions and complaints from "any interested person" who believes that in any transaction involving petroleum products the seller has obtained a windfall profit (as defined to include excesses beyond "reasonable profit," which the Board will determine considering several listed factors). Further judicial review is available. This procedure will become effective one year after the bill's enactment, but will then retroactively cover all transactions since enactment. During the intervening year the President is directed to exercise his price control authorities under existing law to avoid windfall profits.

The administrative and judicial workload which would be produced by the *ad hoc* type procedure strongly argues against its adoption. There would be major judgemental and procedural problems in determining price-cost relationships for individual transactions, producing both inequities and multiple appeals. The intervening year would additionally produce great uncertainty pending the effective date of the Renegotiation Board procedure and its retroactivity.

Immediate and effective action to preclude excess profits can be taken through an appropriate taxing scheme, which will be equitable and yet allow incentives for exploration and development. The Administration's windfall profits tax proposal will shortly be before Congress, and we urge deletion of this provision pending enactment of such a tax.

5. *Section 112*—Requires factors of equity and fairness to be considered in taking action to allocate or restrict energy use.

Largely duplicates other similar requirements stated in Section 4 of the Emergency Petroleum Allocation Act. To the extent it goes further in speaking against arbitrary action and discrimination, could give rise to litigation since allocation can be by definition somewhat arbitrary and discriminating.

Proviso in 112(a) would require U.S. to allocate only 3 days' supply of energy to British firms in U.S. so long as England operates on a 3-day work week. This proviso and entire section should be deleted as unnecessary.

6. *Section 114*—Deals with the potential antitrust difficulties which may arise through voluntary agreements and plans of action among members of the petroleum industry in order to assist the Government in resolving the energy emergency. Involves the Attorney General and the Federal Trade Commission in administering and monitoring such agreements or actions.

This provision is unduly restrictive and burdensome, to the extent that it would discourage potentially helpful voluntary agreements and plans of action.

Section 314 of S. 2589 as passed by the Senate takes a more reasonable approach which is favored by the Justice Department over the present provision. It would provide more effective results, and therefore should replace the present conference language. In the alternative, existing law may be relied upon.

7. *Section 115*—Provides authority to impose restrictions on exports of fuels and related products.

In effect this duplicates existing authority now being exercised under the Export Administration Act and the Mandatory Petroleum Allocation Act. To avoid confusion this section should be deleted.

8. *Section 116*—Provides for consideration of and assistance to those unemployed as a result of the administration of this legislation.

Unemployment should be avoided and eliminated where possible as an evil in itself, not through an attempt to determining its cause. Determining who fell within the scope of such a program would be impossible. It would be far preferable to enact the broad unemployment insurance program proposed last year by the President, which would assist all unemployed.

9. *Section 117*—Provides for involvement by the Secretary of Transportation in a national carpool effort through grants and other assistance administered through an Office of Carpool Promotion in the Transportation Department.

This provision is unnecessary because of the Emergency Highway Conservation Act enacted just prior to adjournment, which provides sufficient authority to carry out the objectives of this provision.

10. *Section 118*—Provides complex procedures for administrative and judicial review of rules and orders under this legislation.

Close study during the recess has raised a number of ambiguities and inconsistencies which seriously affect the ability of any organization to operate under this section. It is also difficult to determine to what extent this section applies to other sections of the bill. Because of the potential confusion which this section would create in its administration, deleting it and permitting the Administrative Procedures Act to apply in the ordinary course would be the better action.

11. *Section 124*—Requires the promulgation of a regulation requiring persons doing business in U.S. engaged in exploring, extracting, and refining for petroleum, natural gas, or coal to provide detailed reports every 60 days on energy supplies. Retail operations are exempted from reporting and further exemptions may be granted persons where they now provide similar data to Federal agencies.

This requirement will place a huge administrative burden on persons engaged in such businesses as well as the Government, even though such data will not be needed bimonthly on such a comperhensive basis. On far more *selective* basis, the additional data not now collected by the Government can be gathered to develop the necessary information on petroleum, natural gas, and coal supplies in the energy development process.

We feel strongly that additional data is required from industry, and the Federal Energy Office has already instituted a plan to collect all appropriate data. To insure prompt collection, there is a need to carefully define the types of information needed and how it should be made available consistent with the preservation of full industry competition.

The Senate/House FEA bills have a general authority provision that provides the Administrator with authority to require reports from persons in the energy business. In addition, the Administration plans to submit draft legislation to the Congress for authority to gather the necesary data on a selective basis.

12. *Section 203*—Provides with respect to automobile emissions that (a) interim standards for emission of carbon monoxide and hydrocarbons applicable to 1975 model year light duty vehicles and engines shall be extended to apply also to the 1976 model year; (b) the Administrator of EPA may extend these standards for one additional year under certain circumstances; and (c) that standards for oxides of nitrogen applicable to 1975 model year (3.1 grams per mile) shall also apply to the 1976 model year, and that the standard for the 1977 model year shall be 2.0 grams per mile.

The interim 1975 standards for hydrocarbons, carbon monoxide and oxides of nitrogen should be extended *now* for 2 years—to cover model years 1976 and 1977—so that there will be a steady target for a known and fixed period of time enabling manufacturers to concentrate on maximizing gasoline mileage. Extending the standards for 2 years would have no significant adverse impact on our progress in improving air quality.

13. *Section 206*—Requires (a) a study and report to Congress within 6 months of potential methods of energy conservation; (b) an "Emergency Mass Transportation Assistance Plan" to expand and improve mass transit to be submitted to Congress in 90 days; and (c) a study of a proposed high-speed ground transportation system between Tijuana, Mexico and Vancouver, Canada to be reported to Congress and the President by December 31, 1974.

The "Emergency Mass Transportation Assistance Plan" contemplates a Federal program of operating subsidies for mass transit, which we strongly oppose. The appropriate Federal concern should relate, in our view, to extending service for the purpose of shifting riders from autos to transit, which studies show subsidies tied to fare reductions would not tend to accomplish.

The Transportation Department has al-

ready studied the Tijuana to Vancouver system issue, and has developed information which indicates serious technical and economic problems. Rather than devote additional resources to further study, it would seem more useful for the Department to discuss their findings with the appropriate Congressional committees.

The leader of the Senate conferees today is attempting to inject a totally new provision into the conference report to roll back prices. He failed to give any of the conferees detailed advance notice of his plan. It was requested. He denied the request.

Under the ruse of conducting hearings on a price rollback bill, S. 2885, he asked for testimony, but he told the witnesses he had no intention of acting on any manner of legislation resembling it. Instead, he had a secret substitute which he was not going to bother acting upon according to the Senate rules. He was going to impose it upon the conference report. Only today did he release his substitute.

The day before yesterday the chairman received testimony from five economists, all experts on energy.

John Lichtblau, executive director of the Petroleum Industry Research Foundation, said he favors a price rollback but not prior to further study based upon testing the impact of the proposed rollback scheme on an economic model.

He said:

To do otherwise could be disastrous.

Dr. C. Jackson Grayson, Jr., of the School of Business Administration at Southern Methodist University in Dallas; Dr. Thomas Stauffer, research associate, Harvard University Center for Middle Eastern Studies; Mr. Warren Davis, Gulf Oil Corp.'s chief economist; and Mr. John Emerson, energy economist of Chase Manhattan Bank, all opposed a rollback for various reasons ranging from its adverse impact on domestic energy supply to international economic and political dangers.

I call the attention of my colleagues to the testimony of these witnesses who were unanimous in opposing incorporation of a price rollback scheme into the Energy Emergency Act. I ask unanimous consent that the written testimony which is available be printed in the RECORD, because it will not be available to Members in committee print form by the time they are called upon for the third time to vote on the conference report on S. 2589.

I urge my colleagues on both sides of the aisle to carefully study this testimony.

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

DALLAS, TEX.,
February 2, 1974.

Senator PAUL J. FANNIN,
Capitol Hill, D.C.:

Appreciate the invitation to testify before your committee on the subject of price ceilings for roll back. Regret that on such short notice (less than 24 hours) I will be unable to attend. I believe this issue is important enough that some statement should be made available to the committee. Accordingly I am sending you the following brief comments in this telegram. I understand that it is the chairman's intent that price ceilings for price roll back provisions be contained in the energy emergency bill the conference on which is to be convened this Monday.

In my opinion the energy pricing issue is far too complex to be handled in pending legislation without considerable additional investigation. The consequences of moving too quickly and without sufficient background information on such a measure could place this Nation in greater international jeopardy by inhibiting rapid movement toward domestic energy self sufficiency. Specifically before legislation is developed regarding this matter the following issue should be addressed: (1) what impact would such a provision have on the domestic production of energy to include crude production of old oil, new oil and stripper crude synthetic energy materials such as oil shale, gasification and liquification of coal, nuclear energy, geothermal energy, solar energy, and other new energy forms? (2) What precedent would such ceilings have on establishing additional ceilings for other internationally traded commodities whose price has also risen? Such commodities might include ferrous scrap, nonferrous metals, raw cotton, etc. (3) What impact would such measure have if additional legislation were enacted involving any of the following: A. repeal of depletion allowance, domestic and international. B. Repeal of intangible drilling expense allowances. C. Imposition of excess profit tax? (4) What are the hazards of imposing price ceilings on crude oil or petroleum products when cost of producing and refining oil have dramatically increased? (5) What positive impact has higher petroleum prices had in reducing demand and thereby conserving energy? (6) What are the dangers to be contemplated by any proposed arrangement for petroleum price ceilings, no matter how carefully drafted, on the operation of the market place?

In light of these issues and other issues which I have not begun to be able to contemplate I would advise against taking unnecessarily quick action regarding price roll backs or related matters in the pending energy emergency bill.

Dr. C. JACKSON GRAYSON, Jr.,
School of Business Administration, Southern Methodist University, Dallas, Tex.

TESTIMONY OF DR. THOMAS STAUFFER, RESEARCH ASSOCIATE, CENTER FOR MIDDLE EASTERN STUDIES, HARVARD UNIVERSITY

I would oppose a price roll back at the present time, in the absence of much more careful consideration and better information, because a price roll back could have a number of important and serious repercussions on our national economy, and possibly on national security.

(1) It would perpetuate our dependence upon foreign sources of unreliable oil imports.

(2) It could mortgage our future supplies of energy in order to offer a very short-run dividend in the form of slightly lower prices. This might be good politics, but it is bad economics.

(3) The hidden costs of energy shortages can be a much greater burden than the visible costs of higher oil prices. It is better to pay more but to have energy, than to pay less and thus to get less energy—and cause still more jobs to be lost.

(4) There is a disastrous precedent for unwise price regulation of energy resources. We must remember what FPC price regulation did to the natural gas industry. Those price controls were implemented in the name of consumerism. And those policies of Commissioners Swidler and White promoted the waste of energy and created today's shortages.

(5) Finally, last October we embarked on a policy in the Middle East which created today's energy crunch and cost American jobs. In the face of today's shortages, it seems unwise if not folly itself, to make another political decision which would reduce the incentives for the production of domestic energy. Having cut ourselves off from oil from Middle Eastern producing countries, if not careful we might find that price rollbacks and revisions of the oil tax laws might dry up our otherwise promising domestic sources.

Price rollbacks and oil tax revisions as called for by Chairman Jackson are definitely not the direct route to achieving energy self-sufficiency. On the contrary such actions can impede the attainment of self-sufficiency.

Such measures do not contribute to any solution of our country's energy problem. Indeed, the proposed price rollbacks and possible revisions in the tax laws seem better designed to perpetuate and worsen the energy crisis. Specifically, these measures would reduce our production of domestic oil and increase the already dangerous import gap. Senator Jackson's proposals could ultimately render us still more dependent upon foreign oil imported from the Middle East. Far from fostering energy self sufficiency for the U.S., these measures would render us still more vulnerable to more serious oil embargoes in the future.

The United States has already lost some 20% of its oil supply as a consequence of our political policy in the Middle East, and now millions of Americans must bear increasing inconvenience, while hundreds of thousands have already sacrified their jobs. Any act which could impair the remaining domestic supply is at best perverse, if not an act of absolute folly. At this point we need all the oil which we can produce. Higher prices are certainly unpleasant—no one wants to pay more—but higher prices alone are the most direct route towards emancipating ourselves from the political dangers of greater oil imports. Given our commitment to Israel, the best alternative to imported oil is a strengthened domestic oil industry, not one weakened by price cuts.

Such measures appear to be expressly designed to perpetuate and exacerbate the present energy crises. If price rollbacks are implemented, the consumer in the short run obviously pays less for gasoline or heating oil, but over the longer period the consumer would also get less. We must ask which poses the greater burden for the consumer—some market-related price for a commodity or the ramified costs of shortages such as we begin to see now? Which is more serious—paying market-related prices for an indispensable resource or the still greater costs resulting from not having enough?

Given that we are confronted with acute shortages in key areas, it seems imprudent, if not irresponsible, to reduce the incentives for energy production until the ramifications and implications of these steps are fully understood. Otherwise, we shall resemble the farmer who decides to get more in the short-run by eating all of his seed corn. His belly was certainly more full for a few months, but the price for such a short-lived bounty can be long years of unpleasant deprivation.

A central issue here is the relationship between the prices of oil and gas and the additional production which can be obtained from increased prices. It is clear that our potential reserves of oil and gas are very large. In particular, these are large enough that exploitation of such conventional reserves can greatly facilitate our switch to coal or nuclear sources over the longer-run.

It is exceedingly difficult to estimate the supply elasticity for oil or gas, i.e. how much more one can discover and produce at higher prices, or, conversely, how much less one might have if real prices were to decline. Conventional econometric calculations are so unreliable that I for one do not believe them even when I might agree with the result.

However, a simple-minded set of engineering-type calculations leads to the suggestion that there should be about a fifty-percent increase in potential production for every doubling of the price. Thus, very approximately, a twenty-five per cent reduction in price equates to a loss of about 12.5% of potential production, or about 1.5 million barrels per day. This is roughly equivalent to one half of the present level of shortfall induced by the oil embargo. Therefore, we are talking about effects which are serious.

This very rough computation allowed only for the ability to drill deeper wells in response to higher wellhead prices. Everything else remaining equal, an average price increase of 50% would permit the depth of the average well to increase from around 5600 feet to circa perhaps 6800. In a special sense this means that 20 per cent more stands may be tapped.

More generally, however, two additional effects contribute to a still greater increase in production as a consequence of a price increase. First, it is economically justified to explore for smaller or less certain deposits in older, less more shallow zones. Second, secondary or tertiary recovery projects may be implemented more thoroughly, increasing output both from new finds and also from older reservoirs. Finally, one can operate in deeper water offshore, increasing the scope for new discoveries, or one can develop lower-quality, higher-cost fields when found.

All of these factors contribute significantly to a higher yield of new energy supplies when price incentives are raised. But, conversely, such opportunities can be lost if prices are cut or tax incentives reduced. Especially at this time, when we have lost some 20% of our oil supply as a consequence of our Middle Eastern policy, we should be cautious indeed before we jeopardize any fraction of our remaining domestic supplies of energy. These price rollbacks and tax modifications deserve the most careful scrutiny, lest we sacrifice future crops while savoring enjoying the seed corn.

Complex issues with complex ramifications cannot be resolved overnight nor even in 48 hours. The issues raised in this hearing deserve review, but once again, in conclusion, I urge the utmost caution and discretion.

TESTIMONY OF WARREN B. DAVIS, BEFORE THE SENATE INTERNATIONAL COMMITTEE, CONCERNING S. 2885, FEBRUARY 2, 1974

My name is Warren B. Davis. I am Director of Energy Economics for the Gulf Oil Corporation and reside in Pittsburgh, Pa. I was Chairman of the Coordinating Subcommittee of the National Petroleum Council's U.S. Energy Outlook Study.

I would like to discuss some of the aspects of S. 2885.

I believe the goal of 85–90 percent self-sufficiency in crude oil by 1980 will be an extremely difficult one to attain. It will require an all-out effort to explore for and develop domestic oil supplies. In the context of the National Petroleum Council's Study on the U.S. Energy Outlook, only Cases I and II approach this goal. These cases both assume a finding rate about 50 percent above the past trend. Thus, it would be dangerous to count on them in laying plans. A more realistic possibility might be the Case I drilling rate which envisions an increase of six percent per year in drilling, combined with a discovery rate in line with past trends. This produces results similar to Case II which results in 80 percent of the U.S. energy requirements being supplied by domestic fuels in 1980.

Then if we are to be 85–90 percent self-sufficient by 1980, we will need to develop synthetic fuels at an even greater rate than the projections in any of the cases in the National Petroleum Council study. Thus, it will require an all-out effort, not only on domestic crude oil, but also on synthetic fuels.

I cannot forecast for you exactly what oil price is needed to encourage an all-out effort, and I doubt if anyone else can either. There is a great deal more involved than just the price of oil in encouraging all-out efforts in the development of fuels in this country. Rather than list other factors here, I would simply refer you to the National Petroleum Council study.

I think it worthwhile to try to compare the present situation with one that occurred in the past. After World War II, war-time price controls were removed and the average price of crude oil increased from $1.22 per barrel in 1945 to $2.60 per barrel in 1948. Between 1946 and 1957, drilling increased from 28,000 wells to over 50,000 wells, and as a result U.S. crude oil reserves increased by about 50 percent. I cannot say for certain that the same would happen today, but it looks as if we face a similar situation. It is interesting that during this 1946–1957 period, the oil industry did not have extremely large profits for more than a very short period of time, because the high prices induced people to spend more money looking for and developing oil.

If the U.S. is to achieve a high degree of self-sufficiency, then we need prices that will induce very large investments in synthetic fuels. Referring again to the National Petroleum Council study, the committee estimated synthetic oil from shale and coal to have costs, including a return on investment, in the range of $5.00–$8.00 per barrel. However, these estimates did not include land costs and there is great uncertainty about the magnitude of the environmental costs. Both of these factors tend to make the upper end of this range look more likely at the present time than the lower end. The most significant fact, however, is the basic uncertainty as to what oil price will encourage a forced-draft development of our synthetic fuel resources in this country. The results of the recent shale oil lease sale make it appear that the present new oil prices are sufficient to encourage the development of synthetics. It is questionable whether a substantially lower price would, and it is reasonably certain that putting an arbitrary ceiling price on the new oil price will be a discouraging factor.

A factor that is most discouraging to the idea of arbitrarily lowering the new oil price is the inability of anyone to accurately determine what will be the effect of an arbitrary reduction in price. At the present time, the new oil price in the U.S. is free of control and presumably is either seeking or has already found its natural level. I believe the course of action most likely to maximize the development of our domestic fuel resources is to continue to leave this price free of control. At least two factors are working to prevent free prices from resulting in "windfall profits" to producers: (1) When oil producers get more revenue, they traditionally use it to explore more territory and drill more wells. This normally has gone on until their profitability level is back somewhere near the level before the price increase, and instead of resulting in a lot more profit, it results in more production. (2) The only really good long-term solution to high oil prices is a substantial increase in supply. If the supply is great enough, the prices will go down, and the sooner we get to that point the better.

The dual price structure maintained by the Cost of Living Council has been livable, but it creates economic anomalies to have a single lease producing identical oil with two different prices. I endorse the statement made by the Cost of Living Council in the introductory material to its Phase IV Regulations, published August 17, 1973 in which they say, "The Council will continually monitor the ceiling prices of domestic crude petroleum and intends to make periodic upward adjustments in the ceiling price toward the higher world prices for crude petroleum."

In closing I would like to comment on Senator Jackson's remarks in the Congressional Record of January 24, 1974. On Page 728, the Senator interpreted the National Petroleum Council report as saying that the U.S. would achieve the greatest feasible level of domestic self-sufficiency with a crude oil price of $4.35 per barrel in 1975. I would like to call your attention to a statement on Page 39 of the Summary Report of the National Petroleum Council's study which says, "These required 'prices' and production rates provide useful information about supply and price. However, they should not be construed as measures of supply-price elasticity." I would also like to point out that National Petroleum Council study was directed at the long-range outlook, particularly toward the period 1980-1985 and if any such interpretations are to be made, they should be directed to that period. I believe Mr. Vincent M. Brown, Executive Director of the National Petroleum Council, has commented on this matter and I endorse his comments.

If I seem to be uncertain about these matters, it is simply because there are many uncertainties. I don't know how many of them could be resolved with thorough study, but I strongly recommend that any action such as S. 2885 be delayed until some thorough studies can be made.

THE ROLE OF PRICES IN THE U.S. ENERGY CRISIS

STATEMENT OF JOHN D. EMERSON, ENERGY ECONOMIST, THE CHASE MANHATTAN BANK, N.A., NEW YORK, N.Y.

My name is John Emerson. I am an energy economist of the Chase Manhattan Bank in New York. I have been associated with the Bank as an energy analysist for almost 17 years. During this time I have co-authored many of the Bank publications and have counseled the Bank's management and customers on matters relating to energy. I appear here today as an individual, not to testify for or against any specific legislation, but to contribute whatever I can to a better understanding of some of the dimensions of the energy situation currently facing the nation.

I would like to say at the outset that prices and pricing is one of the most difficult aspects of any industry to pin down. This is not surprising since price is only one of the factors that are agreed to in buy and sell contracts. The same commodity may change hands at differing prices, reflecting the volume, the length of the contract, and the urgency of the buyer's or seller's need, among other things.

For example, Iranian light 34° crude oil was sold at auction in December by National Iranian Oil Company at $17.04 a barrel. This same oil is currently being traded by the industry at about $8.45 a barrel. Arabian light 34° oil, a somewhat similar crude oil, is being sold back to the oil companies by the Saudi Arabian Government at about $10.85 a barrel.

Who is to say which of these prices represents the true market value of this grade of crude oil? Is it not more correct to say that at this point in time this grade of oil has differing market values to different customers? Left to itself, without outside interference, the market will sort this situation out.

In attempting to assess the market for crude oil, it is important to consider how much oil is being sold at what price. We cannot say that the price of crude oil in the United States is $10 a barrel if only a quarter of all the oil produced is being sold at that price. Equally, we cannot say that the price of Iranian oil is $17 a barrel when the great bulk of Iranian oil is moving at half that price.

In a free market, that is a market which is not being manipulated by governments, price is part of a dynamic relationship involving supply and demand. For twenty years we lived in a world in which price was subject to constant downward pressure because new supply was created faster than new demand could absorb it. This situation ended at the time of the Teheran agreement of February, 1971. In fact, the revenue gains won by producing governments and the consequent higher prices for oil came about because the supply/demand balance had turned in favor of the producer. After all, OPEC was founded in 1960. For more than 10 years, they achieved very little because the underlying economics of the sixties were not conducive to change.

Since the Teheran conference, the demand for oil relative to the supply has permitted further price increases for crude oil. When crude oil production in the United States peaked in 1970, any increases in demand had to be met from imports. Thus, the United States market was no longer insulated from the world market. As foreign crude prices rose higher and higher, they moved beyond domestic prices and began to drag the latter up into the vortex of world prices.

Until October 16, 1973, world crude oil price increases were the result of the normal economic interplay of supply and demand. At that time they became involved in Middle East politics. For political reasons Arab governments reduced the supply of crude oil. In economic terms, supply became managed by the only effective oil monopoly the world has seen in sixty years. The price of marginal supplies shot up. The January 1 increase in Posted Prices mandated by producing governments did not, however, reach the marginal price level. It was, nevertheless, an increase in costs of all crude oil as far as the rest of the world was concerned.

It is worth noting that between October 1, 1973 and January 1, 1974, the cost of the 40 per cent of our oil supplies that we import rose by 15 cents a gallon. On February 1 our Canadian friends will be increasing the export tax on oil they ship to us to a level of 15 cents a gallon, also. Driven by higher costs abroad, it is obvious that oil product prices are rising.

In the United States, costs including taxes are not rising as fast as they are overseas. This is leading to the idea that windfall profits are being generated. Before we pluck some arbitrary price out of the air, however, and chop off all profits arising from sales above this arbitrary number, we should consider what our objectives are as a nation.

Members of this distinguished committee have gone on record in support of greater energy self-sufficiency for the United States. And I cannot think of a more important objective for this country. What is involved in achieving this objective? Reduce to the bare essentials, improving our energy self-sufficency requires "opportunity and incentive". Private investors must be given the opportunity to increase our domestic energy supplies. This means they must have the opportunity to lease government owned oil, gas, coal and shale lands. They must have the opportunity to build pipelines, deep water ports, and refineries. Incentive without opportunity will get us nowhere. Neither, on the other hand, will opportunity without incentive. Investors have many opportunities to invest. They will select those that offer the prospect of earning the best return. I will give you a very simple example. The wellhead price of Canadian crude is fixed by the Canadian government at $4.10 a barrel. The going rate for new oil in the United States is more than twice that amount. If you had a million dollars to invest in oil exploration and production, would you invest it in the United States or Canada? The same principles apply to investment choices between different industries and between investments in different countries.

If our national objective is to eliminate wasteful energy use and increase our domestic energy supply as rapidly as possible, then it follows as surely as night follows day that the best way to do this is to maintain a high price for energy which will discourage wasteful use and which at the same time will encourage as many investors as possible, from anywhere in the world, to put their money into U.S. energy supply projects. The Soviet Union understands this principle very well, and at this time is trying to interest the United States and Japan in investing in projects to develop Soviet energy resources.

There is an obvious link, even though a changing one, between prices and profitability. If we arbitrarily lower energy prices in the United States, we will lower profitability; we will lower the incentive to invest. Two things will happen. At lower prices the demand for energy will be higher, and the supply will be lower.

Lowering oil prices now will win some quick popularity for the present administration, but it will create additional problems for the next administration. Our dependence on foreign oil will continue to rise. And as a result, our balance of payments problems will be harder to solve. Investment funds which might be attracted to this country will go elsewhere. Since the demand for energy will remain relatively high, rationing will be inevitable.

Many of our present energy problems have their origin in our attempts to over-protect the consumer. It began twenty years ago when we controlled the wellhead price of natural gas. Today's young people are paying the price of that decision. Gas is still a bargain if you can get it, but there is not enough of it to go around, and many young people who would like a gas heated home cannot obtain one.

Let us not make the same mistake again. If we try to overprotect today's consumers, what will happen to their children when they grow up? If we lower prices today, we will postpone the day when shale oil, when oil and gas from coal, when oil and gas from the Arctic and the continental shelves, will help our children fill their energy needs.

Thank you, gentlemen, for this opportunity to share these thoughts with this distinguished committee.

AMERICAN CIVIL LIBERTIES UNION LETTER TO SENATE-HOUSE CONFERENCE ON S. 2589

Mr. BUCKLEY. Mr. President, the House and Senate conferees are today resuming their meetings on the Energy Emergency Act, S. 2589, which the Senate decisively recommitted to conference last week. At every stage of the Senate's deliberations on this proposed legislation I expressed my serious objections to the excessive delegation of authority to the Executive, the curtailment of procedural safeguards, and the general abdication of responsibility that has characterized the Congress reaction to the energy crisis. The Energy Emergency Act, in its present form, is a classic example of the cure being worse than the disease.

I recently learned that similar criticisms have been given eloquent voice by the national director of the American Civil Liberties Union, Mr. Charles Morgan, Jr., in a letter dated January 16, 1974, to the cochairmen and members of the conference on S. 2589. I hope that the conferees will have read Mr. Morgan's letter with the care it deserves. While I may not personally endorse each and every suggestion in the precise form proposed, in general I find the thrust of the critique and recommendations to be consistent with what is required to insure procedural safeguards against the sweeping authority which this bill bestows upon the President to deal with the energy emergency.

Mr. President, I ask unanimous consent to have the letter referred to printed in the RECORD. I urge all Members of this body to take the few minutes required to read it so that they may have a better understanding of the emergency energy legislation's potential threat to individual liberties.

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

AMERICAN CIVIL LIBERTIES UNION,
Washington, D.C., January 16, 1974.

Hon. HENRY M. JACKSON,
Senate Committee on Interior and Insular Affairs, New Senate Office Building, Washington, D.C.

Hon. HARLEY O. STAGGERS,
House Committee on Interstate and Foreign Commerce, Rayburn House Office Building, Washington, D.C.

Cochairmen Senate-House conference committee on S. 2589.

GENTLEMEN: The American Civil Liberties Union is a nationwide, nonpartisan organization of more than 256,000 members devoted to the protection of the Bill of Rights. Over the years the ACLU has consistently sought to protect and expand the political freedom of American citizens and to implement the constitutional guarantees of freedom of speech and press, freedom of travel, free exercise of religion, due process and equal protection of the laws.

Today these constitutional rights are endangered by an unexpected problem—the national energy crisis. Perhaps because Americans have long been accustomed to almost unlimited supplies of fuel, the elected representatives of the people seem to have forgotten that the effort to distribute now limited energy resources can have a dramatic impact on individual freedoms.

The energy bills passed by the House and Senate and the compromise Conference report rejected by Congress in the closing days of 1973 do not safeguard the people's liberties. They do not even list the protection of civil liberties among the purposes to be fulfilled by the legislation.

On the contrary, these bills grant the President sweeping authority to regulate the daily lives of American citizens without consideration of the impact on constitutional rights. They set no standards to guide the virtually unlimited discretion granted to the President.

Provisions for Congressional veto power, included in all three versions, are no substitute for positive exercise by Congress of its responsibility to legislate to meet the current crisis while protecting the rights and liberties of all Americans.

The Conference version of the Energy Emergency Act is awaiting reconsideration by Congress on its return from vacation January 21. Unless this bill is substantially modified to ensure the protection of civil liberties, a President who has already displayed his insensitivity to individual rights will have the power to:

1. Create a federal "energy police" with the power to snoop into all kinds of private activities, from thermostat setting to driving habits, including destinations;

2. Establish a federal bureaucracy with the authority to determine priorities in the allocation of scarce fuels and to decide whether an individual's use of energy resources is essential or nonessential;

3. Limit or ban Sunday travel, thereby interfering with the free exercise of religion

and the individual right to choose whether to use limited gasoline for travel to church or work, or for recreational purposes;

4. Issue orders and regulations, directly or indirectly through an administrative agency, which become effective immediately without any requirement for public hearings until afterwards. Enforcement of such orders against uninformed, or inadequately informed, individuals or businesses violates the very essence of legal due process by failing to give notice of what the law commands;

5. Restrict the energy use of communications media, especially television and radio, thereby endangering the freedom and responsibility of the press and interrupting the free flow of ideas guaranteed by the First Amendment; and

6. Delegate much of this new authority to the states, which in turn could create an energy police force and an energy bureaucracy to regulate even more closely the travel, work, play, and political activity of their citizens.

These are not idle threats. Although a few Senators and Congressmen stood firm against the tide and warned their colleagues against overriding the rights of religious, racial, and political minorities in the rush to formulate a national energy policy and program, most were swept away.

In an exercise of political opportunism, the House amended the Senate energy bill to prohibit allocation of scarce fuels for busing children beyond their neighborhood schools—regardless of whether the affected school systems are under court order for busing to fulfill the educational rights of minority-group students. This amendment—removed from the Conference report—was not only unconstitutional but an abdication of Congressional responsibility to protect the civil rights of all citizens equally in a time of national emergency.

The ACLU urges Congress to revise its energy measures to safeguard the civil liberties of all Americans. In particular, the ACLU requests Congress to reconsider its wholesale delivery of our constitutional rights into the hands of the President, and to fulfill its responsibility to represent the interests of all the people of the United States.

The ACLU recommends revision of the energy bills (S. 2589) to:

1. Establish as a purpose of the legislation the minimization of any adverse impact on civil rights and individual liberties of any energy conservation plan or measures thereunder (Sec. 102—Senate bill; Sec. 101—House bill; Sec. 101—Conference report).

2. Limit, and set precise standards for, Presidential action by setting forth a complete energy conservation plan establishing national policy and priorities for fuel use, and prescribing specific measures for enforcement.

3. If gas rationing is among those specific measures, establish priorities among users, instead of leaving it to the President and a federal energy agency to decide. Any such list of priorities should begin with a careful definition of vital services—entirely undefined in both the Senate bill (Sec. 203(a)) and the Conference report (Sec. 101(b)(4))—and the order in which they are to be maintained. Although the Conference report in Sec. 104 incorporates the "objectives" listed in the Emergency Petroleum Allocation Act of 1973, P.L. 93-159, Sec. 4(b)(1), those objectives are themselves too vaguely defined to guide decision-making about which services are most necessary to protect public health, safety, and welfare. The House bill (Sec. 105(b)) is an improvement, since it at least identifies those services the House considers essential, including new housing construction, education, health care, hospitals, public safety, energy production, agricultural operations, mail, and transportation. But even this section fails to set priorities among these services or to provide criteria for determining such priorities.

4. Clarify and limit provisions for criminal and civil penalties for violation of the bills or orders issued thereunder. The ACLU opposes any blanket provision creating a huge new category of regulatory civil offenses not requiring the government to prove willfulness. Both bills and the Conference report contain such a provision. Due process must be strictly followed in imposing sanctions against certain kinds of behavior in an area where personal choice has long been the rule (Sec. 307—Senate bill; Sec. 111—House bill; Secs. 119 and 120—Conference report).

5. Provide adequate procedures for challenging administrative action. Judicial review of general administrative rules or orders should not be limited to within 30 days after their promulgation, as it is in the Senate bill (Sec. 312) and the Conference report (Sec. 118(b)(1)), since many persons affected will not learn of the rules in time to challenge them effectively. The House bill (Sec. 109(b)) is preferable. It accords Judicial review to all aggrieved persons under the normal procedures without restrictive time limits.

6. Require public hearings prior to the issuing of orders and rules, with exceptions only for extraordinary cases of public emergency. Both the Senate (Sec. 311) and House (Sec. 109(a)) versions and the Conference report (Sec. 118(a)) permit public hearings on rules which substantially affect large numbers of individuals or businesses to be held after the implementation of such rules—within 60 days afterward in the Senate version and 45 days afterward in the House measure and Conference report. Public input is vital to fairness in governmental regulation of heretofore unregulated activity.

7. Protect the rights of the poor (and other persons without substantial economic resources) so that they are not made to bear a disproportionate share of the energy shortage. Congress should investigate to determine and select energy conservation measures which most equitably distribute scarce resources among all citizens.

8. Protect the educational rights of all children by placing a high priority on the fuel needs of public education. Public schools should not be singled out, as they are in the Senate bill (Sec. 203(b)(2)), as early candidates for limitations on energy use. The House anti-busing amendment (Sec. 103(a) (proposed new Subsection (k) of Sec. 4 of the Emergency Petroleum Allocation Act of 1973)), which was removed from the compromise bill by Senate and House conferees, should not be revived under any circumstances.

9. Protect the free exercise of religion and maximize freedom of individual choice in the use of fuel by prohibiting restrictions on Sunday travel or business operation. If time restrictions on automobile travel are necessary, individuals should be permitted to select the day or days on which they will do without their cars. Similarly, businesses should be permitted to select which day or days they will close in order to conserve fuel.

Sincerely,

CHARLES MORGAN, Jr.,
Director.

HARRY S. TRUMAN AND THE NATION'S HEALTH

Mr. HUMPHREY. Mr. President, Harry Truman was one of our greatest Presidents, and his contributions to the Nation in many fields are gratefully acknowledged by one and all. Some of his most important proposals concerned the Nation's health. Mr. Truman initiated a sustained effort to insure quality health services for all Americans. Many of our recent accomplishments in this field, such as medicare, might have been impossible had not this farsighted President laid the groundwork.

Yet today, at this critical time in our country's development, the area of responsible health care for all of our people remains an uncompleted agenda. I believed in the 1940's that this was a crucial issue, and I supported wholeheartedly the efforts of President Truman to secure congressional approval of the historic legislation he had proposed. Now, in the 1970's, it is all the more urgent that we proceed toward the goals that Harry Truman dreamed about and tried to make possible.

I have obtained a summary concerning President Truman's campaign in the health field for which I wish to thank Mr. Edward J. Pfeiffer, a research grantee of the Truman Library.

Mr. President, I ask unanimous consent that this account be printed in the RECORD.

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

PRESIDENT TRUMAN AND THE NATION'S HEALTH: A RECORD OF IMPACT, VISION

(By Edward J. Pfeiffer)

Of all of the sound, creative and farsighted proposals, known as President Truman's Fair Deal, none perhaps was closer to basic human needs than his persistent pursuits for equitable health legislation to provide better health services and adequate, essential medical care for all Americans. It was an historic effort, unmatched by previous Presidents, with sufficient depth towards the understanding and solution of the problems surrounding the area of medical manpower, hospital facilities and a fair national health insurance program.

One rightfully wonders whether Medicare and the Health Security Act of 1971 would have come to fruition without the groundwork, innovation and perceptive perspectives of the late President Harry S. Truman.

Homeward from the Potsdam Conference in August 1945 on the ship Augusta Mr. Truman gave serious indication of his interest in a comprehensive domestic program by instructing his Special Counsel Judge Samuel I. Rosenman, to draft his post-war twenty-one point Fair Deal message, detailing a program of liberalism and progressivism which became the theme of the Truman Administration. In it, as delivered to the Congress on September 6, 1945, Mr. Truman made specific recommendations for the support of medical research and public health. It also forecast his intentions to submit a health message.

Urged and moved in the White House on September 8, 1945 by Mrs. Mary Lasker to the effect that he would be the first President in American history to do so, a special health message was carefully prepared and submitted by Mr. Truman on November 19, 1945 to the Congress with the following provisions in a pioneer effort:

(a) Prepayment of medical costs through compulsory insurance premiums and the general revenues.

(b) Protection against loss of wages from sickness and disability.

(c) Expansion of public health, maternal and child health services.

(d) Federal aid to medical schools and for research purposes.

(e) Stepped-up construction of hospitals, clinics and medical institutions under local administration.

It was a remarkable basic proposal with proper scope to health legislation, including the observance of physicians' rights, within responsible national and individual guidelines.

President Truman took the following further steps to achieve a meaningful health program:

On May 19, 1947 he sent a special message to the Congress on Health and Disability Insurance so as to assure, as he pointed out, ". . . the ultimate strength from the vigor of our people." The President's earnest call was for a fair chance for a healthy life in the order of ". . . a great and free nation to bring health care within the reach of all its people." This was a significant and far-reaching recommendation in the interest of public health with particular emphasis on the need for more doctors, hospitals and increased medical research for preventive medicine and for the cure of disease.

Mr. Truman suggested that a national health insurance program be made into a part of the Social Security Act. Said he, "A national health insurance program is a logical extension of the present social security system which is so firmly entrenched in our American Democracy. National health insurance should be a part of our total health program. Until it is part of our national fabric, we shall be wasting our most precious national resource . . ."

It is in this magnificent sense that President Truman advocated the well-justified need for a national health and disability insurance system.

After several unsuccessful efforts to achieve Congressional approval of proposed appropriations measures, President Truman renewed his struggle by sending another health message to the Congress in April 1949. His premise was that of his original appeal of November 1945. He called again to good sense in order to provide, (a) A nation-wide system of health insurance, (b) Congressional action to help medical schools to expand, (c) Government help to provide aid for the construction of medical facilities, and (d) Consolidation of existing grants with provisions of State matching funds to adjust financial resources.

And he went beyond.

Said the President in characteristic candor, "The real cost of medical services and the need of them cannot be measured merely by doctor's bills and medical bills. The real cost to society is in unnecessary human suffering and the yearly loss of hundreds of millions of working days." He directed Congressional attention to the shattering of family budgets, disruption of family life, the suffering of disabilities, the permanent impairments left by crippling disease and the death of tens of thousands of persons who might live. This is the price, Truman wisely warned, America pays for inadequate health care.

Frustrated by the lack of Congressional action on his health program, in December 1951 Mr. Truman created the President's Commission on the Health Needs of the Nation. It was his hope to produce a critical study of the nation's health requirements, immediate and long-range, and thus to provide useful data for comprehensive action.

But the creation of the Commission itself was an unhappy compromise by the President. Faced with a tepid response by the Congress and with the effective, well-financed lobbying effort of the American Medical Association, Mr. Truman was left with little choice except to "study" the situation with concerned interest.

The Truman health effort had some specific successes, however. It produced increased hospital construction, it established health institutes and, within serious budget restrictions, it did manage to pass a crippled children bill.

The President had ample reasons not to be discouraged as he must have thought at the time President Johnson signed the Medicare Bill into law with Mr. Truman at his side in the Truman Library. Because he had made a lasting impact of innovation in his sound health initiatives with an eye on the future with vision and ability to tackle perennial problems in the awesome area of national health care. He paved the way for effective health legislation in the interest of all Americans, for those over the age of 65 already realized and for the rest of us, in my view, in the conceivable future to materialize.

At a time when the Nixon Administration deliberately avoids considering the nation's health needs in a meaningful manner, it is particularly worthwhile to remind ourselves of the depth of President Truman's attempts. The health field is not a partisan matter. Concerns in health matters should not, in the making of public policy, be reduced to special interests when indeed the well-being and the quality of our society hang in the balance.

A vigorous effort is urgently needed to bring government, doctors, patients and above all, as I see it, private insurance companies together to reason out in good faith the roadblocks to ensure general health care for the sick, preventive medicine and the massive infusion of funds for medical research.

Surely, it is a large request. But we are committed in principles, as a nation, to respond to the misfortune of the just and yet we seem immobilized at a time when our inventive genius should be most active for many solutions of the problems of national health care.

I wish that the Congress had listened and acted favorably on President Truman's health proposals in 1945. We would be a healthier nation today as a result. After all, Truman was often ahead of his time.

NEW ARTIST OF THE OLD WEST

Mr. MATHIAS. Mr. President, one of the vital forces in American life has been the urge to go west. For 300 years, residents of the eastern seaboard have found excitement in the beauty of America as they have explored the interior of the continent. There was a theory that the frontier ended with the 19th century and in strictly geographical terms that may be true. The spirit of pioneer America, however, is still strong and is still felt by easterners who have been capivated by the different kind of life they find far from the tidewater and salt marshes of the Chesapeake Bay.

An article in the Baltimore Sun of December 16, 1973, and in the Omaha World Herald, January 6, 1974, describes one of our western artists and his work which is known to many, not only in Maryland, but also throughout the United States. Mel Gerhold, a native Marylander, now residing in Nebraska, lives the life he paints and, indeed, is recording history on canvas, which will serve perhaps to make even more valid to coming generations some of the unique traditions of our great country. I would like to commend to the attention of my colleagues the article by Ron Speer, writer and journalist and ask unanimous consent that it be printed in the RECORD.

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

BALTIMOREAN LIVES THE ROUGH COWBOY LIFE TO PAINT IT

(By Ron Speer)

With the rising sun sending golden gleams off nearby Crow Butte, Mel Gerhold leaves the log house where he lives and drives to Crawford, 7 miles to the west.

He parks his pickup on Main street, and swaggers on his cowboy boots into Audrew's Cafe, leaving his big, brown cowboy hat pulled low on his head while he has a cup of coffee or two with ranchers and shopkeepers and deputy sheriffs from this little town of 1,290 in northwest Nebraska.

Usually he and his friends, swapping barbed comments as cowboys do about each other's wealth and laziness and intelligence, play a numbers game on a napkin to see who picks up the tab for the dime-a-cup coffee.

Then Mr. Gerhold goes to work—but not on a ranch.

He goes around the corner, climbs some rickety wooden stairs to what once was a small apartment over an old house and picks up an easel and a brush.

The 45-year-old Baltimore-born man is an artist, a western artist, despite his eastern background, who is living the life he paints.

He rides, brands, dehorns, chases cattle, works with horses and drives his pickup over the trails that pass for roads in the cattle country, visiting with cowhands and Indians and old-timers to learn more about the lifestyle of the Old West.

And then he paints detailed, realistic pictures of the life he lives and loves.

"I wish I could have been born a hundred years ago," Mr. Gerhold says. "Since I wasn't, I think living around Crawford is as close as I can come to the Old West.

"To paint it, you have to be where your subject is. And although I have traveled all through the Southwest and Colorado and Wyoming and Montana and California, I never found a place where I wanted to live and still could work around my subjects, until I came to Crawford.

"They still rope and brand and push cattle around here like they always have—and the town is a nice place to be around.

"The people here are my kind of people—seldom do you ever find a phony. They work hard and they play hard."

Painting the Old West after growing up in Baltimore seems odd, but Mr. Gerhold is following in the footsteps of famous western artists of the past.

Frederic Remington was from New York, George Catlin was reared in Pennsylvania, Alfred Jacob Miller was Baltimore-born, William R. Leigh was from West Virginia, and even Charles W. Russell—probably the most famous of all western painters—came from St. Louis.

Mr. Gerhold first came to Crawford four years ago, when he was working out of a studio in Frederick, on a study and vacation trip to Fort Robinson, 2 miles west of Crawford.

Around Crawford, towering clay buttes—Saddle Rock, Lover's Leap, Chimney, Seven Sisters, Crow—punch into the sky like exclamation points.

Crazy Horse and Sitting Bull and Red Cloud and Sheridan and Custer and black and white cavalrymen and settlers and circuit riders roamed the land not too many years ago.

And Mr. Gerhold decided this was where he wanted to be, moving his wife and two sons here in the summer of 1972.

He's seen the now-dim tracks of the Deadwood stake run, and he's sat cross-legged with Indians while they went through old ceremonies. He's watched while American Indian Movement leaders threw fears into folks around Crawford. He's danced in Marv's Bar on Saturday nights, next to the hat-wearing cowboys who don't dress much differently than their grandfathers.

The deer and the antelope still play on the hills and plains, and there's even a herd of buffalo at Fort Robinson.

And the colors of nature around Crawford, Mr. Gerhold says, are unmatched.

"People back East wouldn't believe the colors of the sunrises and the sunsets," he says. "They've never seen purple buttes like we have around here when the sun is right."

He takes color photographs of cowboys and Indians and sunrises and sunsets and cattle roundups and herds of horses, using them as background ideas for his oil paintings, his sketches and his sculpture.

Without a doubt, though, his favorite subject is horses.

"Horses are everything to me, as far as painting goes," says Mr. Gerhold, who first fell in love with horses in Baltimore when he hung around riding stables near his suburban home.

As a boy, he used to earn lunch money from classmates at Baltimore Poltyechnic Institute drawing horses heads, and from then on, he says, "I just drew and drew and drew."

There wasn't money enough then to send him to art school, but after a Navy hitch late in World War II he qualified for the GI Bill and used it to attend the Maryland Institute.

That's where he decided to become a western artist, after meeting western painter William R. Leigh. Mr. Gerhold graduated in 1954, after another Navy hitch in the Korean war.

Since then he's been painting professionally and traveling through the West to learn more about the old days, and to collect pack saddles and gold panning utensils and Indian clothing and bits of history to make his pictures authentic.

His interest in the West helps him fit into Crawford, where ranchers and conservation officers and Indians and cowhands and retired cavalrymen tell him about Crawford's early days.

Some even buy his paintings, although the price tag is high to folks accustomed to the ways of amateurs.

He lives in a log house, just below the buttes east of town, which was built in 1933 by Levi Richardson, a rancher who is his landlord and friend. Mr. Richardson calls on Mr. Gerhold to help round up his cattle, to help brand and dehorn and castrate, to chase after strays and to share a drink in the setting sun after the chores are done.

And Mr. Richardson doesn't mind pulling a cowboy trick or two on Mr. Gerhold, who is known as a kidder and practical joker when he isn't painting.

Mr. Gerhold recently accompanied Mr. Richardson to a hog sale, and the rancher introduced the artist to strangers as "my new hog man."

At the next sale Mr. Gerhold wasn't along, and Mr. Richardson was asked what happened to "that new hog man you hired."

"Oh, hell," he replied, "that son of a gun wasn't worth a damn around hogs, and I had to let him go."

Probably Mr. Richardson was right—Mr. Gerhold isn't much of a hog man. There's never been a hog in a Gerhold painting.

But he has pictures of cowboys and hunters and Indians and winter scenes and Sand Hill landscapes and horses hanging in galleries in Wyoming and Arizona and in homes and institutions in various parts of the country. One of his pictures is being displayed this winter on a greeting card, and a Nebraska banker just commissioned him to paint a huge picture of a watering hole for cattle.

Before moving to Crawford, when he was painting out of his studio in Frederick, Mr. Gerhold presented one of his pictures to President Johnson. He also has painted a favorite horse of former New York Yankee baseball slugger Charlie Keller.

Mr. Gerhold says he has no desire to return to the East.

His father, Charles, a retired Baltimore policeman who lived on Ramona avenue, died in November.

"I tell my friends back East to come see me out here, and a lot of them do," he says. "Usually we'll go riding in the hills, and most of them like to watch the cowboys dance on Saturday night.

"Whenever I go away and then come back to Crawford, I come over the ridge and see the buttes and the pine trees and the kills—and I know I'm home."

And he has no plans to give up western painting for "modern" creations.

"I despise modern art," he says bluntly. "To appreciate a picture, I have to see the drawing ability in it. And I don't see any in most modern art.

"I may spend a couple of days just getting one cow head right out of a whole herd, while some modern painters can do a whole picture of red and white lines in less time.

"I don't think that is art. I think western art is the true American art. No other place in the world had cowboys and Indians.

"I hope I can help preserve and portray the history of the Old West. And western painting is becoming more and more popular. I believe there is a lot of cowboy and Indians in all Americans."

There definitely is in Mel Gerhold.

AN ARTIST FINDS PEACE IN THE PINE RIDGE

(By Ron Speer)

CRAWFORD, NEBR.—With the rising sun sending golden gleams off nearby Crow Butte, Mel Gerhold leaves the ranch where he lives and drives every morning to Crawford, seven miles to the west.

He parks his pickup on Main Street and swaggers into Audrey's Cafe, where he has a cup of coffee or two with ranchers, carpenters, shopkeepers and deputy sheriffs from this community of 1,290 in the Pine Ridge section of Nebraska.

Gerhold and his friends swap barbed comments about each other's richness and laziness and intelligence; play a numbers game on a napkin to determine who picks up the tab for the coffee.

Then Gerhold goes to work—but not on a ranch, despite his boots, hat and other cowboy apparel. He goes around the corner, walks up some rickety wooden stairs to what once was a small apartment over an old house, and picks up a pallette and brush.

The 45-year-old transplanted Nebraskan is an artist, a western artist who lives the life he paints.

Gerhold rides, brands, dehorns, chases cattle, works with horses and drives his pickup over the country trails that pass for roads in the cattle country. He visits with cowhands and Indians and oldtimers to learn more about the lifestyle of the Old West. Then he paints detailed, realistic pictures of the life he lives—and loves.

"I wish I could have been born a hundred years ago," Gerhold says. "Since I wasn't, I think living around Crawford is as close as I can come to the Old West.

"To paint the West, you have to be where your subject is," he says. "And although I have traveled all through the Southwest, and Colorado and Wyoming and Montana and California, I never found a place where I wanted to live and could still be working around my subjects until I came to Crawford.

"They still rope and brand and push cattle around here like they always have—and the town is a nice place to be around. The people here are my kind of people—very seldom do you ever find a phony. They work hard and they play hard."

Gerhold first came to this country four years ago on a vacation and study trip to Fort Robinson, two miles west of Crawford, one of the last outposts of the Indian wars.

The towering buttes—Saddle Rock, Lover's Leap, Chimney, the Seven Sisters, Crow—punch into the blue sky like exclamation points.

Historic streams—Soldier's Creek, White River, Squaw Creek, Sand Creek—curve through the pinestudded hills and the white buttes.

Crazy Horse and Sitting Bull and Red Cloud and Little Bat and black soldiers and white cavalry men and settlers and circuit riders roamed the land not too many years ago.

Gerhold decided this was where he wanted to be, moving his wife and two sons here in the summer of '72.

"The settling of the West was the most romantic period in this country's history," Gerhold says. "And I don't think there is any place where you can find as much history as you can within fifty or one hundred miles of Crawford."

He's seen the now-dim tracks of the Deadwood stage run, and he's sat with Indians while they went through ceremonial dances.

He's danced in Marv's Bar on Saturday nights next to the cowboys who don't dress much differently than their granddads did.

Sheepherders still roll their own cigarets, the deer and the antelope still play on the hills and plains, and there's even a herd of buffalo at Fort Robinson. The colors of nature around Crawford, Gerhold says, are unmatched.

"People back East where I come from wouldn't believe the colors of the sunrises and the sunsets," he says. "They've never seen purple buttes like we have around here."

Gerhold takes scores of color photographs of cowboys and Indians and sunrises and sunsets and cattle roundups and herds of horses, using them as background ideas for his oil paintings, his sketches and his sculpture. Without a doubt, though, his favorite subject is horses.

"Horses are everything to me, as far as painting goes," says Gerhold, who first fell in love with horses in his hometown of Baltimore when he hung around riding stables near his suburban home.

"Painting horses is a lifelong study—nobody ever gets them perfect," he says.

As a boy, he earned lunch money from classmates by drawing horses' heads. There wasn't enough to send him to art school, but after a Navy hitch late in World War II he qualified for the G.I. Bill and used it to attend the Maryland Institute of Fine Arts in Baltimore.

That's where he decided to become a western artist, after meeting famed western painter William R. Leigh. Gerhold was graduated from the Baltimore school in 1954, after another Navy hitch in the Korean War.

Since then he's been painting professionally and traveling through the West. Easterner Gerhold is following in the footsteps of famous Western painters of the past.

Frederic Remington was from New York, George Catlin was raised in Pennsylvania, Alfred Jacob Miller was Baltimore-born like Gerhold, William R. Leigh was from West Virginia, and even Charles W. Russell—perhaps the most famous of them all—came from St. Louis, a river town settled long before cowboys drove cattle up the trail from Texas to Nebraska's Panhandle.

Gerhold has had no trouble fitting into this little community, where ranchers and conservation officers and Indians and cowhands tell him about Crawford's early days. Some even buy his paintings, although the price tag is a bit startling to folks accustomed to the ways of amateurs.

Gerhold has painted Crow Butte and favorite horses and portraits for his friends and neighbors, and he also works with them when they need riders.

He lives in a log house, just below the

buttes east of town, which was built in 1933 by Levi Richardson, a rancher who is Gerhold's landlord and friend. Richardson calls on Gerhold to help round up cattle, to help brand, to chase after strays, and to share a drink in the setting sun after the chores are done.

Gerhold, who is known as a kidder and practical joker when he isn't painting, has all he can do to hold his own with Richardson. Once Gerhold accompanied Richardson to a hog sale, where Richardson introduced the painter to strangers as "my new hog man."

At the next sale, Gerhold wasn't along, and Richardson was asked what happened to "that hog man you hired."

"Oh, hell," replied Richardson, "That son of a gun wasn't worth a damn around hogs and I had to let him go."

Probably Richardson was right—Gerhold isn't much of a hog man, and there's never been a hog in a Gerhold picture.

But he has pictures of cowboys and hunters and Indians and winter scenes and Sand Hill landscapes and horses hanging in galleries in Wyoming and Arizona, and in homes and banks in Nebraska.

His latest commission was a huge painting of a Sand Hill watering hole for cattle, wanted by a Loup City bank. Gerhold finished it just in time to pack up his other pictures, load them in his pickup-camper and head for art shows in Death Valley and San Bernardino Calif.

He also has displayed his work at shows in Lincoln, North Platte and Great Falls, Mont., this year, and some of his paintings are being displayed on greeting cards this winter.

Before moving to Crawford, when he was painting out of a studio in Frederick, Md., Gerhold gave one of his pictures to the late President Lyndon B. Johnson, and also has painted a favorite horse of former New York Yankee baseball slugger Charlie Keller.

Gerhold says he has no desire to ever return to the East, preferring the openness of westerners to the fear and worry of city residents.

"Whenever I go away and drive back to Crawford," he says, "I come over the ridge and see the buttes and the pine trees and the hills—and I know I'm home."

MEDAL OF HONOR GROVE

Mr. HUMPHREY. Mr. President, the 200th anniversary of our great Nation's birth is fast approaching and there are many preparations for the Bicentennial already in progress. One of these is the Medal of Honor Grove, now being erected at Freedom Foundation at Valley Forge.

This grove will enshrine the names of all Medal of Honor recipients by State. It will stand as a lasting memorial to the courage and heroism of those young men who served above and beyond the call of duty to their country.

However, further capital is needed to insure that this fitting tribute becomes reality. National Sojourners, Inc., a military-Masonic-patriotic organization, has agreed to undertake the task of fundraising in each State. For this they are to be heartily commended. In Minnesota, Col. A .G. Silverson, of St. Paul, has been selected as State chairman of the Medal of Honor Grove Committee. This is a great honor and a great responsibility, and I congratulate Colonel Siverson on his appointment.

The Medal of Honor Grove will be an important contribution to the Bicentennial effort, and I sincerely hope it will receive the support that it deserves.

SENATOR RANDOLPH STRESSES PETROLEUM SAVINGS THROUGH COAL CONVERSION

Mr. RANDOLPH. Mr. President, over 500,000 barrels per day of oil can be saved by reconverting electric utilities from oil to coal.

Today during the House-Senate conference on emergency energy legislation I discussed potential reductions in this years demand for residual oil and heavy distillates. Some 46 electric powerplants have been identified by the Federal Energy Office and the Environmental Protection Agency that could be readily converted from oil to coal. This represents 79 percent of the generating capacity which earlier converted from coal to oil—principally, then low cost imported oil.

During the first quarter of 1974, 23 facilities could be converted with minimum environmental impact. These plants alone represent some 200,000 barrels per day of residual oil. The coal requirement would be 49,000 tons per day, or 14 million tons per year.

The remaining 23 facilities, however, will require close examination to determine their potential environmental impacts since reconversion may not be practrical or consistent with environmental policies.

As of January 9, 1974, nine plants have already reconverted from oil to coal. These voluntary conversions amount to one-quarter of the administration's goal for the first quarter of 1974, which is 200,000 barrels per day.

The Emergency Energy Act requires firm commitments to meet environmental standards by 1979 before these conversions are undertaken. Thus we are coming to grips with the formulation of a true national energy policy that reflects environmental and energy concerns.

GOVERNMENT BY CRISIS

Mr. MOSS. Mr. President, the present energy crisis is due not so much to the Arab oil embargo, as to poor planning. Because we have had no forward-looking, comprehensive policy of relating our scientific and technological advances to our domestic problems, we have had to confront one crisis after another. Even now, while all our energies are directed toward resolving the fuel dilemma, a material shortage looms disturbingly on the horizon.

Yet, an editorial by C. W. Borklund in the January issue of Government Executive reveals that:

> Design teams have been broken apart, technical expertise scattered, and the art of design—has—in some cases—stagnated. And do you know there are people in high places who can't see the cause-effect relationship between that and the shortage of good schools, adequate medical care and a higher U.S. standard of living?

Senator MAGNUSON has proposed, and Senator TUNNEY and I have cosponsored S. 2495, a bill which offers an alternative to such mismanagement. It provides for the more effective utilization of our scientific and technological resources to the solution of our critical domestic problems.

Thus, we have a choice between rational management and the "government by crisis" of which Borklund spoke.

For the benefit of my colleagues, I ask unanimous consent that his editorial be printed in full in the RECORD.

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

GOVERNMENT BY CRISIS

Shivering in a fuel-less mid-winter, we are suffering once more the penalties of a basic flaw in this democratic government. Its leadership has great difficulty leading. Its machinery does not permit its leadership to conceptualize, at least not with any particular effectiveness. For the record, as a matter of policy, program, practice and legislation, it can not anticipate a problem and work around it until it belts us on the nose.

Government has a talent—of debatable sorts—for reacting to a crisis. It has first-rate ability for arguing a subject endlessly without reaching any special conclusion. It can respond with a payoff—mostly through further increase in taxes—to the pleas and vociferous demands for "help" from just about any minority sliver of our ethnic culture.

It can even lead us out of the wilderness, though not often with any great degree of efficiency. But its most glaring shortfall, we think, is that it can't seem to keep the Nation from stumbling into the jungle in the first place.

We don't think it's crying over spilt milk to complain now that this energy crisis should never have happened in the first place. The Great Teacher in the Sky is trying to tell us there is a lesson to be learned here if we care enough about our own future to listen. Otherwise, this country's democratic institutions will survive only so long as we continue to be the most affluent nation on earth. The greater the wealth, the higher the level of incompetence that a country or a business or even a person can afford.

Twenty-eight years ago, then-Navy Secretary James Forrestal warned us of the threats to world fuel supplies if a Middle East war forced people to choose up sides between Arabs and Jews. For this trouble, all he got was an indictment of being anti-semitic by columnist Drew Person.

Proposals from the White House on preventing the energy crisis have been fermenting on Capitol Hill for more than two years while most Congressmen concentrated on reacting to some variation of a thing more than accusations of self-styled Senator Henry Jackson drum-thumped for alertness and action. But not until the fuel flow dropped did his urging earn him anything more than accusations of self-styled (and mostly uniformed) environmentalists that he harbored a callous disregard for Mother Nature's cleanliness.

Energy is not the only field where Government has fumbled.

Item: experts on international trade and the economic aspects of foreign policy say the basic merits of the Trade Reform Bill (know what that is?) are inarguable. Yet, largely through procrastination and thumb-twiddling its passage is now threatened. And the irony is a lot of the people who will vote on it have previous little notion of how non-politically important it is to this country.

Item: about five years ago a panel of experts produced a study which said, basically, the Nation's economic and environmental well-being, as well as military security, would be enhanced immensely if we poured as much effort now into developing our oceanic resources as we had a decade earlier into the Space race.

But the Space race was a reactive program. A National Oceanographic and Atmospheric activity is a conceptual idea. Thus, what has

been done about the proposal since is, essentially, nothing.

Item: In April, 1970, the President's Task Force on Science Policy issued a six-section plan for using "Science and Technology (as) Tools for Progress." Said the report: "The management, strength, and proper allocation of these vital (scientific and technological) resources are political responsibilities of the highest significance."

If they are, then it follows logically that Government is politically irresponsible, because it hasn't done anything appreciably significant about science policy since 1970—except to whack down research and development expenditures.

Item: as, in part, a tool for keeping the peace, the President is trying to launch a program of trade expansion and economic interdependence with Russia, China and the other Socialist countries. But, summarized one leading industrialist recently, "The U.S. Government bureaucracy is thwarting the thrust of the President's program with the USSR and is failing to properly support his trade expansion objectives with the other Socialist countries."

Item: a joint Defense-NASA-Department of Transportation study, completed in August, 1972, on "R&D Contributions to Aviation Progress" pointed out that Government R&D support is what had made the U.S. the world's leader in military and commercial aerospace technology.

But, as a result of the dramatic reduction in that support in recent years, it noted, "Design teams have been broken apart, technical expertise scattered, and the art of design has—in some cases—stagnated." And do you know there are people in high places who can't see the cause-effect relationship between that and the shortage of good schools, adequate medical care and a higher U.S. standard of living?

We could "item" you into numbness with examples of how the Federal Government (let alone state and local governments) can't seem to think and plan ahead. Maybe, if it manages it, Congress reshaping its machinery so it can budget within our income will help. Maybe, if they manage it, the Office of Management and Budget's creating a method for measuring Executive Department performance will help.

Wise and perceptive people are struggling mightily to modernize the machinery of Government. We have got to see that they succeed. The price we're paying for what we have now is too horrendous to be borne much longer.

MATERIAL SHORTAGE LOOMS

Mr. MOSS. Mr. President, in my prior remarks, I noted that a reduced supply of materials is a very real threat. According to an article in the February 4 issue of U.S. News & World Report:

Anxiety over a cutback in raw materials from abroad is no idle concern . . . America—blessed with a wealth of natural resources—may have to worry about becoming a "have not" nation in some basic raw materials.

It is imperative that this Nation embark on a course of efficient utilization of our science and technological resources to meet our critical domestic problems. As I have indicated previously, such a course is available to us through legislation such as S. 2495.

I ask unanimous consent that this recent article from U.S. News & World Report be printed in the RECORD.

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

SUPPOSE OTHER COUNTRIES CUT OFF UNITED STATES FROM RAW MATERIALS

For Americans already worried over the cutback of oil supplies to the United States by Arab nations comes this new concern:

A threat that other countries may follow the Arabs' lead and shut off supplies of a broad list of basic raw materials—or demand inflated prices for them.

It's a danger that is focusing fresh attention on just how heavily the U.S. depends on imports of commodities vital to its status as the world's most prosperous nation.

The fact is that this country is counting more and more on other nations to supply a major portion of metals, minerals and other substances without which American industry cannot continue to function.

As the Pictogram on these pages shows, the U.S. relies on import for all of its natural rubber, and for most of a wide range of other items including manganese, cobalt, chromium, platinum, aluminum, tin, and nickel.

The U.S. can still meet most of its needs for copper, uranium, coal, iron ore, lead, potash and a number of other materials from domestic sources.

LOOKING AHEAD

But demand is growing so rapidly, Goverment officials say, that by 1985 the U.S. could depend on imports for half of its suppliers of raw materials—including even iron ore and lead.

Anxiety over a cutback in raw materials from abroad is no idle concern.

Scheduled in February is a meeting in Guinea of major producers of bauxite, an ore from which aluminum is produced. The avowed goal: a common front to control production and fight for the highest possible prices for bauxite.

Zaire and Zambia, two major producers of copper, recently announced plans to coordinate production of that metal to keep prices high.

What worries U.S. officials is the spread of such tactics to an increasing number of commodities—helped by the concentration of production of key materials in just a handful of nations.

C. Fred Bergsten of the Brookings Institution says that two countries, Malaysia and Bolivia, account for 70 per cent of all tin exports. Four nations control more than 80 per cent of the world's copper exports. A similar number of countries hold more than half the world's reserves of bauxite, and half the supply of natural rubber.

As officials see it, the danger is a sharp increase in prices rather than a total shutoff of raw materials. A major reason: Most developing countries could not afford to go without revenues for any length of time.

Even without concerted action by raw-material suppliers, intense competition among consuming nations will drive prices further up in years ahead.

The United States, with less than 6 per cent of the world's population, consumes one third of the world's mineral output each year—including 56 per cent of all natural gas, 35 per cent of the free world's silver and aluminum, 32 per cent of all lead.

Rate of growth in demand among other industrial nations is expected to be even greater than in the U.S. And as developing nations industrialize their economies, they are likely to hang on to more raw materials themselves.

PUSH TO SUBSTITUTES

Higher prices, officials note, may encourage production of minerals in the U.S.—now too expensive to extract—from low-grade iron, aluminum, titanium and other ores.

A search for substitute products and synthetics for some of the rarer and costlier minerals is likely to be speeded up, too. Stockpiles of key commodities that the U.S. has built up can help to meet immediate needs for a while.

Still, America—blessed with a wealth of natural resources—may have to worry about becoming a "have not" nation in some basic raw materials.

NIXON ADMINISTRATION IMPOUNDMENT ABUSES

Mr. HUMPHREY. Mr. President, while some Nixon administration officials have recently told a number of reporters that they can eliminate the word "impoundment" from their type, we in Congress must continue to scrutinize the OMB's actions vigilantly until illegal impoundment, by whatever name the administration chooses to call them, are themselves eliminated.

As the President's budget proposal is about to be presented, I think it is very timely to remind ourselves that the abuses of impoundment are still an important issue.

Dr. Louis Fisher, a leading researcher on the impoundment issue, has written an outstanding article for the fall, 1973 issue of the Buffalo Law Review, entitled "Impoundment of Funds: Uses and Abuses."

Given the contradictory views on impoundment between the White House and the Congress, many Americans are confused as to what issues are involved. This article is particularly relevant because it clarifies the constitutional and statutory authority for impoundment. In three case studies that he has prepared on the Nixon administration's impoundment of agriculture, HUD, and environmental program funds, Dr. Fisher concludes that the executive branch has failed to respond to the practical need for good faith efforts. More specifically, the Nixon administration frequently has interpreted a lack of mandatory language in a bill to mean an administrator is at liberty to ignore a program in its entirety. The Nixon administration has clearly substituted "administrative convenience" in place of legislative responsibility, both in failing to report billions of impounded dollars, and in justifying impoundments on the basis of the broadest possible interpretation of constitutional authority. This is certainly diametrically opposed to the claims the President has made of being a "strict constitutional constructionist."

This article is worth the attention of all my colleagues because it clearly delineates the major elements of the impoundment controversy currently flaring within and between the executive, legislative, and judicial branches of government.

Mr. President, I ask unanimous consent that Dr. Fisher's article be printed at this point in the RECORD.

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

IMPOUNDMENT OF FUNDS: USES AND ABUSES

(By Louis Fisher*)

In his news conference of January 31, 1973, President Nixon raised a number of academic and congressional eyebrows by asserting that the "constitutional right for the President of the United States to impound funds[,]

Footnotes at end of article.

. . . not to spend money, when the spending of money would mean either increasing prices or increasing taxes for all the people . . . is absolutely clear." [1] Far from laying the issue to rest, this sweeping declaration triggered a strong countermovement within Congress.

The debate on impoundment, spirited and fervent though it may be, has a tendency to generate more heat than light. A rich lode of percedents is available to comfort either side. Despite the volume of commentary on the subject, no one can say precisely what "impoundment" is.[2] This has resulted in a confusion of terms and misleading statistical claims. The first part of this article attempts to clear away some of the conceptual underbrush by offering a typology of impoundment, suggesting which are controversial and which are not. Then, three case studies are offered to demonstrate that apart from the broad issue of constitutionality is the practical need for good-faith efforts on the part of administrative officials. Without such efforts, administrators cannot expect to receive from Congress the customary broad grants of discretionary power. The system of delegation would then be profoundly altered, with many of the informal and nonstatutory controls frozen into law.

PART I—TYPES OF IMPOUNDMENT

Discussion of impoundment requires distinguishing among various types of action. Some actions are legitimate exercise of executive power, while others trespass directly on the legislative domain. To say that "impoundment has been used in the past" is to say nothing at all. The proper inquiry must be "What *kind* of impoundment?" It comes in many shapes and colors, legitimate in one case and highly suspect in another. As an omnibus term, "impoundment" tells us very little. To state the definition in a manner analogous to Mr. Justice Jackson's description of security, impoundment is like liberty in that many are the crimes committed in its name.[3]

The first of four categories, efficient management, covers instances in which funds are withheld either (1) to effect savings, (2) to accommodate changing events which make an expenditure unnecessary, or (3) to satisfy basic managerial responsibilities. Impoundments of this type are of a commonsense variety, evoking few protests, if any, from members of Congress.

A second category includes impoundment actions based upon statutory authority. Some statutes provide a routine delegation of power, calling upon the expertise and managerial talents of the executive branch. Other statutes represent a surrender of power that could have been exercised at the legislative level, had there been the desire to do so. In both cases, impoundment authority is derived from statute.

A third category concerns the general constitutional powers of the President, particularly his duties as Commander in Chief. Impoundments in this area are highly controversial, placing the President's power directly in conflict with Congress's responsibility to provide for the common defense.

The last category covers executive policy making. In pursuing such goals as curbing inflation or rendering budget priorities, the President uses impoundments to further his objectives at the expense of legislative preferences. In such cases it is not sufficient to agree with administrative goals, for that easily degenerates into a philosophy wherein "the end justifies the means."

These four categories are not mutually exclusive. For example, efficient management has been partially enacted into statute (the Antideficiency Act) and may even be regarded as part of the President's constitutional responsibility to faithfully execute the laws. The value of categorizing impoundments is to separate their various underlying sources of authority.

I. EFFICIENT MANAGEMENT

It has long been the practice of the executive branch to regard appropriations as permissive rather than mandatory. Impoundment has thus existed since the days of George Washington, at least to the extent that expenditures occasionally fall short of appropriations.

A. To effect savings

Attorney General Judson Harmon declared in 1896 that an appropriation is not mandatory "to the extent that you are bound to expend the full amount if the work can be done for less. . . ." [4] This same point was made in 1942 by President Roosevelt. The setting aside of budgetary reserves for the purpose of preventing deficiencies or for effecting savings was defended as sound fiscal practice. Roosevelt wrote that to mandate that all funds be fully expended "would take from the Chief Executive every incentive for good management and the practice of commonsense economy." [5]

In 1950 the House Committee on Appropriations emphasized that economy "neither begins nor ends in the Halls of Congress." [6] According to the Committee, an appropriation of a given amount for a particular activity constituted only a ceiling upon the amount which should be expended for that activity. The administrative officials responsible for administration of an activity for which appropriation is made bear the final burden for rendering all necessary service with the smallest amount possible within the ceiling figure fixed by the Congress.[7]

These are *limited* powers of impoundment. President Roosevelt expressly recognized the constraints on this type of action by saying that the use of budgetary reserves to prevent deficiencies or to effect savings was not "a substitute for item or blanket veto power, and should not be used to set aside or nullify the expressed will of Congress. . . ." [8] The 1950 statement by the House Committee on Appropriations warned that "there is no warrant or justification for the thwarting of a major policy of Congress by the impounding of funds." [9]

B. Changing events

If Congress provides funds for a purpose, and later events make the expenditure unnecessary, administrators are expected to withhold the funds and return them to the Treasury. Jefferson, for example, found is unnecessary on a number of occasions to use all of the money provided in a contingent fund. He regularly returned the unexpended balances to the Treasury.[10]

A more publicized impoundment by Jefferson concerned the withholding of $50,000 in 1803. When Jefferson notified Congress that the funds appropriated for gunboats would remain unexpended, he explained: "The favorable and peacable turn of affairs on the Mississippi rendered an immediate execution of that law unnecessary . . ." [11] Since the emergency contemplated by Congress failed to materialize, because of the Louisiana Purchase, Jefferson saw no reason to spend the money. Neither did Congress. A year later, having taken the time to study the most recent models of gunboats, Jefferson informed Congress that he was proceeding with the program.[12]

C. Managerial responsibilities

An administration may have a number of other valid reasons for suspending a program or payment. In 1840, the Supreme Court upheld a decision of the Secretary of the Navy to withhold payment from a widow whose claim was based on a resolution passed by Congress.[13] Had the Secretary mechanically followed the direction of Congress, without exercising judgment or discretion, the widow would have received two pensions: one from the specific resolution adopted on her behalf, and a second from a general pension bill. The Secretary properly concluded that Congress could not have intended double benefits.

After World War II, President Truman temporarily withheld funds from a program to build hospitals for veterans. The administration had thought it better to wait until the returning servicemen had settled in order to achieve the most effective placement of medical facilities.[14]

In January 1971, the Department of Housing and Urban Development interrupted a mortgage-subsidy program designed to help poor families buy their own homes. HUD Secretary Romney suspended part of the program when it became apparent that abuses by real estate speculators were "more prevalent and widespread than had previously been evident." [15] After the potential for abuse had been corrected, the program was reinstated.

Several months later HUD suspended a low-income housing program in New Jersey because of inadequate administration by the Newark Housing Authority. The money was released when the Authority complied with HUD's request for organization changes.[16]

A final example involved HEW's 1971 withholding of federal funds from black nationalist Col. Hassen Jeru-Ahmed's drug rehabilitation program. Inadequate bookkeeping was cited as the reason. A report by the General Accounting Office disclosed that at least $171,533 in federal drug treatment funds were paid to a relative and friends of Hassan, were spent for automobiles and real estate, or were unable to be counted for.[17]

II. STATUTORY AUTHORITY

The President is not only permitted limited powers of impoundment to be exercised at his discretion; in some cases he is required or directed by law to withhold funds under conditions and circumstances prescribed by Congress.

A. Economy and Reorganization Acts

Economic collapse in 1929 led to broad presidential authority for reducing expenditures. In 1932 President Hoover received authority to make partial layoffs, reduce compensation for public officials, and consolidate executive agencies in order to effect savings. Funds impounded by this Economy were to be returned to the Treasury.[18] The House of Representatives disapproved the initiatives offered by Hoover, preferring to leave reorganization changes to the incoming President, Franklin D. Roosevelt.[19] Before leaving office, Hoover signed two more economy measures authorizing his successor to effect further reorganization and to reduce military spending in accordance with an economy survey to be ordered by the President.[20]

Once in office, Roosevelt requested authority to reduce veterans' benefits and the salaries of federal employees.[21] The Economy Act of March 20, 1933, authorized him to reduce veterans' payments by several hundred million dollars.[22] The Reorganization Act of 1939,[23] which declared that continuing deficits made cutbacks desirable, directed the President to effect savings by consolidating or abolishing agencies for more efficient operation. Of the five purposes identified in the act, spending reduction was listed first.[24]

Another general grant of impoundment power appeared in the single-package ("omnibus") appropriation bill of 1950, directing the President to cut the budget by not less than $550 million without impairing national defense.[25] President Truman fulfilled the statutory directive by placing $572 million in reserve, including $343 million in appropriations, $119 million in contract authority, and $110 million in authorizations to borrow from the Treasury.[26]

B. Spending ceilings

In 1967 Congress directed a spending cut of $4.3 billion. Legislative action reduced spending by $1.8 billion, leaving $2.5 billion

Footnotes at end of article.

to be trimmed by the President. The budget-cutting formula required each civilian agency to reduce its budgeted obligations by an amount equal to 2 percent of payroll, plus 10 percent of other controllable obligations. Defense Department obligations were to be reduced by an amount equal to 10 percent of non-Vietnam programs.[27]

In 1968, 1969, and 1970, Congress enacted ceilings on expenditures, and thereby gave the Nixon administration additional statutory authority to impound funds.[28] Policy making inevitably resulted, since the administration unilaterally selected the programs to be sacrificed.[29]

In retaliation, Congress refused to adopt a spending ceiling in 1971. Representative Joe L. Evins explained that Congress did not want to give the Nixon administration "a flexible ceiling which could [be] use[d] as a tool to freeze and impound funds as [they] did in the past." [30] The subject of a spending ceiling reappeared in the fall of 1972, but the two Houses of Congress were unable to agree on a formula, which would restrict executive discretion.[31]

The Ervin impoundment bill, reported out on April 17, 1973, included a spending ceiling of $268 billion for fiscal 1974. If withholding were necessary to protect the ceiling, the bill provided that it be done on a roughly proportional basis. The Ervin bill passed the Senate three times: as an amendment to the Par Value Modification Bill,[32] as an amendment to the Debt Limit Bill,[33] and as a separate bill.[34] On July 25, 1973, the House adopted a spending ceiling with a proportional cutback formula.[35]

C. Antideficiency Act

The Antideficiency Act, as amended in 1950, authorizes the President to establish budgetary reserves to provide for contingencies, or to effect savings whenever savings are made possible by or through changes in requirements, greater efficiency of operations, or other developments subsequent to the date on which such appropriation was made available.[36]

To comprehend the purpose and scope of this provision, it must be viewed in the context of an earlier Post Office dispute.

In the spring of 1947, the Post Office Department announced that it would exhaust its funds long before the end of the fiscal year. Instead of apportioning its funds to avoid a deficiency situation (*e.g.*, in roughly equal amounts by quarters), the Post Office allotted $370 million for the first quarter, $409 million for the second, $364 million for the third, and only $9.5 million for the final quarter. Congress found itself in a predicament: If it did not provide extra money in a deficiency bill, the Post Office would have to suspend operations.[37]

The difficulties of the Post Office caused the Senate Appropriations Committee to request that the Bureau of the Budget (hereinafter referred to as "BOB") and the General Accounting Office (hereinafter referred to as "GAO") recommend ways to improve the Antideficiency Act.[38] The resulting joint BOB-GAO report began with the assumption that it was impossible to completely eliminate deficiencies; changing conditions, unforeseen at appropriation time, would always breed new expenses. The report noted, however, that changing conditions should also produce *surpluses* by way of overfunding. Unless some action was taken to conserve these excess funds, they might be obligated by the end of the fiscal year "even though there may be no essential need thereof." [39]

The obvious means for avoiding deficiency bills in the future was to encourage the setting aside of surpluses. A draft bill prepared by the BOB and the GAO recommended this language:

"In apportioning any appropriation, reserves may be established to provide for contingencies or to effect savings whenever savings are made possible by or through changes in quantitative or personnel requirements, greater efficiency of operations, or other developments subsequent to the date on which such appropriation was made available." [40]

Section 1211 of the 1950 omnibus appropriation act closely followed the BOB-GAO language:

"In apportioning any appropriation, reserves may be established to provide for contingencies, or to effect savings whenever savings are made possible by or through changes in requirements, greater efficiency of operations, or other developments subsequent to the date on which such appropriation was made available." [41]

The legislative history of this provision clearly demonstrates that its purpose was to build up surpluses in some accounts as a means of balancing deficiencies elsewhere. Nowhere was there an implied authority to set aside reserves to cancel or curtail a program. On the contrary, immediately after the above cited passage the Act provides that [w]henever it is determined by an officer designated in subsection (d) of this section to make apportionments and reapportionments that any amount so reserved will not be required *to carry out the purposes of the appropriation concerned*, he shall recommend the rescission of such amount in the manner provided in the Budget and Accounting Act, 1921, for estimates of appropriations.[42]

In short, if an administrator could execute a program by spending fewer dollars than appropriated, all well and good. But the purpose of the appropriation itself was not to be denied.

This was a well established policy. The BOB-GAO report had cautioned that the authority to set aside reserves "must be exercised with considerable care in order to avoid usurping the powers of Congress." [43] The same position was taken two years later by the Hoover Commission when it recommended that the President "should have authority to reduce expenditures under appropriations, if the purposes intended by the Congress are still carried out." [44] In reporting out the antideficiency language in 1950, the House Appropriations Committee explained that this grant of authority to set aside reserves was not to be taken as "justification for the thwarting of a major policy of Congress by the impounding of funds." [45] The intent of the 1950 language was amplified by the BOB in its Examiners Handbook for 1952: "Reserves must not be used to nullify the intent of Congress with respect to specific projects or level of programs." [46]

Roy L. Ash, Director of the Office of Management and Budget (hereinafter referred to as "OMB"), during the Nixon administration, argued that inflationary pressures can be considered "other developments" within the meaning of the Antideficiency Act and thus an authority for withholding funds.[47] However, there is nothing in either the language or the history of the Antideficiency Act to support that proposition.

D. Employment Act of 1946

Caspar W. Weinberger told a Senate committee on January 17, 1973, that the Employment Act of 1946 [48] "requires the President to maintain policies that guard against inflation." [49] That is inaccurate. The Act merely requires the President to present an economic report to Congress.[50] It did not confer upon the President any special powers. The Act's goals of maximum employment, production, and purchasing power were to be the responsibility of the entire federal government.

Furthermore, the Act did not confer any discretionary spending power upon the President. Significantly, Section 6 of the Employment Bill of 1945 *did* contain discretionary spending authority, allowing the President to vary expenditure levels in whatever manner he determined to be necessary for the purpose of "assisting in assuring" full employment, but that section was conspicuously absent from the Employment Act of 1946.[51]

As a final point, the Employment Act of 1946 was enacted as an instrument for countering a possible postwar depression. Maximizing purchasing power, a primary goal, was to be attained by promoting employment and production. Impoundment has precisely the opposite effect.

E. Economic Stabilization Act

Deputy Attorney General Joseph T. Sneed told a Senate committee on February 6, 1973, that President Nixon had substantial latitude to refuse to spend or to defer spending for general fiscal reasons, such as control of inflation. This view is supported by the Congressional intent revealed by the Employment Act of 1946, the Economic Stabilization Act Amendments of 1971, and the debt limit imposed by Public Law 92–599.[52]

A report by OMB also cited the Economic Stabilization Act as authority and reason for withholding funds from a number of projects: the Appalachian regional development programs, rural electrification loans, FHA rural water and waste disposal grants, federal aid to highways, payment to the Tennessee Valley Authority Fund, and several housing and urban development programs.[53]

On February 19, 1973, Senator Eagleton introduced an amendment to provide that nothing in the Economic Stabilization Act "may be construed to authorize or require the withholding or reservation of any obligational authority provided by law, or of any funds appropriated under such authority." [54] The Eagleton amendment was incorporated into a bill to extend and amend the Economic Stabilization Act [55] and was enacted into law on April 30, 1973.[56]

F. Public debt limit

Several administrations have relied on the debt ceiling as authority for withholding funds. In 1957, in order to keep within the statutory debt limit imposed by Congress, the Eisenhower administration issued a series of orders and announcements for cutbacks and stretchouts in defense programs.[57] When Congress later raised the debt limit, the money was released.[58] The "debt ceiling" argument has also been invoked frequently by the Nixon administration.[59]

In adhering to a debt limit established by Congress, an administration is nevertheless able to give preference to its own programs and priorities. Thus, the Nixon administration extended revenue sharing to the states without feeling constrained by the debt limit, while at the same time it withheld funds from a number of other programs ostensibly on the ground that the debt limit could not accommodate them.

G. Discretionary language

Statutes frequently provide for discretionary spending authority, which is sometimes explicit in the statute itself, sometimes implicit in the statute's legislative history.

Explicit authority is illustrated by the Labor-HEW appropriation bill for fiscal 1970. President Nixon vetoed the bill on January 26, 1970, because it provided $1.3 billion more than he had requested.[60] After sustaining [61] the President's veto, Congress reduced the appropriation from $19.7 billion to $19.3 billion—still $900 million more than Nixon had desired. But in order to avert the possibility of a second veto, the bill included a provision that limited expenditures to 98 percent of appropriations, provided that no amount specified in the appropriation could be cut by more than 15 percent. The 2-percent cutback allowed for a further spending reduction of $347 million. President Nixon signed the amended bill.[62]

Footnotes at end of article.

A similar situation arose three years later. President Nixon vetoed the fiscal 1973 Labor-HEW appropriation bill, which was $1.8 billion higher than he had requested.[63] Congress passed the bill again, this time including presidential authority to withhold from obligation and expenditure as much as $1.2 billion, provided that no activity would be reduced by more than 13 percent.[64] In contrast with his action three years earlier, the President pocket vetoed the amended bill.[65]

The Labor-HEW appropriation bill for fiscal 1974, enacted into law,[66] authorizes the President to withhold up to $400 million, with the restriction that none of the appropriations, activities, programs and projects may be reduced by more than 5 percent. If the discretion is used to its fullest, the statute will exceed the President's budget request by approximately $978 million.[67]

A more difficult area, concerning the degree of spending discretion implicit in an act, is illustrated by the Federal Water Pollution Control Act Amendments of 1972.[68]

H. Other miscellaneous statutory provisions

The President has been granted discretionary spending powers in a variety of other legislative formulations. For example, he has been directed to withhold economic assistance in an amount equivalent to that spent by an underdeveloped country for the purchase of sophisticated weapons systems, unless he informs Congress that the withholding of such assistance would be detrimental to national security.[69] Economic assistance is not to be furnished to any nation "whose government is based upon that theory of government known as communism," unless the President determines that the withholding of such assistance would be contrary to the national interest.[70] An overthrow of a regime by "communist" forces might therefore be a basis for cutting off assistance. Furthermore, according to the "Hickenlooper amendment," if a foreign government seizes any property from U.S. corporations and fails to compensate them within a reasonable amount of time, the President is required to suspend assistance.[71]

The 1964 Civil Rights Act empowers the President to withhold funds from federally financed programs in which there is discrimination by race, color, or national origin.[72] On the basis of that provision, special desegregation grants may be terminated when school districts violate civil rights requirements.

States that fail to enact bi[illegible]board control legislation, as required by the federal Highway Beautification Act of 1965, have been threatened with a loss of federal aid for highway improvement.[73] A 1968 act requires states to update their welfare payments standards in order to reflect cost-of-living increases. "Failure to comply with this act can lead [illegible] a cutoff of federal welfare assistance."[75]

III. CONSTITUTIONAL POWERS

A. Executive power

Legislative efforts to control impoundment have been resisted by the Nixon administration as a "serious infringement" upon the President's constitutional responsibility to execute the laws enacted by Congress. The establishment and release of budgetary reserves was regarded as an action of "an administrative nature, fully consistent with the President's constitutional duty to 'take care that the laws be faithfully executed.'"[76] A more general proposition by the Nixon administration rested on the belief that the President's authority to establish reserves "is derived basically from the constitutional provisions which vest the executive power of the President."[77]

This latter proposition opens the door to the shadowy area of implied powers. And yet, to deny the President any discretion and judgment over the expenditure of funds, other than what Congress specifically delegates to him, would convert his office from that of Chief Executive to Chief Clerk.[78] It would prevent the executive branch from making the kinds of decisions previously described as "efficient management."[79] Finally, it would carry to extremes the Brandeis dictum that the doctrine of separated powers was adopted "not to promote efficiency but to preclude the exercise of arbitrary power."[80] The period from 1774 to 1787 furnishes ample proof that the framers indeed intended to create a separate executive branch for the purpose of imparting efficiency and accountability to government.[81]

The issue is thus not *whether* a degree of discretion and judgment is implied in Article II of the Constitution.[82] Rather, inquiry must be made as to the boundaries of that discretion.

B. Foreign affairs

Officials of the Nixon administration have argued that the President's discretion to withhold funds is especially broad in the area of foreign affairs. In a statement before the Ervin-Chiles impoundment hearings on February 6, 1973, Assistant Attorney General Sneed offered these remarks:

The President has substantial authority to control spending in the areas of national defense and foreign relations. Such authority flows from the President's constitutional role as Commander-in-Chief of the Armed Forces and from his relatively broad constitutional authority in the field of foreign affairs.[83]

In [the areas of national defense and foreign relations] Congressional directives to spend may intrude impermissibly into matters reserved by the Constitution to the President. It is noteworthy that Congress has never successfully challenged an impounding action in the foreign relations and national defense funds.[84]

Of course, ample statutory authority exists for withholding foreign assistance funds.[85] If the President were to withhold funds he would be acting in support of congressional policy, not in defiance of it. Moreover, the administrative patterns in foreign assistance is not to impound funds but to spend every available dollar. In 1971, when it was learned that a series of domestic programs had been affected by impoundment, congressional hearings revealed that not one dime had been withheld from projects overseas.[86] This led to a provision in the Foreign Assistance Act of 1971, prohibiting the obligation or expenditure of funds available under the Foreign Assistance Act and the Foreign Military Sales Act unless certain funds withheld from the Departments of Agriculture, HEW, and HUD were released.[87] A similar effort was made in 1973 to make the expenditure of foreign assistance funds contingent upon the release of domestic funds.[88]

C. Commander in Chief

Assistant Attorney General Sneed's contention that there exists executive authority for impoundment of funds in national defense and foreign relations matters relies upon the President's constitutional role as Commander in Chief.[89] The scope of that constitutional provision remains a source of continuing dispute. As Mr. Justice Jackson once said of the Commander in Chief clause:

These cryptic words have given rise to some of the most persistent controversies in our constitutional history. Of course, they imply something more than an empty title. But just what authority goes with the name has plagued presidential advisers who would not waive or narrow it by nonassertion yet cannot say where it begins or ends.[90]

1. *During Wartime.* Impoundment pursuant to this authority was used before, during, and after World War II, sparking objections from some members of Congress but without creating a major crisis. With war imminent in January 1941, President Roosevelt told Congress that it seemed appropriate to "defer construction projects that interfere with the defense program by diverting manpower and materials."[91] Despite some opposition, the Roosevelt administration was generally able to withhold funds from domestic projects in order to promote the war effort.[92] When Congress authorized public works projects in December 1944 and in March 1945, it did so in the "interest of the national security" and for the purpose of providing a reservoir of useful projects during the postwar period. Projects were to be initiated "as expeditiously and prosecuted as vigorously as may be consistent with budgetary requirements."[93] No project was to be funded or constructed until six months after the end of the war, unless recommended by an authorized defense agency and approved by the President as being "necessary or desirable in the interest of the national defense and security, and the President had notified the Congress to that effect."[94]

Surrender of the Axis powers left the federal government with tens of billions of dollars in excess of military needs. That balance was brought under control by Congress (rescinding appropriations) and by the President (impounding funds). In June 1944, Congress directed the President to undertake a continuous study of war appropriations and contract authorization so that he would be able to recommend the rescission of appropriations no longer needed.[95] The following year it called upon the administration to reduce the number of federal employees and to bring about the reduction of administrative costs by way of reorganization. Savings were to be placed in reserve and returned to the Treasury.[96] Also in 1945, Congress passed the first recission bill, cancelling a number of funds previously appropriated.[97]

In September 1945, President Truman submitted to Congress a series of proposed reductions in the civilian war agencies and in the naval and military establishments. The proposed rescissions of appropriations and contract authorizations came to approximately $49 billion.[98] But when Congress passed the recission bill, it included a rider to require decentralization of public employment offices. Truman opposed this latter provision both in substance and procedure, insisting that such issues "should not be dealt with as riders to appropriation bills." He refused to sign the bill into law, yet he told Congress that he would heed those sections which dealt with rescissions. He then directed the BOB to designate those amounts as nonexpendable.[99]

Congress responded by passing a number of statutes to rescind appropriations and contract authority.[100] Spending reductions for the budget year ending June 30, 1946, eventually came to $55 million.[101] Thus, under appropriate conditions, Congress as well as the President can "impound" appropriations previously made.

2. *Peacetime Military Procurement.* Prior to the Nixon administration, most of the controversial impoundment actions involved weapons systems. The complicated political setting of this type of action may be illustrated by providing details of two major examples: one involving Air Force funds withheld by Truman and the other concerning funds for B–70 bombers during the Kennedy administration.

In 1949 Congress voted to increase President Truman's Air Force request from 48 to 58 groups. Truman countered by placing the unwanted funds, totalling $735 million, in reserve. Several factors produced this collision between the two branches.

First, Louis Johnson, who replaced James Forrestal in March 1949 as the new Defense Secretary, subjected the military budget to fresh scrutiny. Even though the Berlin airlift was in operation and the Korean War

Footnotes at end of article.

little more than a year away, Johnson was optimistic about the chances for peace.[102] This period was also dominated by the theory that it was the intention of Soviet Russia to force the United States to spend so much on defense that this would bankrupt the American economy. Instead of aiming for a military victory, it was widely believed that Russia planned to undermine the American economy—to "bleed the economy to death."[103]

Retrenchment in defense spending because even more likely when the Eberstadt task force of the Hoover Commission released its findings on the Pentagon. In December 1948 the task force criticized the military services for hampering defense policy with their fierce rivalries. More directly to the point, the services lacked a "sense of cost consciousness" and were "far too prodigal" with government funds.[104] The following April former President Hoover advised Congress that $1.5 billion could be cut from the military budget without impairing national security.[105] In June, Franz Schneider, who had headed the Eberstadt study of the fiscal 1950 budget, told a Senate committee that defense savings could run as high as $2 billion.[106]

Secretary Johnson, who considered the defense budget too small when he presented it in 1949, nevertheless concluded that larger appropriations—because of waste within the Pentagon—would be throwing money "down a rat hole."[107]

Still another factor was Truman's fiscal policy of relying on budget surpluses and debt retirement to restrain inflation. Twice in 1947 he vetoed tax-reduction bills.[108] In 1948, when he again vetoed a tax-reduction bill, Democrats joined with Republicans to override him.[109] With revenues lost to tax relief, and tax receipts down because of the 1948–49 recession, Truman had to redouble his efforts to control expenditures.[110]

The Senate joined with the President in opposing Air Force funds added by the House. But as the matter lay deadlocked in conference committee, the House rejected a Senate motion to vote continuing appropriations.[111] With adjournment close at hand and the military services in need of payroll funds, the Senate reluctantly agreed to the 58 groups. It did so, however, on the understanding that the money might not be spent. Senator Elmer Thomas, a ranking Democrat on the Appropriations Committee, left the impression that "if the money is appropriated it may not be used."[112]

Truman signed the bill, announcing that he was directing his Secretary of Defense to place the extra funds in reserve: $577 million in contract authority for aircraft construction, $130 million for maintenance and operations, and lesser amounts for contingencies, special procurement, and research and development—a total of $735 million.[113] He justified impoundment on the need to maintain a balance between national security and a sound economy, the importance of preserving the elements of a unified strategic concept among the military services, and the President's authority as Commander in Chief.[114]

Neither Senator McKellar nor Representative Cannon—Chairmen of the Appropriations Committees—questioned Truman's authority to withhold the money.[115] Defense Secretary Johnson regarded Truman's action as inherent in the President's responsibilities as Chief Executive and Commander in Chief.[116] When Truman was later asked if he saw any conflict between his constitutional duty to enforce the law and his impoundment of Air Force funds, he replied:

"That is the discretionary power of the President. If he doesn't feel like the money should be spent, I don't think he can be forced to spend it. How would you go about making him spend it . . . ?[117]

Another hotly contested impoundment action involved the B–70 bomber (later the RS–70), a long-range aircraft billed as successor to the B–52. President Eisenhower had restricted the B–70 program to production of prototype aircraft, to be made available in 1963 for flight testing. Although U.S. strategy in the postwar period depended on manned bombers Eisenhower felt that an increasing part of the strategic force would be composed of fixed-base and mobile ballistic missiles. Hence, he doubted the need for B–70s in an age of ICBMs and Polaris submarines.[118]

In 1961 Congress added $180 million to the $200 million requested by the Kennedy administration for development of the B–70. Defense Secretary McNamara, stressing our advantage over the Soviets in bombers and the deterrent capability of American missile strength, refused to release the unwanted funds.[119]

In March 1962 the House Armed Services Committee, under the leadership of Carl Vinson, voted to direct the Secretary of the Air Force to spend not less than $491 million during fiscal 1963 toward production of the aircraft (then redesignated RS–70). The committee figure was $320 million above the administration's request. To remove any doubts about its intentions, the committee said that the Secretary was "directed, ordered, mandated, and required" to spend the full $491 million. In casting down the gauntlet, the committee declared: "If this language constitutes a test as to whether Congress has the power to so mandate, let the test be made. . . ."[120]

President Kennedy, in a letter to Vinson, urged that the word "authorized" be used in place of "directed." The President contended that the change in language would be more suitable for an authorization bill, since funds would still have to be appropriated in a separate bill. He also thought the wording would be "more clearly in line with the spirit of the Constitution" and its separation of powers. Kennedy insisted on "the full powers and discretions essential to the faithful execution of [his] responsibilities as President and Commander in Chief, under article II, sections 2 and 3, of the Constitution."[121]

Other than the backing of his own committee, Vinson was isolated from other congressional power centers. Among the military, he was supported only by the Air Force. The rest of the Joint Chiefs supported McNamara.[122]

Vinson also encountered stiff opposition from the House Appropriations Committee. Committee chairman George H. Mahon said that it was improper and impractical to direct the President to spend money before it was appropriated. He was opposed to the Armed Services Committee's directing his committee to appropriate money.[123] Gerald Ford, ranking minority member on House Appropriations, was "unalterably opposed" to the use of the word "directed." According to Ford, the "directed" language invaded the responsibilites of the President, usurped the authority of the Appropriations Committee, and created inflexibility in the program.[124] Opposition to the mandatory language came from Charles Halleck, House Minority Leader, John McCormack, Speaker of the House, and Carl Albert, House Majority Leader.[125]

To assuage Vinson's embarrassment, Kennedy announced that McNamara would initiate a "new study" of the aircraft.[126] Vinson took the floor to claim that Congress "has made its point and . . . caused the Department of Defense to see the error of their ways."[127] Interpretations from other Members were less flattering. Representative Leslie Arends called it a "paper victory." He said he would "wait the translation of the assurances, we now have into affirmative action."[128] Representative Frank Becker claimed that McNamara's offer was "an old legislative trick—that when you want to get rid of something, agree to a study. This is the surest way to brush something under the rug that you want to get rid of."[129] Representative H. R. Gross regretted that the fight had ever started, "for it is apparent now that it has been lost. This is not a compromise; it is a defeat for the entire House of Representatives."[130]

The administration proceeded with its original plan to build two prototypes of the RS–70 before considering full-scale production. One prototype crashed in June 1966; the second ended up in the Air Force Museum at Dayton, Ohio.[131]

IV. ADMINISTRATIVE POLICY MAKING

Any impoundment action by an executive official represents at least some degree of policy making, even when in compliance with statutory language. Policy is part of every budget and fiscal decision.[132]

A few cases of impoundment, however, illustrate policy making in such pure form that they are included here as a separate section.

A. Unwanted projects

Prior to the 1960's, several Presidents practiced a form of "item veto" on public works legislation—obeying certain portions of a bill while ignoring others. Senator Stephen Douglas of Illinois recalled that an appropriation act of 1857 had failed to benefit his state. The President had quarreled with Representatives from Illinois and penalized them by withholding funds:

To this hour [in 1861], you could not get the law executed. Other custom-houses could be built; other post offices could be made; but not a dollar could be expended at Springfield or at Cairo, in Illinois, although the law required it.[133]

In 1876, in signing a river and harbor bill, President Grant expressed his objections to particular projects:

If it was obligatory upon the Executive to expend all the money appropriated by Congress, I should return the river and harbor bill with my objections, notwithstanding the great inconvenience to the public interests resulting therefrom and the loss of expenditures from previous Congresses upon completed works. Without enumerating, many appropriations are made for works of purely private or local interest, in no sense national. I cannot give my sanction to these, and will take care that during my term of office no public money shall be expended upon them.[134]

This selective execution of the laws occasionally received support from influential legislators. In 1896, Senator John Sherman—second-ranking Republican on the Finance Committee—regarded President Cleveland's veto of a river and harbor bill as unnecessary. The appropriation bill was permissive:

If the President of the United States should see proper to say, "That object of appropriation is not a wise one; I do not concur that the money ought to be expended," that is the end of it. There is no occasion for the veto power in a case of that kind.[135]

In 1923, President Harding threatened to use his impoundment power to curb river and harbor spending. Whether he could have won this confrontation with Congress is academic; within a matter of months he was dead, and there is no evidence to suggest that his successor was inclined to impound the funds.[136]

With regard to a dispute in the early 1940's concerning the Kings River Project in California's Central Valley Basin, President Roosevelt instructed his Secretary of War not to allocate any funds or submit any estimates for appropriations without review by the BOB and by the President.[137] When Congress funded the project in the spring of

Footnotes at end of article.

1946, President Truman announced that he would submit his own plan for developing water resources in that area. He then impounded the funds pending a determination of the prospective costs. In February 1947, after he submitted his report to Congress, Truman released the money.[138]

In 1965 a dispute over legislative procedures led to impoundment of funds for small watershed projects. Instead of vetoing a river and harbor bill, President Johnson noted his opposition to a committee-veto provision and asked that it be repealed in the next session. Congress refused and the funds for small watershed projects remained impounded.[139] On March 27, 1969, President Nixon advised his Secretary of Agriculture that he would not object to the committee-veto procedure.[140] A list of 18 projects was submitted to Congress on June 30 for committee approval.[141]

In a fiscal 1966 appropriation, Congress provided $9.2 million for construction of a national aquarium.[142] The Johnson and Nixon administrations impounded practically the entire amount.[143] On January 19, 1971, President Nixon halted construction of the $180 million Cross Florida Barge Canal, a project that was years in the making and more than one-third complete. The project was halted, the President said, "to prevent serious environmental damages." [144]

Lastly, during December 1972 and January 1973, the Nixon administration announced the termination or postponement of numerous agricultural, environmental and housing programs.[145]

B. Anti-inflation policy

In signing an agricultural appropriation bill in 1966, President Johnson was displeased that Congress had added $312.5 million to his budget request. "During a period," he said, "when we are making every effort to moderate inflationary pressures, this degree of increase is . . . most unwise." Instead of vetoing the bill, and losing funds he wanted, he reduced expenditures for certain items "in an attempt to avert expending more in the coming year than provided in the budget." [146]

President Johnson's economic message to Congress, on September 8, 1966, estimated that spending had to be cut by $3 billion to protect the nation's economy. Whenever possible, appropriations surpassing the President's recommendations would be withheld.[147] After the November elections, Johnson announced a $5.3 billion reduction in federal programs, requiring more than a $3 billion reduction for the remaining seven months of the fiscal year.[148]

The Nixon administration's anti-inflation policy was buttressed by congressionally-enacted spending ceilings for fiscal years 1969, 1970, and 1971.[149] Apart from those statutory limitations, however, the President relied upon general executive authority to restrain inflationary pressures.

For example, the spending ceiling established in July 1969 ranged from $191.9 billion to $193.9 billion (to allow for uncontrollables), plus whatever Congress wanted to add to the budget. But the President announced his intention to follow his *own* ceiling of $192.9 billion.[150]

During the fall of 1970, while signing an authorization bill for sewer and water lines, President Nixon warned that appropriations in excess of his budget would have a "disastrous fiscal effect." Nixon said that in the event that Congress refused to exercise restraint, "I must and will act to avoid the harmful fiscal consequences of this legislation. I will be compelled to withhold any overfunding." [151] The following day he signed a public works appropriation bill, stating his intention to consider all means possible "to minimize the impact of these inflationary and unnecessary appropriations, including the deferment of the proposed starts and the withholding of funds." [152]

The Nixon administration went ahead with public works projects that it had recommended. It also deferred, without exception, all of the additional projects that Congress had added. Caspar Weinberger offered this explanation to a House subcommittee: "Given the necessity for retrenchment in some areas, I think it is inevitable that the President would feel that the items he included were items that should be released first." [153]

Why only the President's items? Did the executive branch enjoy some special technical or professional advantage in selecting top-priority projects? The administration made no effort to justify its choices in terms of project merit, such as cost-benefit ratios or any other criteria.

Weinberger even acknowledged that congressional committees explored in "much greater depth" than OMB the technical merits of public works projects:

The point I made is that the discretion we exercise is done on a single basis, the idea that the President's budget should stand and that all of the congressional add-ons be deferred, when a deferral is necessary in this amount, rather than exercising a cavalier or an independent judgment on individual projects. We don't feel qualified to do that.[154]

OMB depended on advice from the Corps of Engineers or the Bureau of Reclamation as to which projects had lower priority—"by definition those projects that are not included in the budget. . . ." [155] In short, instead of treating the budget as a set of recommendations, to be acted on at the discretion of Congress, OMB decided that "the President's budget should stand and that all of the congressional add-ons be deferred. . . ." [156]

In the fall of 1972, after Congress had refused to establish a spending ceiling, President Nixon announced that he intended to "use every weapon at [his] command" to hold spending in fiscal 1973 as close as possible to $250 billion.[157] Having asked for a statutory ceiling of $250 billion, and having been rejected, the President proceeded to adopt that figure as an administration target, impounding whatever funds were necessary to stay within that limit. Speaker Albert commented that this action made "a monkey out of the legislative process." [158]

C. Shifting priorities

After inheriting the "Great Society" programs of the Johnson years, President Nixon relied on impoundment to move toward his own priorities. During the latter part of 1969 and into 1970, the Nixon administration announced plans to reduce research health grants, Model Cities funds, and grants for urban renewal to help check inflation.[159] The President's critics noted that these cutbacks were made at the same time the administration was sponsoring such costly projects as the supersonic transport, a manned landing on Mars, revenue sharing, a larger merchant marine fleet, and the Safeguard ABM system.

In the spring of 1971, the Nixon Administration reported that it was withholding more than $12 billion, most of which consisted of highway money and funds for various urban programs.[160] It became evident that part of the withholding was tied to the administration's desire to drop the system of categorical grant-in-aid programs in favor of bloc grants and general revenue sharing. When Congressman Zablocki complained about the impoundment of water and sewer funds, he was told by Weinberger that the administration shares your concern over the public facility needs of cities. . . . However, the President firmly believes that revenue sharing represents a much more effective way of helping local governments provide for local needs than the narrowly-focused categorical grant programs which now exist.[161]

This was the administration's way of saying that it intended to implement a program which was not yet law, but would not implement a program already authorized and funded.

The withholding of water and sewer grants was defended in 1972 by OMB Director George Shultz:

"I might say that this is one area where there are some funds in reserve that are restrictive in nature. I think it reflects our feelings that while other funds will be released by the end of the fiscal year, we can appropriately drag our feet just a little bit while the Congress examines the extent to which it wants to transfer to the Federal Government what has historically been a function of local government, usually financed by the people who benefit directly." [162]

This is essentially a states' rights argument, perhaps compatible with the political philosophy of John Calhoun and John Taylor, but not even remotely supported by statutory authority, by constitutional grants of power, or by the present distribution of power between the federal government and the states.[163] The argument is not consistent with the reality of federal financing of health, education, and welfare — responsibilities which also at one time were "a function of local government." Consistency in this position would require the Nixon administration to withhold from local governments still other funds for programs which the President strongly supports, such as law-enforcement grants.

PART II—THE NIXON ADMINISTRATION'S "GOOD FAITH" EFFORTS: THREE CASE HISTORIES

The examples offered in the first part of this article are illustrative of the broad areas of spending flexibility available to the executive branch. Discretion and judgment are essential qualities of executive power. And yet the fact that spending flexibility exists does not indicate that an administration may operate without limits. A lack of mandatory language cannot be taken to mean that an administration is at liberty to ignore a program in its entirety. In such cases an unwritten code of custom and interbranch comity obliges executive officials to operate on a good faith basis, preserving a foundation of trust with Congress and its committees.

This nonstatutory system of controls, constructed over a period of decades, has collapsed in recent years. The Nixon administration has ignored its "good faith" obligations and stretched discretionary authority beyond its customary limits. In self-defense, Congress has begun to delete from legislation various forms of executive spending discretion. The three case histories offered here provide concrete evidence of congressional disapproval.

I. AGRICULTURE

During December 1972, the Nixon administration made wholesale reductions in farm programs. The first two casualties were the $225.5 million Rural Environmental Assistance Program (REAP) and the $10 million Water Bank Program. Subsequently, the administration also terminated the emergency disaster loan program (of the Farmers Home Administration), the rural electrification program and the water and sewer grant programs.

A. REAP and water bank

The Rural Environmental Assistance Program operated to relieve the problem of water pollution caused by sediment; the Water Bank Program was established to preserve wetlands for waterfowl. Both programs were terminated on December 26, 1972. A legal memorandum from the Department of Agriculture argued that the action was "consistent with provisions of the legislation authorizing the REAP and Water Bank Programs since that legislation authorizes but does not require that the programs be carried out by the Secretary." [164] "Since it is

Footnotes at end of article.

clear," the memorandum continued, "that neither the substantive legislation nor the appropriation act compels the obligation and expenditure of the full amount authorized but merely authorizes a program to be carried out, it is our opinion that the program may be legally terminated." [165] That is a wholly remarkable interpretation since Congress authorized and funded a program after holding hearings, writing committee reports, and enacting a bill into law.

The response from Congress was predictable. In place of discretionary language, Congress inserted mandatory clauses. The House Committee on Agriculture said that while it normally sought to give the Secretary "maximum discretion in administering the programs assigned him by the Congress as a contribution toward sound administration, the REAP termination signals an abuse of that discretion." [166] Instead of providing that the Secretary "shall have power" to carry out REAP, the committee proposed that he "shall" carry it out. Instead of allowing the Secretary to make payments "in amounts determined by the Secretary to be fair and reasonable," he was directed to make payments "in an aggregate amount equal to the sums appropriated therefor . . . ." [167]

The Senate Committee on Agriculture and Forestry added the requirement that the Water Bank Program "shall" be carried out.[168] The bill was amended on the Senate floor by deleting from the Water Bank Act the words "shall have authority to" and replacing them with language directing that the Secretary "shall, to the full extent permitted by available appropriations therefor." [169] Because of differences between the two houses,[170] and because of some doubts as to whether either house had the two-thirds majority needed to override a veto, the bill was not presented to the President.

Another effort was made to reinstate REAP by amending, on the Senate floor, the Agriculture and Consumer Protection Act.[171] Five days later the House Committee on Appropriations directed that the REAP and Water Bank Programs be reinstated for fiscal 1974. In the event that Department of Agriculture studies indicated that the same work could be carried out with less personnel, the committee stated that it would consider such proposals "with the understanding that no reductions be made until prior Committee approval has been obtained." [172] An amendment by Representative Robert H. Michel to limit the scope of the REAP program was later rejected on the House floor by a vote of 23 to 69.[173]

The Agriculture and Consumer Protection Act of 1973, as enacted, contained a modified REAP program entitled "Rural Environmental Conservation Program." The Act directed that the Secretary of Agriculture "shall carry out the purposes" of specified clauses in the Soil Conservation and Domestic Allotment Act and in the Water Bank Act.[174] The conference report on the agriculture appropriation bill included funds both for the modified REAP program and for the Water Bank Act.[175]

B. FHA disaster loans

The emergency loan program of the Farmers Home Administration was established to provide a source of loan funds for farmers and ranchers in areas designated to be disaster areas. In a press release dated December 27, 1972, the Department of Agriculture announced that funds were being cut off to counteract inflationary pressures and to enable adherence to the President's $250 billion spending limit.[176]

As a result of judicial and legislative efforts, the program was partially restored. A Minnesota district court decision ordered Secretary Butz to reinstate the program for natural disaster victims in 15 Minnesota counties.[177]

Secretary Butz had designated 14 of the counties eligible for emergency loans on June 26, 1972.[178] On September 20, 1972, he added another county to the list.[179] Farmers in those areas were advised that applications would be accepted and processed through June 30, 1973. They were also advised that it would be preferable to file after the harvest (late November or early December) to ensure that all eligible losses were included in the applications. Because of the large number of applications after the harvest, many farmers were told that appointments for review could not be made until early 1973. Then, on December 27, Secretary Butz directed the Minnesota State FHA office not to accept any applications for the 15 Minnesota counties.[180]

The Minnesota court distinguished between two types of secretarial actions: discretionary (declaring which areas were entitled to disaster assistance) and ministerial (processing applications after a designation is made). The court held that while an individual does not have a "right to receive a loan under the disaster loan program, he does have the right to file an application and to have his application reviewed." [181] It was determined by the court that Secretary Butz' refusal was "in excess of the Secretary's authority and [was] unlawful." [182]

Moreover, the court concluded that Secretary Butz had ignored several departmental regulations, including a requirement to give prior notice in the *Federal Register* for proposed rules, and a requirement to provide an opportunity for interested parties to participate in rulemaking. Also ignored was a requirement to publish an adopted rule in the *Federal Register* not less than 30 days before its effective date. The court noted that the Department "did not comply with even one of these mandatory requirements . . . ." [183]

Congress rewrote the FHA emergency loan program to eliminate a $5,000 forgiveness feature and to raise the interest rate on loans from 1 percent to 5 percent.[184] The new law also eliminates what was previously discretionary authority for the Secretary of Agriculture. Instead of "authorizing" him to make loans, the law states that he "shall" make them.[185] And whereas previous law provided that the Secretary "may" designate any area as an emergency area when he finds that a need exists, it now provides that he "shall." [186] Finally, the law included an 18-day grace period for eligible applicants in areas designated by the Secretary of Agriculture after January 1, 1972 and prior to December 27, 1972.[187]

C. REA loan program

On December 28, 1972, without advance warning and without prior consultation with the leadership of Congress, the Department of Agriculture terminated the program of direct loans to rural electric and telephone borrowers of the Rural Electrification Administration. Instead of offering federal loans at a fixed 2-percent interest rate, the Government planned to insure or guarantee private loans at 5 percent.

In his news conference of January 31, 1973, President Nixon resorted to ridicule in an effort to justify the administration's decision:

[W]hat I have found is that when I first voted for REA, 80 percent of the loans went for the purpose of rural development and getting electricity to farms. Now 80 percent of this 2 percent money goes for country clubs and dilettantes, for example, and others who can afford living in the country. I am not for 2 percent money for people who can afford 5 percent or 7.[188]

Several days later, at hearings before the Senate Agriculture and Forestry Committee, Secretary Butz was asked whether he agreed with the President's statement that most REA loans were going to dilettantes and country clubs. Butz replied:

"No, not most of them. There are some going like that, of course, in rural areas." I think the choice of the word "most" was probably unfortunate and not premeditated on his part. There are some going like that, Mr. Chairman, but surely not most of them.[189]

Legislation was introduced in each house to reactivate the program. The Senate report concluded that the association between REA and "2-percent money" was an exaggeration. Most loans were a combination of 2-percent REA loans and supplemental assistance from the Rural Utilities Cooperative Finance Corporation (CFC), a private credit cooperative. Fewer than 10 percent of the borrowers were eligible for 2-percent loans. The remainder relied on blended loans, with about 54 percent eligible for 70 percent REA/30 percent supplemental funds, about 20 percent for 80/20 loans, and about 17–18 percent for 90/10 loans.[190]

The Senate bill replaced discretionary language with mandatory provisions. Instead of providing that the Administrator is "authorized and empowered" to make loans, with discretion as to the amount, the bill "authorized and directed" loans to be made "in the full amount determined to be necessary by the Congress or appropriated by the Congress. . . ." [191] The House version, which also contained mandatory clauses, proposed a compromise measure designed to meet some of the objections of the administration. For example, the House incorporated a new revolving fund for two types of insured loans, one at a "special rate" of 2 percent and the other at a "standard rate" of 5 percent.[192]

Secretary Butz pledged to carry out the REA program on the condition that the mandatory language be stricken from section 305, which "authorized and directed" the Administrator to make insured loans. The conference committee complied with his request.[193] The enacted statute reflects that change and retains the concept of a revolving fund.[194]

When the administration failed to implement the REA program, Congress threatened to prevent payment of certain salaries and expenses for persons responsible for the delay. The threat was withdrawn after Congress received assurances from the OMB Director that he would recommend and support implementation of the program.[195]

D. Rural water and sewer grants

On January 10, 1973, the Department of Agriculture announced that it was "terminating" planning and development grants in the water and waste disposal programs of Farmers Home Administration. The effect was to impound $120 million for fiscal 1973. An opinion from the General Counsel of the Department justified the action on the ground that the statute "authorizes but does not require that the programs be carried out by the Secretary." [196]

The House Committee on Agriculture, in reporting out a bill to restore the program said that the grant of discretion by Congress and the subsequent abuse of that discretion made the remedy apparent: "The Committee has little choice but to act to remove the discretionary features of the original Poage-Aiken Act, and reinstate the program as originally established by law." [197] The House bill, substituting the word "shall" for the words "is authorized to" and "may," passed by a vote of 297 to 54.[198] The Senate passed the bill 66 to 22.[199]

Despite the generous margins of those votes, Congress was unable to override the President's veto. The House could muster only a vote of 225 to 189 on the override attempt.[200] Nevertheless, the conference report on the agriculture appropriation bill contained $30 million in new funds for FHA water and sewer grants, supplemented by $120 million in carryover funds.[201]

As a general approach to the impoundment of agriculture funds, the Senate adopted

Footnotes at end of article.

an amendment to the agriculture appropriation bill requiring that all money appropriated by the bill "shall be made available for expenditure except as specifically provided by law." [202] The exception was intended to cover such statutes as the Antideficiency Act. [203] Senator Bayh elaborated on the purpose of this provision:

This amendment will send the administration a message about what Congress means when it passes an appropriations bill. It will tear asunder the administration's argument—which I think specious in any event—that the amount granted in an appropriations bill is only the maximum which can be spent on the program in question, and that the administration has discretion to spend less—down to nothing if it feels like it.[204]

The amendment was deleted in conference without prejudice as an unnecessary restatement of existing provisions of law.[205]

II. ENVIRONMENT

The Federal Water Pollution Control Act Amendments of 1972 [206] were enacted into law when both houses overrode a presidential veto, the Senate 52–12 and the House 247–23.[207] A month later the President instructed the head of the Environmental Protection Agency (hereinafter referred to as "EPA") to withhold from the states more than half of the waste treatment allotments. Instead of following the statutory ceilings of $5 billion for fiscal 1973 and $6 billion for fiscal 1974, the President established the maximum allotments for those years at $2 billion and $3 billion.[208]

A. Statutory coverage

The administration had potential spending control in (1) the initial allotments of contract authority to the states and (2) the obligation and expenditure of funds at a later date. The statute appeared to make the first step mandatory, in the sense that section 205 of the Act directed that sums "shall" be allotted. However, the original language in the House bill had been even stronger, directing that "all" sums shall be allotted.[209]

Representative William H. Harsha, ranking Republican on the conference committee handling the bill, explained that elimination of the word "all" was intended "to emphasize the Presidents flexibility to control the rate of spending." [210] Flexibility was enhanced by inserting the phrase "not to exceed in section 207 of the Act which described the amounts authorized to be appropriated for fiscal years 1973, 1974, and 1975. The EPA Administrator could also pace the expenditure of funds by virtue of his authority to approve plans, specifications, and estimates.[211]

Representative Harsha concluded by saying that he did not see how "reasonable minds could come to any other conclusion than that the language [of section 207] means we can obligate or expend up to the sum—anything up to that sum but not to exceed that amount." [212] Representative Robert Jones, chairman of the House conferees, agreed: "there is no doubt in anybody's mind of the intent of the language." [213] Minority Leader Gerald Ford summed up the situation:

"[T]his clarifies and certainly ought to wipe away any doubts anyone has. The language is not a mandatory requirement for full obligation and expenditure up to the authorization figure in each of the 3 fiscal years." [214]

Edmund Muskie, leading Senate sponsor of the bill, remarked that the President knew "that all the money authorized in the bill would not have to be obligated." [215] According to Muskie, the "not to exceed" language, coupled with the deletion of "all," was to be taken "to give the administration some flexibility concerning the obligation of construction grant funds." [216] Hence, these speakers were in agreement that the President could exercise some discretion in obligating and expending funds.

A separate question presented was whether the President also enjoyed flexibility in allotting the contract authority to the states. In a decision handed down on May 8, 1973, the U.S. District Court for the District of Columbia held that the Act required the administration to allot the full sums authorized to be appropriated by Section 207.[217] Instead of allotting $5 billion for the first two years, the administration should have allotted the full $11 billion. In reaching that decision, however, Judge Gasch did not try to determine "whether the Administrator should *spend* any given amount of money for sewage treatment works." [218] He stated that the question whether "the entire amount should be *obligated* is, of course, not before this Court." [219]

The question of obligation and spending was at issue in *Campaign Clear Water v. Ruckelshaus*.[220] Judge Merhige found that the Nixon administration's failure to allot $6 billion in clean-water money constituted an abuse of discretion.[221]

Unlike Judge Gasch, Judge Merhige warned that excessive withholding at the obligation and expenditure stages would contravene the letter and spirit of the Act.[222] But whereas Judge Gasch decided that the Act required allotment of all funds, Judge Merhige drew from the legislative history—particularly the omission of the word "all" from section 205—a willingness on the part of Congress to allow *some* discretion at the allotment stage. However, the degree of impoundment—55 percent ($6 billion out of $11 billion for fiscal years 1973 and 1974)—represented "a violation of the spirit, intent and letter of the Act and a flagrant abuse of executive discretion." [223]

B. Legislative commitment

The Merhige decision reconciled two central features of the clean-water legislation: (1) the grant of discretionary authority to the executive and (2) the commitment on the part of the Government to combat water pollution within a scheduled period of time. The administration used its discretion to undermine its commitment.

The concept of an overriding legislative commitment is described most clearly in a decision by Judge Roberts of the Western District of Texas.[224] He emphasized Congress's concern with the ability of state and local governments to effect long-range plans in combating pollution: "Indeed the planning problem was the reason for the implementation of the allotment procedure rather than the normal appropriation procedure in the Act." [225] Without unequivocal federal financial assistance, state and local governments would have difficulty entering into long-term contracts and financing long-term bonds. "It is illogical," wrote Judge Roberts, "to think that Congress would inject the same uncertainty back into the system it had sought to avoid with the allotment procedure by giving the Administrator discretion to choose the amount to be made available to the state and local governments." [226]

Administrative spokesmen claimed that it was possible to use the full amount of contract authority provided by Congress. John D. Ehrlichman, in his capacity as Director of the Domestic Council, said that there are "only so many contractors who can build sewer plants. There is only a certain amount of sewer equipment that can be purchased. It becomes obvious that there is no point in going out and tacking dollar bills to the trees. That isn't going to get the water clean." [227]

Why assume that the environmental industry would be unable to increase its capacity? It would be more reasonable to expect that if the Government committed itself financially and established target dates for the goal of clean water, industry would gear up to meet that commitment. That is what happened in the 1950s with the highway program. That is the lesson from 1961 when President Kennedy set the national goal of putting a man on the moon by the end of the decade. No one argued that those commitments could not be met because of a lack of contractor capability. The commitment came first; the capability followed.

After the President's veto, Mr. Ruckelshaus argued that it was economically unwise to allot the full amounts authorized by Congress: "the fastest way to increase inflation is to pour more money into the community than the construction industry can absorb." [228] That conflicts with his own letter to the Office of Management and Budget, *prior* to the veto, in which he strongly recommended that the President sign the bill:

The total value of construction initiated in the near-term under the enrolled bill is expected to correspond closely to the total value of construction that would have been initiated under the Administration bill. . . . With the projected close correspondence in total near-term value of construction starts, the potential inflationary impact upon the entire construction sector would be minimized.

The total amount of contract grant authority contained in the enrolled bill is formulated from the Administration's estimate of construction needs as submitted to the Congress in February of this year. The total estimate amounted to $18.1 billion. The Federal share at 75% would amount to $13.6 billion. This needs estimate did not include any allowance for inflation, nor did it include funds for combined, storm and collection sewers, or for recycled water supplies. These are project eligibilities newly specified by the enrolled bill.[229]

In this same letter, Mr. Ruckelshaus pointed out that the needs estimate provided to Congress was constructed to support the commitment of the President in his State of the Union message of January 22, 1970, to "put modern municipal waste treatment plants in every place in America where they are needed to make our waters clean again, and to do it now.

This Presidential commitment was repeated in the environmental messages in 1970 and 1971.[230] Mr. Ruckelshaus further noted that the additional spending authority provided by Congress was "largely the result of the Congress adopting a later EPA needs survey than the one that provided the basis for the Administration's request." [231]

Notwithstanding the discretion included in the bill, the trust of the legislation was to establish a clear commitment and to provide the necessary budget authority. To say we can't afford this sum of money," said Representative Harsha, "is to say we can't afford to support life on earth." [232] Senator Muskie stressed that the "whole intent of this bill is to make a national commitment." [233] The discretionary language in the bill was not to be used, Senator Muskie warned, "as an excuse in not making the commitments necessary to achieve the goals set forth in the act." [234]

When the administration used that discretion to cut in half a legislative commitment, the lesson for some legislators was to be less generous with discretionary authority in the future. It was a temptation to Congress to be more inflexible when drafting legislation. Senator Muskie directed these remarks to Mr. Ruckelshaus:

"I could now write better language and believe me, I will. Believe me, I will.

"The clear language and debate was what we were giving you, is what we understood to be legitimate administrative discretion to spend the money, not defeat the purposes.

Footnotes at end of article.

Then to have you twist it as you have, is a temptation to this Senator to really handcuff you the next time." [235]

III. HOUSING AND URBAN DEVELOPMENT

A. Housing moratorium

On January 5, 1973, the Nixon administration placed an 18-month moratorium on subsidized housing programs: low-rent public housing, rent supplements, homeownership assistance, and rental housing assistance. In a speech three days later, HUD Secretary Romney offered the following justification:

"It became crystal clear by 1970 that the patchwork, year-by-year, piecemeal addition of programs over a period of more than three decades, had created a statutory and administrative monstrosity that could not possibly yield effective results even with the wisest and most professional management systems " [236]

That position was repeated a week later by the Director of Domestic Council, Kenneth R. Cole, Jr., who argued that—

"The program structure we have now cannot possibly yield effective results even with the most professional management. There is mounting evidence that the present programs, for the most part, have proven inequitable, wasteful, and ineffective in meeting housing needs." [237]

Members of Congress pressed the administration for analyses and studies which justified the moratorium. Senator Proxmire, for example, wanted to know if the Cole statement was true and "what documentation he has for it and how you can establish that. . . . Where is the evidence?" [238] It appears that the moratorium was imposed *before* such documentation was available. William Lilley, III, HUD's Deputy Assistant Secretary for Policy Development, was "distressed" to find that "no sophisticated analytical work" had been done prior to the moratorium. After the subsidized housing program was suspended, HUD devoted a day and a half to an initial rationalization, which Lilley called "paper thin, highly subjective and totally unsupported by any back-up data." [239]

Did the housing program "fail to work" because of defects in the law or because of mismanagement and administrative disinterest? Dr. Anthony Downs, in a study dated October 1972, described the homeownership and rental housing programs as "effective instruments for meeting the key objectives of housing subsidies." The basic designs were considered sound, while the basic inadequacies so far encountered in the execution of these programs have stemmed mainly from either poor administration by HUD or the inherently higher risks of investing capital in housing for relatively low-income households in relatively deteriorated areas. Such higher risks are inescapable in any meaningful attempts to achieve the basic objectives of housing subsidies.[240]

Regarding public housing leasing and rent supplements, Dr. Downs said that the programs had "major advantages that indicate they should be significantly expanded." [241] After identifying and analyzing the major criticisms of housing subsidies, the Downs study stated that "the widely expressed conclusion that current housing subsidy programs 'have failed' or are generally ineffective is false." [242]

The Joint Economic Committee reported in March 1973 that most of the scandals and abuses were due to faulty administration by the Department of Housing and Urban Development rather than to any inherent defects in the legislation. Shoddy construction, poor inspection procedures, almost no tenant counseling, no careful analysis of the cause of high default rates, excessive land costs, and excessive legal and organizational fees are examples the Subcommittee found where HUD simply did not do its job. While some legislative improvements are needed, our present housing programs are *not* inherently unworkable as some White House spokesmen have charged.[243]

On June 30, 1973, the Senate adopted an amendment to prohibit the use of any HUD funds unless the Secretary of HUD, during fiscal 1974, made funds available for obligation contract authority for rent supplements, homeownership, rental housing assistance and public housing.[244] The amendment was deleted in conference.[245]

In a decision of July 23, 1973, Judge Charles R. Richey of the U.S. District of Columbia called the housing moratorium unlawul. He ordered Secretary Lynn to accept applications for subsidies, to process existing and new applications in accordance with HUD regulations, and to approve and complete the processing of projects found to be qualified under HUD regulations.[246] It was not within the discretion of the Executive "to refuse to execute laws passed by Congress but with which the Executive presently disagrees." [247]

The Nixon administration had four years to study housing programs and to propose remedies. Each budget presentation could have identified for Congress the inadequacies and what should be done to correct them. Nothing was proposed except for a consolidation and simplification bill. To wait four years and then impose a moratorium, without adequate evidence that the program was structually unsound or administratively unworkable, was in act of administrative bad faith.

B. Community development

In a March 1971 appearance before a Senate committee, Secretary of HUD Romney explained that funds were being held back from various urban programs in anticipation of the President's revenue sharing proposal.[248] He remarked that there was no point in accelerating programs that were "scheduled for termination." [249] The fact that Congress had yet to register an opinion about the "termination" of urban grants was apparently immaterial to Mr. Romney.

Two years later, during Senate hearings on February 1, 1973, Senator Ervin challenged the right of the administration to use impoundment in this manner. He was assured by OMB Director Ash that the Romney example "dealt not with this year but earlier activities. This year the reasons are very compelling ones and different ones.[250]

Contrary to the Ash reassurance, impoundment was still very much a part of the administration's stategy to enact urban revenue sharing. Secretary Romney, in his speech of January 8, 1973, announced that "we have ordered a temporary holding action on new commitments for water and sewer grants, open space grants, and public facility loans until these activities are folded into the Special Revenue Sharing program." [251] That was underscored a week later by Kenneth R. Cole, Jr., Director of the Domestic Council.[252]

To impound funds in this prospective sense—holding on to money in anticipation that Congress will enact an administration proposal—was a new departure for the impoundment technique. Money was not being withheld to avoid deficiencies, to effect savings, or even to fight inflation, but rather merely to shift budget priorities from one administration to the next, all before any congressional action.

In its report of June 19, 1973, the House Committee on Appropriations expressed "great concern" that termination of categorical grant programs for community development by impoundment of funds or executive fiat is of questionable legality. Until modified or repealed by the Congress, the Committee directs that the programs be continued.[253]

In that same report, Representative Robert O. Tiernan pointed out that the omission of mandatory language in the bill created uncertainty as to the future of community development programs.[254] On April 6, 1972, the District Court for the Northern District of California had concluded that nonmandatory language in federal housing legislation made it impossible for the court to order the release of $150 million in urban renewal funds.[255] The court had held that Congress appeared "to have created much of the executive's discretion to withhold funds and would also appear to be able to limit that discretion if it so desired.[256]

When the housing appropriation bill reached the floor, Representative Tiernan offered an amendment to mandate spending for three community development programs: Model Cities, urban renewal, and open space. His amendment was rejected on a point of order.[257] Senator Cranston successfully proposed an amendment to the housing appropriation bill to prohibit the Secretary of HUD from using any funds for administrative expenses unless the full amount appropriated for community development assistance programs was released during fiscal 1974. That amount included funds to be available in the fiscal 1974 bill as well as those impounded from prior appropriations.[258] The Senate also adopted an amendment that made air conditioning for the Office of Management and Budget contingent upon the release of $10.1 million for air conditioning of Veterans Administration hospitals.[259] As passed by the Senate, the fiscal 1974 appropriation bill contained a general provision to induce the administration to spend the funds; the bill specified that all funds "shall be made available for expenditure except as specifically provided by Law. . . ." [260] These amendments to the HUD bill were rejected in conference.[261]

A general directive to spend funds for all federal programs was included, however, in the continuing appropriations bill passed by the Senate on June 29, 1973. The provision stated that funds "shall be made available for expenditure except as specifically provided by law." [262] The Senate Appropriations Committee intended that all funds [would] be available for obligation except those for which a specific reservation ha[d] been provided in this bill or those which may legally be withheld under the Anti-Deficiency Act or other specific statutory authority.[263]

The provision was deleted in conference because it was considered an unnecessary restatement of existing provisions of law.[264] The continuing appropriations bill also provided that "[a]ny provision of law which requires unexpended funds to return to the general fund of the Treasury at the end of the fiscal year shall not be held to affect the status of any lawsuit or right of action involving the right to those funds." [265]

IV. CONCLUSION

Impoundment of funds by the Nixon administration provoked not only ad hoc efforts to restore specific programs but also more general remedies. Even members of Congress who at one time were sympathetic to impoundment now joined the ranks of those insisting on greater congressional control.

A good example of the change in congressional thinking is George H. Mahon, chairman of the House Committee on Appropriations. In 1969 he stated that—

"The weight of experience and practice bears out the general proposition that an appropriation does not constitute a mandate to spend every dollar appropriated. . . . I believe it is fundamentally desirable that the Executive have limited powers of impoundment in the interests of good management and constructive economy in public expenditures. . . . " [266]

Four years later, no longer confident that the Executive could be trusted to exercise "limited powers of impoundment," Mahon

Footnotes at end of article.

sponsored a bill to prohibit impoundment if both Houses of Congress, within 60 days, adopted a resolution of disapproval.[267] To President Nixon's claim that it was "absolutely clear" that he had the constitutional right to impound funds to prevent an increase in prices or taxes,[268] Mahon insisted that Congress could not concede such broad authority: "To concede that would mean that we were practically out of business as a legislative branch." [269] According to Mahon a failure to check the administration's use of impoundment "would destroy the coequal status of Congress . . . . [and] would be demeaning the Congress." [270]

The Mahon impoundment bill, after extensive modification by the House Committee on Rules, was reintroduced by Representative Ray J. Madden.[271] The new House bill provided for disapproval by only one House instead of two, reliance on the expertise of the General Accounting Office, a provision to discharge from the Appropriations Committees any impoundment actions referred there, and a spending ceiling of $267.1 billion for fiscal 1974.[272] The bill passed the House on June 25, 1973.[273]

The Ervin impoundment bill, which had already passed the Senate,[274] prohibited an impoundment after 60 days unless both Houses ratified it. Whereas the Madden bill placed upon either the House or the Senate the burden of disapproving an impoundment action, the Ervin bill placed upon the administration the burden of gaining the support of both Houses. Furthermore, the Ervin bill relied to an even greater extent on the GAO for assistance, brought impoundment actions directly to the floor rather than referring them first to Appropriations Committees, and established a spending ceiling of $268.0 billion for fiscal 1974.[275]

Both Houses moved forward with these bills somewhat reluctantly; they were concerned about the effect to anti-impoundment legislation on government economy and efficiency. But the extraordinary and unprecedented use of impoundment by the Nixon administration left Congress with no other choice. Congress could not allow the President to justify impoundment on the grounds of fighting inflation and higher taxes. Those policy objectives, attractive though they may be, do not stand alone. Constitutional government depends on more than the pursuit of desirable goals. More fundamental than goals are the means employed. Who is to set the goals? What standards and procedures are to be devised to ensure that public policy is built upon the law rather than administrative convenience?

For all its trappings of conservatism and "strict constructionism," the Nixon administration has never demonstrated an understanding of what lies at the heart of our political system: a respect for procedure, a a sense of comity and trust between the branches, an appreciation of limits and boundaries. Used with restraint and circumspection, impoundment is a viable instrument, capable of being used without precipitating a crisis. But restraint was replaced by abandon, precedent stretched past the breaking point, and statutory authority pushed beyond legislative intent. Basic courtesies were neglected, and OMB's reputation for objectivity and professionalism damaged.

Without good-faith efforts and integrity on the part of executive officials, the system of delegation, discretion, and nonstatutory controls will not last. Under such conditions Congress is forced to act.

APPENDIX

STATISTICAL CLAIMS

A. Impoundment reports

A debt limit bill, enacted October 27, 1972, required the President to transmit an impoundment report to Congress.[276] Although the language of the law called for "prompt" reporting, the President still had not complied by January 6, 1973. On that day the Senate considered an amendment by majority whip Robert C. Byrd to establish a specific deadline for the information.[277] As finally enacted, the date was set for February 10.[278]

The resulting report from the Office of Management and Budget stated that "budgetary reserves," as of January 29, 1973, amounted to $8.7 billion.[279] Administration spokesmen relied on this report to announce that Presidents Kennedy and Johnson had both impounded a higher percentage of funds than President Nixon. Secretary Weinberger wrote:

"Here are the facts: as of Jan. 29 of this year, 3.5 per cent of the total unified budget was being impounded. That compares with 7.8 per cent on June 30, 1961, under President Kennedy, 6.1 per cent in 1962, 4 per cent in 1963; 3.5 per cent in 1964 under President Johnson's first budget, 4.7 per cent in 1965, 6.5 per cent in 1966, 6.7 per cent in 1967, and 5.5 per cent in 1968." [280]

The "facts" of the matter are a little more complicated. As will be demonstrated herein, the OMB report omitted approximately $9 billion in impounded funds. Moreover, percentages and dollar amounts fail to capture the nature and character of impoundment actions. Not until they are analyzed on a case-by-case basis—separating the routine from the controversial, the deferred from the cancelled—is it possible to comprehend the full impact on programs and activities.

1. *Amounts.* Five instances of impoundment were omitted from the OMB report. The largest of such items was $6 billion in contract authority withheld from water pollution control programs: $3 billion each year for fiscal 1973 and fiscal 1974. However, since the President acted in fiscal 1973 to withhold the amounts for both years,[281] the entire $6 billion should have been included in his report.

The justification for omitting the $6 billion may be found in the definition of contract authority—buget authority "which permits obligations, but requires an appropriation or receipts 'to liquidate' (pay) these obligations." [282] Since states could not enter into obligations until the President allotted the authority, the unallotted portion ($6 billion) never satisfied the technical definition of either contract authority or budget authority. By this reasoning, nothing existed to impound or place in reserve. Casper W. Weinberger noted that "the authority to obligate the United States comes into existence on the date the allotments to the states are made and the amount of the total obligational authority thus provided is determined by the total amount allotted." [283] Still, it is clear that Congress regarded the failure to allot the $6 billion as an act of impoundment. Moreover, the act of October 27, 1972, called for reports on *impoundment*, not "budgetary reserves" or some other category more convenient to the administration.

The OMB report also failed to include $441 million in contract authority withheld because of the housing moratorium.[284] This amount included $38,584,000 for rent supplements, $220,983,000 for homeownership, $171,473,000 for rental assistance, and $10,209,000 for college housing. HUD explained that those amounts were not reported because contract authority is not apportioned by HUD and therefore cannot be placed in "budgetary reserve." [285]

A third item omitted from the OMB list was $382.8 million in proposed rescissions (requests to cancel budget authority). This was comprised of $283.8 million for manpower training services; $17.3 million for the Food and Drug Administration; $4.7 million for Indian health services; and four programs in the Office of Education: $18 million for Indian education; $44.3 million for higher education; $2.9 million for library resources; and $11.9 million for educational renewal.[286] Those amounts were apportioned to their respective agencies, pending congressional action. Since they were actually apportioned, and thus not placed in "budgetary reserve," they were omitted from the OMB list.[287]

Whether apportioned or not, the proposed rescissions were functionally identical to impoundment. The agencies were instructed not to obligate the funds until Congress acted. Even if Congress rejected the proposed rescissions there was no guarantee that the money would be used. Weinberger explained:

"Our determination of what steps to take if the funds are not rescinded will be dependent upon a number of factors which are currently unknown, such as the status of Congressional action on other fiscal year 1973 appropriations and where we stand with respect to our firm target of maintaining outlays below $250 billion in fiscal year 1973." [288]

Part of the proposed rescissions were released as a result of court action. Of the $44.3 million withheld from higher education, $25 million was for veterans' cost-of-education grants to colleges and universities. Judge Gesell of the U.S. District Court for the District of Columbia ordered the Office of Education to issue regulations so that colleges and universities could apply for grant assistance.[289] The Office later agreed to fund the program in its entirety.[290]

The $18 million for Indian education was also released because of pressure from litigation.[291] When the fiscal 1974 budget proposed to rescind $10 million for land-grant colleges (the Bankhead-Jones Act),[292] the National Association of State Universities and Land Grant Colleges brought suit against HEW Secretary Weinberger in the U.S. District Court for the District of Columbia.[293] The Department of Justice informed the court that, in view of Congress' failure to approve the rescission requests, HEW was now implementing the program. The case was dismissed as moot.[294]

In rejecting the rescission requests,[295] both houses were "highly critical of the Department's actions with respect to items proposed for rescission. Little was done in the way of anticipating Congressional action on these items. As a result, those who wish to apply for funding are required to do so on extremely short notice. The conferees are aware that to date the Department has acted with less than alacrity, and expects that all possible considerations be given to applicants." [296]

A fourth category omitted by OMB was $1.9 billion withheld from the Departments of Labor and Health, Education, and Welfare. The appropriation bill for those departments had been vetoed once by the President and pocket-vetoed a second time.[297] During this period the Labor-HEW programs were financed by means of a continuing resolution, under which departments and agencies were generally funded at the level approved by the House or the Senate, whichever was lower. Instead, the administration decided to fund the programs at an even lower level—the President's revised 1973 budget requests.[298] The difference of $1.9 billion was not technically "budgetary reserves," since the apportionment process was waived for continuing appropriations.[299] Yet the effect was identical to impoundment.

Because of the administration's action in withholding Labor-HEW funds, House Appropriations prepared a continuing appropriations bill to establish spending authority for the Departments of Labor and Health, Education, and Welfare, and related agencies "as now or hereafter passed by the House and Senate." The "current rate" for projects and activities in the Labor-HEW bill was defined to be those established by Congress in the continuing resolution for fiscal

Footnotes at end of article.

1973—a level higher than the actual ongoing administrative rate.[300]

The fifth, and final, item omitted from the OMB impoundment report was approximately $300 million withheld from the FHA disaster loan program. That is the estimated saving that would have been realized had the program been cancelled.[301] Adding the five omissions to the OMB list of $8.7 billion brings the impoundment total up to $17.7 billion. Instead of only 3.5 percent of the Nixon budget being impounded, the actual percent was at least twice that amount.

2. *Program Impact.* Although it is not very hepful to compare administrations with aggregate figures, either by dollar amounts impounded or by percentages, such comparisons are instructive in showing the impact of impoundment *within an* administration.

The OMB report listed $1.899 billion withheld from the Department of Defense (military functions), $1.497 billion from the Department of Agriculture and $529 million from HUD. As percentages of total available budget authority for fiscal 1973 that translates to 2.4 percent for Defense, 13.0 percent for Agriculture, and 10.5 percent for HUD.[302] As Defense is underrepresented, the main burden of impoundment obviously falls on the domestic sector.

Those percentages actually understate the full extent of that burden. Two other calculations are needed. The first involves the OMB report's omission of $300 million in FHA disaster loan funds and $441 million in HUD contract authority.[303] Thus, a more accurate comparison would be: 2.4 percent for Defense, 15.6 percent for Agriculture, and 19.2 percent for HUD.

A second focuses on the amount of unobligated funds which lapse at the end of the fiscal year. Deferral of spending is less serious to an agency than outright loss of funds. Of the Defense impoundments, all unobligated funds will be available beyond fiscal 1973 except for $7.5 million in annual accounts; $5.1 million in Reserve Personnel, Marine Corps. and $2.4 million in the Special Foreign Currency Program.[304] Thus, less than one-half of 1.0 percent of Defense impoundments was scheduled to lapse.

That stands in stark contrast that $207 million of Agriculture money not available beyond fiscal 1973.[305] Moreover, there are additional funds which are technically or legally "available" after fiscal 1973, of which the administration had no intention of spending: $300 million for the FHA disaster loan program, $210 million for REAP, $11 million for the Water Bank Program, $456 million for REA loans, and $120 million for rural water and waste disposal grants. In a practical sense, then, 72.6 percent of Agriculture impoundments would have been lost after fiscal 1973 without legal and legislative efforts to restrain the administration.[306]

All of the $970 million withheld from HUD was technically available after fiscal 1973. But with the single exception of $6.6 million in housing production and mortgage credit, the administration had no plans to spend the money.[307] In the area of Defense, none of the funds that extended beyond fiscal 1973 faced political impoundment.

Thus, a comparison of the three Departments in terms of the percent of impoundments that would lapse—either legally or politically——reveals: 0.4 percent, Defense; 72.6 percent, Agriculture; and 99.3 percent, HUD.

B. *The $11 billion saving*

During the fall election months of 1972, when President Nixon asked Congress for a $250 billion ceiling for fiscal 1973, administration spokesmen argued that congressional action threatened to drive federal spending to an irresponsible inflationary level. The President declared his intention to "fight every attempt by the Congress to bust that budget, because a big spending spree by the Congress will have only one result, a hangover of higher taxes or higher prices for every working family in America."[308] After Congress refused to grant him a spending ceiling, the President announced his determination to "use every weapon at my command to hold spending in this fiscal year as close as possible to $250 billion . . . ."[309]

In an article for *The New York Times*, Secretary Weinberger claimed that "only Presidential intervention" prevented an additional $11-billion increase in the fiscal 1973 budget, Weinberger maintained that the President ordered the "most exhaustive evaluation of Federal programs ever undertaken" in order to ferret out waste and inefficiency.[310] The alleged saving came from two sources: $6.5 billion in program reductions and terminations, and $4.7 billion attributed to the following items (in billions):[311]

Additional stockpile disposals	−0.4
Additional non-federal financing for federal credit programs	−1.1
Deferral of various payments:	
General revenue sharing	−1.5
Other	−0.5
Additional offshore oil receipts	−1.0
Increase in user charges and other actions	−0.2

Starting with this list of $4.7 billion, most of the action consists of bookkeeping processes and deferrals rather than actual savings. To sell $1.5 billion in stockpile assets and federal credit is not a saving in the sense that a program is eliminated or reduced. Nor is it a saving to push certain costs into the early months of the next fiscal year, such as the $2.0 billion in general revenue sharing and other deferrals. Furthermore, the $1.0 billion in offshore oil receipts is more properly considered as additional revenue rather than "outlay savings".

Turning now to the $6.5 billion, a significant percentage of the program reductions and terminations resulted from factors over which the administration had no control. For example, $2.343 billion represented monies which might have been spent had Congress not established a ceiling of $2.5 billion for the social services grant program.[312] To designate that as part of the President's $11 billion savings is a strange use of statistics.

Several other large savings resulted from congressional action or inaction. Highway spending was reduced by $100 million because Congress failed to pass the Highway Act of 1972.[313] Similarly, the defeat of the appropriation bill for the Corporation for Public Broadcasting resulted in an outlay saving of $10 million.[314] Also significant was legislation enhancing the marketability of bonds for the Washington Metropolitan Area Transit Authority, permitting earlier use of bond revenues and $80 million in outlay savings.[315] Still another factor external to administrative action was the termination of the European Monetary Agreement by the Organization for Economic Cooperation and Development, producing an outlay saving of $242 million.[316]

Projects were delayed in some cases because of environmental considerations, especially projects that had been authorized prior to the National Environmental Policy Act of 1969. Those delays affected projects by the Corps of Engineers and the Bureau of Reclamation, airport grants, the Federal Law Enforcement Training Center, AEC's Plowshare program, and TVA construction activity—a total of $155 million related to environmental factors.[317] The motivating force here was not administrative initiative but compliance with legislative standards.

Other large savings resulted from normal administrative responsibilities: eliminating unnecessary advance payments in the Medicare program, and eliminating overpayments or payments to ineligible recipients in the Medicaid and public assistance programs. Those items amounted to $572 million.[318] Surely it cannot be argued that the Congress would want the administration to pay for unnecessary advancements, overpayments, or ineligible recipients.

Nor could Congress have expected the administration to spend funds for FAA equipment subject to procurement delays;[319] for Urban Mass Transportation research and development experiencing problems with new technology;[320] for intermodal research and development in the Transportation Department affected by administrative delays;[321] for termination payments on the supersonic transport delayed by negotiations to settle claims;[322] or for maritime subsidies delayed by late shipments of grain.[323] Outlay savings for those items came to $90 million.

In short, more than half of the $6.5 billion in reductions and terminations can be accounted for by the following four categories: $2.775 billion related to congressional action or inaction; $155 million related to environmental factors; $572 million in normal administrative responsibilities; and $90 million produced by administrative delays or late shipments—a total of $3.592 billion.[324]

FOOTNOTES

*Analyst, Congressional Research Service, The Library of Congress. B.S., College of William and Mary, 1956; Ph.D., New School for Social Research, 1967.

The views expressed in this article are those of the author, not the Congressional Research Service.

[1] 9 WEEKLY COMP. PRES DOC. 110 (1973).

[2] For an exploration of the definitional problem, see Note, *Presidential Impoundment: Constitutional Theories and Political Realities*, 61 GEO. L.J. 1295, 1296–97 (1973).

[3] In United States *ex rel.* Knauff v. Shaughnessy, 338 U.S. 537 (1950), Mr. Justice Jackson said that "security is like liberty in that many are the crimes committed in its name." *Id.* at 551.

[4] 21 OP. ATT'Y GEN. 415 (1896); similar statements appear *id.* at 392, 422.

[5] *Hearings on First Supplemental National Defense Appropriation Bill for 1944 Before the Senate Comm. on Appropriations*, 78th Cong., 1st Sess. 739 (1943) (letter from President Franklin D. Roosevelt to Senator Richard Russell, Aug. 18, 1942).

[6] H.R. REP. No. 1797, 81st Cong., 2d Sess. 9 (1950).

[7] *Id.*

[8] *See Hearings, supra* note 5.

[9] *See* H.R. REP. No. 1797, *supra* note 6, at 311.

[10] 1 A COMPILATION OF MESSAGES AND PAPERS OF THE PRESIDENTS 325 (J. RICHARDSON ed. 1925). *See also id.* at 354, 366, 382–83, 405, 421, 447.

[11] *Id.* at 348.

[12] *Id.* at 360. For a discussion of the historical background for this by Professor Joseph Cooper, see *Hearings on Impoundment of Appropriated Funds by the President Before the Ad Hoc Subcomm. on Impoundment of Funds of the Senate Comm. on Government Operations and the Subcomm. on Separation of Powers of the Senate Comm. on the Judiciary*, 93d Cong., 1st Sess. 676–77 (1973) [hereinafter cited as *1973 Ervin Hearings*].

The Nixon administration attempted to use the routine impoundment by Jefferson to justify much more serious actions. *See Hearings on Department of Housing and Urban Development; Space, Science, Veterans and Certain Other Independent Agencies Appropriations for Fiscal 1973 Before the Senate Comm. on Appropriations*, 92d Cong., 2d Sess. 565 (1972) (statement by George Romney, Secretary of Housing and Urban Development); *Hearings on Caspar W. Weinberger To Be Secretary of Health, Education, and Welfare (Part 1) Before the Senate Comm. on Labor and Public Welfare*, 93d Cong., 1st Sess. 29 (1973).

[13] Decatur v. Paulding, 39 U.S. (14 Pet.) 497 (1840). For other early cases distinguishing between ministerial and executive duties, see Fisher, *Funds Impounded by the President: The Constitutional Issue*, 38 GEO. WASH. L. REV. 124, 126–28 (1969).

[14] *Hearings on Executive Impoundment of Appropriated Funds Before the Sub-Comm. on Separation of Powers of the Senate Comm. on the Judiciary*, 92d Cong., 1st Sess. 85 (1971) [hereinafter cited as *1971 Ervin Hearings*].

[15] Washington Post, June 15, 1971, at A2, col. 1, Section 235 of the Omnibus Housing Act of 1968, 12 U.S.C. § 1715z (c)(2) (1971), authorizes payment by the government of up to all but one percentage point of the interest rate on a mortgage loan for a low-income buyer.

[16] N.Y. Times, Apr. 23, 1971, at 36, col. 2.

[17] Washington Post, June 26, 1971, at B1, col. 6; *id.*, May 31, 1972, at A1, col. 3.

[18] Act of June 30, 1932, ch. 314, pt. II, tit. I,IV, 47 Stat. 382.

[19] 76 CONG. REC. 233, 2103–2126 (1932). On June 30, 1932, President Hoover signed the legislative appropriation bill, section 2 of which, the economy act, contained a provision for the reorganization of the executive departments, and in which the President was given certain limited authority to group, coordinate, and consolidate Government activities. Acting under that authority, the President submitted on Dec. 9 a very thorough and exhaustive message containing recommendations for the consolidation of some 58 government activities. *Id.* at 2103.

[20] Act of March 4, 1933, ch. 281, tit. II, § 4, 47 Stat. 1602; Act of March 3, 1933, ch. 212, § 16, 47 Stat. 1519.

[21] 2 PUBLIC PAPERS AND ADDRESSES OF FRANKLIN D. ROOSEVELT 50 (1938).

[22] Act of March 20, 1933, ch. 3, 48 Stat. 8. *See* 2 PUBLIC PAPERS AND ADDRESSES OF FRANKLIN D. ROOSEVELT, supra note 21, at 28, 51, 69.

[23] Act of April 3, 1939, ch. 36, 53 Stat. 561.

[24] For additional background on this and other impoundment disputes, see Fisher, *The Politics of Impounded Funds*, 15 Ad. Sci. Q. 361 (1970).

[25] Act of Sept. 6, 1950, ch. 896, § 1214, 64 Stat. 768.

[26] H.R. Doc. No. 182, 82d Cong., 1st Sess. (1951).

[27] Act of Dec. 18, 1967, Pub. L. No. 90–218, 81 Stat. 662. *See* 2 PUBLIC PAPERS OF THE PRESIDENTS OF THE UNITED STATES; LYNDON B. JOHNSON, 1967, at 1174.

[28] Act of July 6, 1970, Pub. L. No. 91–305, § 501, 84 Stat. 406; Act of July 22, 1969, Pub. L. No. 91–47, § 401, 83 Stat. 82; Act of June 28, 1968, Pub. L. No. 90–364, § 202, 82 Stat. 271. *See* L. FISHER, PRESIDENT AND CONGRESS: POWER AND POLICY 106–10 (1972).

[29] For a discussion of the policy-making issue, see notes 132–63 *infra* & accompanying text.

[30] *Hearings on Public Works for Water and Power Development and Atomic Energy Commission on Appropriations (Part 6) Before the House Comm. on Appropriations*, 92d Cong., 1st Sess. 13 (1971).

[31] *See* 118 CONG. REC. p. 37306 (Oct. 18, 1972); *id* at pp. 36831–36854 (Oct. 17, 1972).

[32] 119 CONG. REC. p. 11072 (Apr. 4, 1973).

[33] *Id* at p. 21657 (June 27, 1973). Rejected by conferees, *id.* at p. 22397 (June 29, 1973); *id* at p. 22598–99 (June 30, 1973).

[34] *Id* at p. 15255 (May 10, 1973).

[35] 119 CONG. REC. p. 25848 (July 25, 1973).

[36] Act of Sept. 6, 1950, ch. 896, § 1211, 64 Stat. 765 (codified at 31 U.S.C. § 665(c)(2) (1970)).

[37] *Hearings on Second Deficiency Appropriation Bill for 1947 Before the Senate Comm. on Appropriations*, 80th Cong., 1st Sess. 125, 137 (1947).

[38] *Id.* at 142–43.

[39] Director of the Bureau of the Budget & Comptroller General of the United States, Report and Recommendations with Respect to the Antideficiency Act and Related Legislation and Procedures 7 (mimeographed report with appendices submitted to Senator Styles Bridges, chairman of the Committee on Appropriations, June 5, 1947).

[40] *Id.* § (c)(2) of draft bill.

[41] *See* Act of Sept. 6, 1950, ch. 896, § 1211, 64 Stat. 765.

[42] *Id.* (emphasis added).

[43] BOB–GAO Report at 21.

[44] COMMISSION ON ORGANIZATION OF THE EXECUTIVE BRANCH, BUDGETING AND ACCOUNTING, A REPORT TO THE CONGRESS 17 (1949).

[45] H.R. REP. No. 1797, 81st Cong., 2d Sess. 311 (1950).

[46] Williams, *The Impounding of Funds by the Bureau of the Budget 32, Inter-University Case Program No. 28 (1955)*, reprinted in *1973 Ervin Hearings, supra* note 12, at 859.

[47] *1973 Ervin Hearings* at 286. The author discusses the history of the Antideficiency Act more thoroughly in *id.* at 395–99.

[48] Act of Feb. 20, 1946, ch. 33, 60 Stat. 24 (codified at 15 U.S.C. §§ 1021–25 (1970)).

[49] *Hearings on Caspar W. Weinberger To Be Secretary of Health, Education, and Welfare (Part 1) Before the Senate Comm. on Labor and Public Welfare*, 93d Cong., 1st Sess. 30 (1973).

[50] Act of Feb. 20, 1946, ch. 33, § 3, 60 Stat. 24 (codified at 15 U.S.C. § 1022 (1970)).

[51] S. BAILEY, CONGRESS MAKES A LAW 248 (1950); S. 380, 79th Cong., 1st Sess. (1945), as introduced on Jan. 22, 1945 and referred to the Committee on Banking and Currency.

[52] *1973 Ervin Hearings* at 366.

[53] 38 Fed. Reg. 3475 [Code 6c], 3476–93, (1973).

[54] 119 CONG. REC. p. 4375 (Feb. 19, 1973).

[55] S. REP. No. 63, 93d Cong., 1st Sess. 6–7 (1973).

[56] Act of April 30, 1973, Pub. L. No. 93–28, § 4, 87 Stat. 28.

[57] Rep. Mahon explained the stretchout policy at 103 CONG. REC. A7337 (1957). In brief, the stretchout policy involves slowing down the rate of expenditures during a given fiscal year, and spending the balance in subsequent years.

[58] Budget Director Stans said that funds were released after the debt ceiling was raised. *Hearings on the Budget for 1960 Before the House Comm. on Appropriations*, 86th Cong., 1st Sess. 40 (1959).

[59] *See 1973 Ervin Hearings at* 270, 366–77; *1971 Ervin Hearings at 96; Hearings on Withholding of funds for Housing and Urban Development Programs, Fiscal Year 1971, Before the Senate Comm. on Banking, Housing and Urban Affairs*, 92d Cong., 1st Sess. 94 (1971).

[60] 116 CONG. REC. 1365–67 (1970).

[61] *Id.* at 1552.

[62] Act of March 5, 1970, Pub. L. No. 91–204, § 410, 84 Stat. 48. *See* discussion at 116 *Cong. Rec.* 5926–27 (1970).

[63] 8 WEEKLY COMP. PRES. DOC. 1240 (1972).

[64] *See* H.R. REP. No. 1591, 92d Cong., 2d Sess. 2–3 (1972).

[65] 8 WEEKLY COMP. PRES. DOC. 1578 (1972).

[66] Act of Dec. 18, 1973, Pub. L. No. 93–192.

[67] H.R. REP. No. 682, 93d Cong, 1st Sess. 7 (1973).

[68] *See* notes 206–35 *infra* & accompanying text.

[69] Act of Feb. 9, 1970, Pub. L. No. 91–194, § 119, 84 Stat. 10; 22 U.S.C. § 2370(s) (1970).

[70] Act of Feb. 9, 1970, Pub. L. No. 91–194, § 109(b), 84 Stat. 9; 22 U.S.C. § 2370(f) (1970).

[71] 22 U.S.C. § 2370(c) (1970). That provision has been applied only once against Ceylon in 1963. *Hearings on Foreign Assistance and Related Agencies Appropriations for 1973 (Part 2) Before the House Comm. on Appropriations*, 92d Cong., 2d Sess. 142 (1972).

[72] 42 U.S.C. § 2000(d)(1) (1970).

[73] Washington Evening Star, Feb. 27, 1971, at A2, col. 6; Washington Post, Feb. 12, 1972, at A4, col. 1.

[74] Act of Jan. 2, 1968, Pub. L. No. 90–248, 81 Stat. 898, § 213(b) (codified at 42 U.S.C. §602(a)(23) (1970)).

[75] HEW threatened during 1971 to cut off relief funds from California, Indiana, Nebraska, and Arizona. *See* National Journal, Feb. 20, 1971, at 401–09; N.Y. Times, Apr. 1, 1971, at 24, col. 3; *id.*, March 29, 1971, at 19, col. 1; *id.*, Jan. 20, 1971, at 15, col. 1; Washington Post, Jan. 28, 1971, at A18, col. 1; *id.*, Jan. 9, 1971, at A2, col. 1; *id.*, Jan. 8, 1971, at A5, col. 6.

[76] *Hearings on the Budget of the United States, Fiscal Year 1973, Before the Senate Comm. on Appropriations*, 92d Cong., 2d Sess. 126 (1972) (statement by the Office of Management and Budget). Repeated, Feb. 1, 1973, by OMB Director Roy L. Ash, in *1973 Ervin Hearings, supra* note 12, at 272.

[77] *1971 Ervin Hearings, supra* note 14 at 95. In his statement of Feb. 1, 1973, OMB Director Ash said that the "detailed administration of projects, the negotiating and letting of contracts, the identification of payees and determination of their eligibility for payment, and the essential exercise of judgment in the normal conduct of Government operations—all of these, by their very nature, are clearly executive functions. These functions are undeniably within the executive authority. Indeed, he has an absolute responsibility to carry out these functions." *1973 Ervin Hearings supra* note 12, at 270. At the latter hearings, Deputy Attorney General Sneed doubted whether Congress can legislate against impoundment, even in the domestic area: "To admit the existence of such power deprives the President of a substantial portion of the 'executive power' vested in him by the Constitution. . . ." *Id.* at 369.

[78] *Id.* (statement by Deputy Attorney General Sneed).

[79] *See* notes 4–17 *supra* & accompanying text.

[80] Myers v. United States, 272 U.S. 52, 293 (1926) (dissenting opinion).

[81] L. FISHER, PRESIDENT AND CONGRESS 1–27, 241–70 (1973); Fisher, *The Efficiency Side of Separated Powers*, 5 J. AMERICAN STUDIES 113 (1971), Fisher, *Presidential Tax Discretion and Eighteenth Century Theory*, 23 WESTERN POL. Q. 151 (1970).

[82] L. Fisher, *supra* note 81, at 29–42.

[83] *1973 Ervin Hearings, supra* note 12, at 368, citing United States v. Curtiss-Wright Export Corp., 299 U.S. 304, 319–20 (1936). The sweeping assertions by Mr. Justice Sutherland in the Curtiss-Wright case rest on an overly simplistic dichotomy between foreign affairs and domestic affairs. Executive commitments abroad have sharply reduced the availability of funds for domestic programs. *See* L. Fisher, *supra* note 81, at 64–65, 117–18, 127–31.

[84] *1973 Ervin Hearings, supra* note 12, at 368.

[85] *See* notes 69–71 *supra* & accompanying text.

[86] *Hearings on Foreign Assistance and Related Agencies Appropriations for 1972 Before the House Comm. on Appropriations*, 92d Cong., 1st Sess. 275–77 (Part 1), 70, 181–91, 351–55 (Part 2) (1971).

[87] Act of Feb. 7, 1972, Pub. L. No. 92–226, § 658, 86 Stat. 32. The Senate Committee on Foreign Relations explained that the purpose of the impoundment provision was to tell the American taxpayers: "You will be assured of getting the funds appropriated by Congress for domestice programs and projects before additional foreign aid funds can

be obligated for similar programs and projects in Rio de Janeiro, Nairobi or New Delhi." S. REP. No. 432, 92d Cong., 1st Sess. 15 (1971). The General Accounting Office subsequently reported that the domestic funds in question had been released. 118 CONG. REC. p. 15693 (May 3, 1972).

[88] *Id.* at 19066–68 (June 11, 1973); 119 CONG. REC. 4041–43 (Feb. 8, 1973). The Nixon Administration's first impoundment report, in response to P.L. 92–599, included various types of withholdings, including Code 8: "The President's constitutional authority and responsibility for the conduct of foreign affairs (U.S. Constitution, Article II, section 2)." No funds were withheld for that reason, 38 Fed. Reg. 3475 (1973).

[89] *See* note 83 *supra* & accompanying text.

[90] Youngstown v. Sawyer, 343 U.S. 579, 641 (1952).

[91] 9 PUBLIC PAPERS AND ADDRESSES OF FRANKLIN D. ROOSEVELT 656 (1941).

[92] *See* Williams, *supra* note 46.

[93] *See* Act of March 2, 1945, ch. 19, § 2, 59 Stat. 11; Act of Dec. 22, 1944, ch. 665, § 10, 58 Stat. 891.

[94] Act of March 2, 1945, ch. 19, § 2, 59 Stat. 12.

[95] Act of June 28, 1944, ch. 304, § 303, 58 Stat. 623.

[96] Act of December 20, 1945, ch. 582, §§ 3, 10, 59 Stat. 617; Act of June 30, 1945, ch. 212, § 607, 59 Stat. 304.

[97] Act of July 3, 1945, ch. 266, 59 Stat. 407.

[98] PUBLIC PAPERS OF THE PRESIDENTS OF THE UNITED STATES: HARRY S. TRUMAN, 1945, at 259, 320, 343.

[99] *Id.* at 579.

[100] Act of July 30, 1947, ch. 357, 61 Stat. 572; Act of July 23, 1946, ch. 591, 60 Stat. 600; Act of May 24, 1946, ch. 271, 60 Stat. 221; Act of February 18, 1946, ch. 30, 60 Stat. 6.

[101] PUBLIC PAPERS OF THE PRESIDENTS OF THE UNITED STATES: HARRY S. TRUMAN, 1947, at 385. *See id.* 1946, at 17, 288; *id.* 1947, at 100.

[102] *Hearings on Military Situation in the Far East (Part 4) Before the Senate Comms. on Armed Services and Foreign Relations*, 82d Cong., 1st Sess. 2607 (1951).

[103] W. SCHILLING, P. HAMMOND & G. SNYDER, STRATEGY, POLITICS AND DEFENSE BUDGETS 103–07 (1962) [hereinafter cited as W. SCHILLING].

[104] N.Y. Times, Dec. 17, 1948, at 18, col. 3.

[105] *Id.*, Apr. 12, 1949, at 1, col. 5.

[106] W. SCHILLING, *Supra* note 103, at 110,

[107] *See Hearings, supra* note 102, at 2607.

[108] 93 CONG. REC. 7073–74, 9303 (1947).

[109] 94 CONG. REC. 4018–19, 4026, 4051–53 (1948).

[110] A. HOLMANS, UNITED STATES FISCAL POLICY: 1945–1959, at 56–84 (1961).

[111] 95 CONG. REC. 14591–92 (1949).

[112] *Id.* at 14355. *See also* Exchange between Senators Ferguson and Saltonstall, *id.* at 14855. For pointed critiques on the failure of Congress to analyze the defense budget so as to rationally justify an expanded Air Force, see E. KOLODZIEJ, THE UNCOMMON DEFENSE AND CONGRESS 79–81, 97–107 (1966); W. SCHILLING, supra note 103, at 71–87.

[113] PUBLIC PAPERS OF THE PRESIDENTS OF THE UNITED STATES: HARRY S. TRUMAN, 1949, at 538–39; *Hearings on Department of Defense Appropriations for 1951; Additional Supplemental Hearing Before the House Comm. on Appropriations*, 81st Cong., 2d Sess. 27 (1950).

[114] PUBLIC PAPERS OF THE PRESIDENTS OF THE UNITED STATES: HARRY S. TRUMAN, 1949, at 538–39. *See also* Letter from Harry S. Truman to Defense Secretary Johnson, Nov. 8, 1949, in *1971 Ervin Hearings, supra* note 14, at 525.

[115] N.Y. Times, Oct. 30, 1949, at 3, col. 3; *id.* at 40, col. 5.

[116] *Hearings on Department of Defense Appropriations for 1951 (Part 1) Before the House Comm. on Appropriations*, 81st Cong., 2d Sess. 61 (1950).

[117] PUBLIC PAPERS OF THE PRESIDENTS OF THE UNITED STATES: HARRY S. TRUMAN, 1950, at 661. For more background on the Air Force impoundment dispute, see E. HUZAR, THE PURSE AND THE SWORD 177–92 (1950).

[118] PUBLIC PAPERS OF THE PRESIDENTS OF THE UNITED STATES: DWIGHT D. EISENHOWER, 1960–61, at 52, 951 (1961).

[119] N.Y. Times, Oct. 28, 1961, at 1, col. 5.

[120] H.R. REP. No. 1406, 87th Cong., 2d Sess. 1, 9 (1962).

[121] 108 CONG. REC. 4694 (1963). Kennedy's reasons for holding up on the RS–70 were given at a news conference on March 7, 1962, in PUBLIC PAPERS OF THE PRESIDENTS OF THE UNITED STATES: JOHN F. KENNEDY, 1962, at 202.

[122] BUSINESS WEEK, Mar. 17, 1962, at 34.

[123] *Id. See also* 108 CONG. REC. 4720 (1962) (remarks of Rep. Mahon).

[124] 108 CONG. REC. 4714 (1962).

[125] E. KOLODZIEJ, THE UNCOMMON DEFENSE AND CONGRESS 415–17 (1966).

[126] 108 CONG. REC. 4694 (1962).

[127] *Id.*

[128] *Id.* at 4699.

[129] *Id.* at 4707.

[130] *Id.* at 4714.

[131] For studies on the RS–70 and other impoundments of weapons systems, see Davis, *Congressional Power to Require Defense Expenditures*, 33 FORDHAM L. REV. 39 (1964): MOORE, To . . . *Provide for the Common Defense*, in PUBLIC ADMINISTRATION 371–400 (2d ed., R. Golembiewski, F. Gibson, G. Carnag eds. 1972); Stassen, *Separation of Powers and the Uncommon Defense: The Case Against Impounding of Weapons System Appropriations*, 57 GEO. L.J. 1159 (1969).

[132] *See* statement by Caspar W. Weinberger, in *1971 Ervin Hearings, supra* note 14, at 98.

[133] CONG. GLOBE, 36th Cong., 2d Sess. 1177 (1861).

[134] 9 A COMPILATION OF MESSAGES AND PAPERS OF THE PRESIDENTS 4331 (J. Richardson ed. 1925).

[135] 28 CONG. REC. 6031 (1896).

[136] N.Y. Times, Feb. 8, 1923, at 4, col. 6; *id.*, Jan. 23, 1923, at 20. 2. *See* 64 CONG. REC. 3507 (1923).

[137] A. MAASS, MUDDY WATERS: THE ARMY ENGINEERS AND THE NATION'S RIVERS 237 (1951). The dispute involved a contest between the Corps of Engineers and the Bureau of Reclamation. *Id.* at 215.

[138] H.R. Doc. No. 136, 80th Cong., 1st Sess. (1947); PUBLIC PAPERS OF THE PRESIDENTS OF THE UNITED STATES: HARRY S. TRUMAN, 1946, at 229–30.

[139] 2 PUBLIC PAPERS OF THE PRESIDENTS OF THE UNITED STATES: LYNDON B. JOHNSON, 1965, at 1083.

[140] Department of Agriculture Release No. 1015–69 (1969).

[141] Forwarded to the author by Senator Talmadge, Chairman, Subcommittee on Watershed Projects of the Senate Committee on Agriculture and Forestry. For entire list of 96 projects affected by the Johnson impoundment, see 115 CONG. REC. 5923 (1969).

[142] *1971 Ervin Hearings, supra* note 14, at 217.

[143] *Id.* at 139–42, 211–17.

[144] 7 WEEKLY COMP. PRES. DOC. 81 (1971). See 117 CONG. REC. p. 8089 (Mar. 25, 1971) (statements by Rep. Bennett); 118 CONG. REC. p. 17775 (May 17, 1972) (statement by Rep. Sikes).

[145] *See* Part II, *infra*.

[146] PUBLIC PAPERS OF THE PRESIDENTS OF THE UNITED STATES: LYNDON B. JOHNSON, 1966, at 980. *See also* notes 108–10, 114 *supra* & accompanying text (anti-inflationary efforts by President Truman).

[147] PUBLIC PAPERS OF THE PRESIDENTS OF THE UNITED STATES: LYNDON B. JOHNSON, 1966, at 987–88.

[148] 2 *id.* at 1406–10.

[149] *See* note 28 *supra*.

[150] 5 WEEKLY COMP. PRESS. DOC. 1142, 1759 (1969).

[151] 6 *id.* at 1343 (1970).

[152] *Id.* at 1349.

[153] *Hearings on Public Works for Water and Power Development and Atomic Energy Commission Appropriations (Part 6) Before the House Comm. on Appropriations*, 92d Cong., 1st Sess. 22 (1971).

[154] *Id.* at 19.

[155] *Id.* at 17. Still another explanation for impounding all of the new congressional projects was that it seemed more "impartial" to do it that way. It was argued that a more selective list, impounding projects in some congressional districts while allowing other add-ons to go forward, might have invited charges of discrimination and political favoritism. *Id.* at 10–11.

[156] *Id.* at 19.

[157] 8 WEEKLY COMP. PRES. DOC. 1553 (1972). The fiscal 1974 budget reduced and terminated a number of programs in order to adhere to the President's $250 billion target. UNITED STATES BUREAU OF THE BUDGET, THE BUDGET OF THE UNITED STATES GOVERNMENT, FISCAL YEAR 1974, at 47–57 (1973). For two recent decisions striking down the Nixon administration's argument that it could withhold highway funds to combat inflation, see State Highway Comm'n v. Volpe, 347 F. Supp. 950 (W.D. Mo. 1972), *aff'd*, 479 F.2d 1099 (8th Cir. 1973).

[158] Washington Post, Mar. 7, 1973, at A4, col. 1.

[159] N.Y. Times, Jan. 9, 1970, at 1, col. 8; *id.*, Oct. 2, 1969, at 28, col. 1; *id.*, Sept. 16, 1969, at 16, col. 1; *id.*, Sept. 13, 1969, at 1, col. 4; *id.*, Sept. 11, 1969, at 1, col. 1.

[160] *1973 Ervin Hearings, supra* note 12, at 877–79; *1971 Ervin Hearings, supra* note 14 at 164–65.

[161] *1971 Ervin Hearings, supra* note 14, at 310.

[162] *Hearings on the Budget of the United States, Fiscal Year, 1973, Before the Senate Comm. on Appropriations*, 92d Cong., 2d Sess. 129–30 (1972).

[163] In his budget message for the fiscal 1974 budget, President Nixon quoted the tenth amendment and said that the "philosophy of the Founding Fathers embodied in this amendment is also my philosophy." UNITED STATES BUREAU OF THE BUDGET, THE BUDGET OF THE UNITED STATES GOVERNMENT, FISCAL YEAR 1974, at 11 (1973). For comments on the tenth amendment, see L. FISHER, PRESIDENT AND CONGRESS 37–39 (1972).

[164] Memorandum from Edward M. Shulman, General Counsel, to Kenneth E. Frick, Administrator of the Agricultural Stabilization and Conservation Service, in H.R. REP. No. 6, 93d Cong., 1st Sess. 2 (1973).

[165] *Id.* at 4. A letter from Elmer B. Staats, Comptroller General of the United States, to Senator Sam J. Ervin Jr., July 26, 1973, B–135564, at 25, stated: "[W]e do not believe it follows that by employing permissive language the Congress envisions the bulk of appropriations acts as carrying with them the seeds of their own destruction in the form of an unrestricted license to impound."

[166] H.R. REP. No. 6, 93d Cong., 1st Sess. 8 (1973).

[167] *Id* at 11.

[168] S. REP. No. 49, 93d Cong., 1st Sess. (1973).

[169] 119 CONG. REC. 6190–92 (Mar. 1, 1973).

[170] *See* H.R. REP. No. 101, 93d Cong., 1st Sess. (1973).

[171] 119 CONG. REC. 11844–46 (June 8, 1973).

[172] H.R. REP. No. 275, 93d Cong., 1st Sess. 34 (1973). *See id.* at 78–80. Concurred in by the Senate Committee on Appropriations, S. REP. No. 253, 93d Cong., 1st Sess. 22–23 (1973).

[173] 119 CONG. REC. 19854–56 (June 15, 1973).

[174] Act of Aug. 10, 1973, Pub. L. No. 93–86, 87 Stat. 241.

[175] H.R. REP. No. 520, 93d Cong., 1st Sess. 22–23 (1973).
[176] H.R. REP. No. 15, 93d Cong., 1st Sess. 2 (1973).
[177] Berends v. Butz, 357 F. Supp. 143 (D. Minn. 1973).
[178] *See* 37 Fed. Reg. 12,854 (1972).
[179] *Id.* at 20,122.
[180] Berends v. Butz, 357 F. Supp. 143, 148 (D. Minn. 1973).
[181] *Id.* at 151, *citing* Dubrow v. SBA, 345 F. Supp. 4 (C.D. Cal. 1972).
[182] *Id.*
[183] *Id.* at 154. For a similar situation where the Nixon Administration tried to close down the Office of Economic Opportunity, acting in violation of OEO procedures, see Local 2677, Am. Fed'n of Gov't Employees v. Phillips, 358 F. Supp. 60 (D.D.C. 1973).
[184] Act of April 20, 1973, Pub. L. No. 93–24, 87 Stat. 24. The first section is directed against the forgiveness and low-interest features. *See* S. REP. No. 85, 93d Cong., 1st Sess. 4 (1973).
[185] Act of April 20, 1973, Pub. L. No. 93–24, § 3, 87 Stat. 24. *See* H. REP. No. 15, 93d Cong., 1st Sess. 10 (1973).
[186] Act of April 20, 1973, Pub. Law No. 93–24, § 6, 87 Stat. 25.
[187] *Id.* at § 8.
[188] 9 WEEKLY COMP. PRES. DOC. 107 (1973).
[189] *Hearings on Impoundment of Funds for Farm and Rural Programs Before the Senate Comm. on Agriculture and Forestry*, 93d Cong, 1st Sess. 22 (1973).
[190] S. REP. No. 20, 93d Cong., 1st Sess. 7–8 (1973).
[191] *Id.* at 25–26.
[192] H.R. REP. No. 91, 93d Cong., 1st Sess. 12–13, 19–20, 38 (1973).
[193] H.R. REP. No. 169, 93d Cong., 1st Sess. 5, 10 (1973).
[194] Act of May 11, 1973, Pub. L. No. 93–32, 87 Stat. 65.
[195] H.R. REP. No. 520, 93d Cong., 1st Sess. 15–16 (1973).
[196] H.R. REP. No. 21, 93d Cong., 1st Sess. 1 (1973).
[197] *Id.* at 3.
[198] 119 CONG. REC. 6027–28 (Mar. 1, 1973).
[199] *Id.* at 9321 (Mar. 22, 1973).
(1973).
[200] *Id.* at 11690–91 (Apr. 10, 1973). For veto message, *see id.* at H2454 (daily ed. Apr. 5, 1973). For fiscal 1974 funding, *see* H.R. REP. No. 275, 93d Cong., 1st Sess. 46 (1973). An amendment by Rep. Michel to delete the funds was rejected. 119 CONG. REC. pp. 19846–47 (June 15, 1973).
[201] H.R. REP. No. 520, 93d Cong., 1st Sess. 21
[202] 119 CONG. REC. 22006 (June 28, 1973).
[203] S. REP. No. 243, 93d Cong., 1st Sess. 6 (1973).
[204] 119 CONG. REC. p. 22034 (June 28, 1973).
[205] H.R. REP. No. 520, 93d Cong., 1st Sess. 6 (1973).
[206] Act of Oct. 18, 1972, Pub. L. No. 92–500, 86 Stat. 816.
[207] 118 CONG. REC. pp. 37056–61 (Oct. 18, 1972) (House override); *id.* at pp. 36871–79 (Oct. 17, 1972) Senate override).
[208] Letter to William Ruckelshaus, EPA Administrator, from President Richard M. Nixon, Nov. 22, 1972, in *Hearings on the Federal Budget for 1974 Before the House Comm. on Appropriations*, 93d Con., 1st Sess. 194–95 (1973).
[209] H.R. 11896, 92d Cong., 2d Sess. (1972) (reported out of House Comm. on Public Works).
[210] 118 CONG. REC. p. 33754 (Oct. 4, 1972).
[211] *Id.*
[212] *Id.* at p. 33755.
[213] *Id.*
[214] *Id.*
[215] Id. at p. 36874 (Oct. 17, 1972).
[216] *Id.* at p. 36871.
[217] City of New York v. Ruckelshaus, 358 F. Supp. 669 (D.D.C. 1973).
[218] *Id.* at 675 (emphasis in original).
[219] *Id.* at 679 (emphasis in original). Similar decisions were handed down in Minnesota v. EPA, Civil No. 4–73 (D. Minn. _____, 1973); Martin-Trigona v. Ruckelshaus, Civil No. 72 C 3044 (N.D. Ill. _____, 1973). In *dicta*, Judge Hauk of the U.S. District Court for the Central District of California concluded that the administration did have discretion in allotting funds. Brown v. Ruckelshaus, Civil Nos. 73–154–AAH and 73–736–AAAH (D. Cal. Oct. 7, 1973).
[220] 361 F. Supp. 689 (D. Va. 1973).
[221] *Id.* at 700.
[222] *Id.*
[223] *Id.*
[224] Texas v. Fri, Civil No. A–73–CA–38 (D. Tex. _____, _____ 1973).
[225] *Id.* at 2.
[226] *Id.* at 5.
[227] Washington Post, Feb. 5, 1973, at A4, col. 5.
[228] *1973 Ervin Hearings, supra* note 12, 417.
[229] Letter from William D. Ruckelshaus to OMB, Oct. 11, 1972, in STAFF OF THE SENATE COMM. ON PUBLIC WORKS, 93D CONG., 1st SESS., 1 A LEGISLATIVE HISTORY OF THE WATER POLLUTION CONTROL ACT AMENDMENTS OF 1972, at 155 (Comm. Print 1973).
[230] *Id.*
[231] *Id.* at 152.
[232] 118 CONG. REC. p. 37056 (Oct. 18, 1972).
[233] *Id.* at p. 36872 (Oct. 17, 1972).
[234] *Id.* at p. 33694 (Oct. 4, 1972).
[235] *1973 Ervin Hearings, supra* note 12, at 411.
[236] Speech by Secretary Romney, National Association of Home Builders, Houston, Texas, Jan. 8, 1973, at 7 (on file at the *Buffalo Law Review*).
[237] Letter from Kenneth R. Cole, Jr., to Senator John Sparkman, Jan. 15, 1973, in 119 CONG. REC. 2786 (Jan. 31, 1973).
[238] *Hearings on Oversight on Housing and Urban Development Programs: Washington, D.C. (Part I) Before the Senate Comm. on Banking, Housing and Urban Affairs*, 93d Cong., 1st Sess. 256 (1973).
[239] Washington Post, Dec. 3, 1973, at A1, col. 5.
[240] A. DOWNS, FEDERAL HOUSING SUBSIDIES: THEIR NATURE AND EFFECTIVENESS, AND WHAT WE SHOULD DO ABOUT THEM 17 (1972).
[241] *Id.* at 19.
[242] *Id.* at 21.
[243] SUBCOMMITTEE ON PRIORITIES AND ECONOMY OF THE JOINT ECONOMIC COMMITTEE, 93D CONG., 1ST SESS., HOUSING SUBSIDIES AND HOUSING POLICY 6 (Comm. Print 1973) (emphasis in the original).
[244] 119 CONG. REC. 22513–15 (June 30, 1973).
[245] *Id.* at H6815 [Amendment No. 42] (daily ed. July 28, 1973).
[246] Pennsylvania v. Lynn, 362 F. Supp. 1363 (D.D.C. 1973).
[247] Id. at 1372 (footnote omitted). On July 31, 1973, Judge Richey ruled that the administration's refusal to further process, improve and implement applications for Farmers Home Administration interest credit loans was unlawful. Pealo v. Farmers Home Adm'n, Civ. No. 1028–73 (D.D.C. Aug. 3, 1973), *appeal docketed*, No. 73–1870, D.C. Cir., Aug. 10, 1973.
[248] *Hearings on Withholding of Funds for Housing and Urban Development Programs, Fiscal year 1971 Before the Senate Comm. on Banking, Housing and Urban Affairs*, 92d Cong., 1st Sess. 159 (1971).
[249] *Id.* at 163, 165.
[250] *1973 Ervin Hearings, supra* note 12, at 278. *But see id.* at 277.
[251] Speech by Secretary Romney, National Association of Home Builders, Houston, Texas, Jan. 8, 1973, at 5 (on file at the *Buffalo Law Review*).
[252] Letter from Kenneth R. Cole, Jr. to Senator John Sparkman, Jan. 15, 1973, in 119 CONG. REC. 2786 (Jan. 31, 1973).
[253] H.R. REP. No. 296, 93d Cong., 1st Sess. 6 (1973). For 1974 funding of HUD water and sewer grants, see H.R. REP No. 275, 93d Cong., 1st Sess. 73 (1973); S. REP. No. 253, 93d Cong., 1st Sess. 50–51 (1973).
[254] H.R. REP. No. 296, 93d Cong., 1st Sess. 31 (1973).
[255] Housing Authority v. United States Dep't. of Housing and Urban Dev., 340 F. Supp. 654, 656 (N.D. Cal. 1972).
[256] An earlier decision on housing impoundment ruled that there was no precedent to suggest that a U.S. district court may compel the President "to take any action whatsoever." San Francisco Redev. Agency v. President Nixon, 329 F. Supp. 672 (N.D. Cal 1971)
[257] 119 CONG. REC. 20981–83 (June 22, 1973).
[258] *Id.* at 22514 (June 30, 1973).
[259] *Id.* at 22521.
[260] *Id.* at 22504. *See* S. REPT. No. 272, 93d Cong., 1st Sess. 4 (1973)
[261] 119 CONG. REC. 26524–25 (July 28, 1973) (Amendment Nos. 1, 9 & 36).
[262] 119 CONG. REC. 22281 (June 29, 1973).
1973).
[263] S. REP. No. 277, 93d Cong., 1st Sess. 4 (1973).
[264] H.R. REP. No. 364, 93d Cong., 1st Sess. 3 (1973).
[265] Act of July 1, 1973, Pub. L. No. 93–52, § 111, 87 Stat. 134.
[266] Letter from Rep. George H. Mahon to Senator Sam J. Ervin, Jr., Feb. 25, 1969, in *1971 Ervin Hearings, supra* note 14, at 501–02. Mr. Mahon had noted in 1949, in reference to impoundment, that "economy is one thing, and the abandonment of a policy and program of the Congress another thing." 95 CONG. REC. 15126 (1949).
[267] H.R. 5193, 93d Cong., 1st Sess. (1973).
[268] *See* note 1 *supra* & accompanying text.
[269] *Hearings on Impoundment Reporting and Review (Part 1) Before the House Comm. on Rules*, 93d Cong., 1st Sess. 7 (1973).
[270] *Id.* at 9.
[271] H.R. 8480, 93d Cong., 1st Sess. (1973).
[272] *See* H.R. REP. No. 336, 93d Cong., 1st Sess. (1973).
[273] 119 CONG. REC. 25848 (July 25, 1973).
[274] *See* notes 32–34 *supra* & accompanying text.
[275] *See* S. REP. No. 121, 93d Cong., 1st Sess. (1973).
[276] Act of Oct. 27, 1972, Pub. L. No. 92–599, § 402, 86 Stat. 1325.
[277] 119 CONG. REC. 418 (Jan. 6, 1973). *See id.* at 1053 (Jan. 16, 1973); *id* at p. 1209 (Jan. 15, 1973).
[278] Act of Jan. 19, 1973, Pub. L. No. 93–1, § 2, 87 Stat. 3. A continuing appropriation bill, enacted March 8, 1973, provided for four impoundment reports a year. The first report shall be transmitted on or before October 15, covering the period through September 30. The second and third reports shall be submitted on or before the 15th and 90th days after submission of the budget, and shall cover the periods through the date of submission and 75 days after that date (*i.e.*, around the end of January and mid-April). The fourth report shall be submitted on or before July 15 following the end of the fiscal year. Act of March 8, 1973, Pub. L. No. 93–9, § 3, 87 Stat. 7.
[279] 38 Fed. Reg. 3474 (1973) (reprinted as S. Doc. No. 4, 93d Cong., 1st Sess. (1973)).
[280] Weinberger, *Congress as the Crisis*, N.Y. Times, Mar. 27, 1973, at 45, col. 5.
[281] *See* notes 208–23 & accompanying text.
[282] UNITED STATES BUREAU OF THE BUDGET, THE BUDGET OF THE UNITED STATES GOVERNMENT, FISCAL YEAR 1974, at 315 (1973).

[283] *Hearing on Nominations of Caspar W. Weinberger, of California, to be Secretary of Health, Education, and Welfare, and Frank C. Carlucci, of Pennsylvania, to be Under Secretary of Health, Education, and Welfare, Before the Senate Comm. on Finance*, 93d Cong., 1st Sess. 48 (1973).

[284] *See* notes 236–47 *supra* & accompanying text.

[285] Statistics and argument obtained from HUD budget office.

[286] UNITED STATES BUREAU OF THE BUDGET, THE BUDGET OF THE UNITED STATES GOVERNMENT, FISCAL YEAR 1974, APPENDIX 1074 (1973).

[287] 38 Fed. Reg. 3474 (1973).

[288] Letter from Caspar W. Weinberger to Senator Jacob K. Javits, Feb. 22, 1973, in *1973 Ervin Hearings, supra* note 12, at 732.

[289] National Ass'n of Collegiate Veterans v. Ottina, Civil No. 349–73 (D.D.C., May 24, 1973). *See* Washington Post, Mar. 28, 1973, at A2, col. 7.

[290] Washington Evening Star and Daily News, May 23, 1973, at B4, col. 1; Washington Post, May 23, 1973, at A7, col 1.

[291] Minnesota Chippewa Tribe v. Carlucci, Civ. No. 628–73 (D.D.C. ------, 1973). *See* Education Daily, May 10, 1973, at 2; *id.*, Apr. 30, 1973, at 4; N.Y. Times, June 25, 1973, at 14, col. 1.

[292] UNITED STATES BUREAU OF THE BUDGET, THE BUDGET OF THE UNITED STATES GOVERNMENT, FISCAL YEAR 1974, APPENDIX 1074 (1973).

[293] National Assoc. of State Univ. & Land Grant Colleges v. Weinberger, Civil No. 1014–73 (D.D.C., dismissed June 29, 1973).

[294] U.S. Dep't of Justice, Impoundment Cases, at 5, Aug. 10, 1973 (memorandum).

[295] H.R. REP. No. 164, 93d Cong., 1st Sess. 3–4 (1973); S. REP. No. 160, 93d Cong., 1st Sess. 3 (1973).

[296] H.R. REP. No. 295, 93d Cong., 1st Sess. 11 (1973). The veto of this supplemental appropriation bill by President Nixon on June 27, 1973, does not alter the fact that his requests for rescission were rejected by the Appropriations Committees of both houses. As enacted, the Second Supplemental Appropriation Act, 1973, extended by three months the availability of certain higher education funds affected by the rescission requests. Act of July 1, 1973, Pub. L. No. 93–50, 87 Stat. 106–07.

[297] 8 WEEKLY COMP. PRES. DOC. 1240, 1578, (1973).

[298] 119 CONG. REC. 19379–80 (June 13, 1973) (statement by Rep. Bell); *id.* at 5376 (Feb. 26, 1973) (statement by Sen. Cotton).

[299] *See e.g.*, Act of July 1, 1972, Pub. L. No. 92–344, § 103, 86 Stat. 404.

[300] Act of July 1, 1973, Pub. L. No. 93–52, § 101(a)(4), 87 Stat. 131. *See* 119 CONG. REC. 21305–07, 21524–25 (June 26, 1973). *See* H.R. REP. No. 328, 93d Cong., 1st Sess. 2–3 (1973); S. REP. No. 277, 93d Cong., 1st Sess. 2 (1973).

[301] Obtained from the Agriculture budget office. Some of this will be spent because of court and congressional actions taken after the OMB impoundment report. For details on the FHA disaster loan program, see notes 176–87 *supra* & accompanying text.

[302] Based on the following fiscal 1973 estimates for budget authority: Agriculture, $11.532 billion; Defense-Military, $77.804 billion; and HUD, $5.048 billion. UNITED STATES BUREAU OF THE BUDGET THE BUDGET OF THE UNITED STATES GOVERNMENT, FISCAL YEAR 1974, at 329 (1973).

[303] Information obtained from Agriculture and HUD budget offices.

[304] The OMB report, *supra* note 279, included a column "Available beyond fiscal year 1973?"

[305] *Id.*

[306] For details on these agriculture impoundments, see notes 164–205 *supra* & accompanying text.

[307] Information obtained from HUD budget office. Some of this budget authority could be made available for the Administration's special revenue sharing proposal or for the suspended housing programs, but that will require legislative action.

[308] 8 WEEKLY COMP. PRES. DOC. 1497 (1972).

[309] *Id.* at 1553.

[310] Weinberger, *Congress as the Crisis*, N.Y. Times, March 27, 1973, at 45, col. 5.

[311] UNITED STATES BUREAU OF THE BUDGET, THE BUDGET OF THE UNITED STATES GOVERNMENT, FISCAL YEAR 1973, at 49 (1972).

[312] *Id.* at 49, 53.

[313] Much of the information in footnotes 314–24 can be found in *id.* at 50–57, but a more detailed examination by OMB was forwarded to the Joint Economic Committee and reprinted in *Hearings on The 1973 Economic Report of the President (Part 1) Before the Joint Economic Committee*, 93d Cong., 1st Sess. 124–86 (1973) [hereinafter referred to as *1973 Economic Report*]. For information on Highway Act of 1972, see *1973 Economic Report* at 171.

[314] *1973 Economic Report* at 184.

[315] *Id.* at 186.

[316] *Id.* at 130.

[317] *Id.* at 144–45, 165, 172, 175–76, 186.

[318] *Id.* at 145, 157.

[319] *Id.* at 172.

[320] *Id.* at 173.

[321] *Id.* at 173–74.

[322] *Id.* at 174–75.

[323] *Id.* at 141–42.

[324] For other critiques of the "$11-billion saving," see 119 CONG. REC. 13060–62 (Apr. 18, 1973) (statement by Elmer B. Staats, Comptroller General of the United States); *id.* at 12345–48 (Apr. 13, 1973) (staff study of Joint Economic Committee); E. Fried, A. Rivlin, C. Schultze & N. Teeters, Setting National Priorities 444–46 (1973).

EXECUTIVE SESSION—GENOCIDE CONVENTION

The PRESIDING OFFICER. Under the previous order, the Senate will now go into executive session for the purpose of considering Executive O, 81st Congress, 1st session, which will be stated.

The legislative clerk read as follows:

Ex. O (81st Con., 1st sess.), the International Convention on the Prevention and Punishment of the Crime of Genocide.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. 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.

Mr. CHURCH. Mr. President, on Friday I circulated a letter to other Members of the Senate calling attention to the reservation to the pending treaty that had been introduced by me and other Senators relating to the question of retaining for the United States jurisdiction over its own citizens in cases involving the charge of genocide.

The letter reads as follows:

FEBRUARY 1, 1974.

DEAR COLLEAGUE: Today, I discussed in the Senate the reservation that has been offered to the resolution of ratification of the Genocide Convention now before the Senate. Enclosed is a copy of the reservation for your examination and review.

The reservation which, if adopted, becomes a condition of ratification, would insure that no American citizen would be tried in foreign lands, under alien procedures, without the Constitutional guarantees of due process of law.

The reservation retains for the United States the right to try its own citizens for genocide in American courts, even though the crime was allegedly committed abroad.

Moreover, the Secretary of State is expressly instructed in negotiating any extradition treaty in the future, to reserve for the United States the right to refuse extradition, in any case, "where the person whose surrender is sought would not be guaranteed all the basic rights of an accused under the United States Constitution."

I hope the Senate will adopt the proposed reservation to the treaty, since it would remove all basis for any fear, however remote, that the treaty might somehow deprive American citizens of their Constitutional rights.

Please let me know if you have any questions regarding this important matter, or get in touch with my assistant, Thomas A. Dine, at extension 51281.

With best wishes,

Sincerely,

FRANK CHURCH.

I would also like to read into the RECORD the text of the reservation which accompanied this letter. It has been introduced by me, by the distinguished Senator from New York (Mr. JAVITS) and the able Senator from Wisconsin (Mr. PROXMIRE).

I ask unanimous consent that the name of the respected Senator from Florida (Mr. CHILES) also be added as a cosponsor of the reservation.

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

Mr. CHURCH. Mr. President, the substantive part of the proposed reservation reads as follows: 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 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

Mr. President, I call this reservation to the attention of my colleagues because it is addressed to the one fear that some Senators have expressed that this treaty might somehow lead to the extradition of an American citizen for trial on a charge of genocide before a foreign tribunal, where the basic rights of an accused under our own Constitution

would not be respected. I think the adoption of this reservation should eliminate any rational basis for such a fear. I would hope that the Senate would adopt it.

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

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

Mr. PROXMIRE. Mr. President, on Friday night, on the local CBS outlet, channel 9, a superb film was run—a very strong, powerful film on the genocide conducted by the Nazis under Hitler in Europe against the Jews.

This was some of the most moving and disturbing film footage I have ever seen. Viewers were counseled to prevent their children from watching it because it was so strong. It vividly told the story of the hideous, monstrous crime that the Nazis planned, programed, and performed in determining that they would wipe out the Jews in Germany and throughout Europe. It showed how 6 million innocent human beings who had committed no crime at all were deliberately murdered—an appalling story.

After that film was finished, the Senator from Idaho (Mr. CHURCH) and the Senator from New York (Mr. JAVITS) both commented on the film and its significance. The program was a local show, and I am sure many Senators were undoubtedly either out of town or busy, and failed to see it. But I hope they will reflect on the message in that film, because that is really what is behind the treaty we will vote on tomorrow. We will have no chance to vote on that treaty, obviously, if our opponents do not let it come to a vote. It is clear from what is happening this afternoon that they have had an opportunity to speak today and had an opportunity to speak last week, and so far I believe there has been one 10-minute speech against the treaty, and that is it. But it is obvious that there is an effort to prevent us from coming to a vote. We attempted to agree to vote at a time certain, but they would not permit that agreement.

Mr. President, the hearings on the treaty were very helpful. The committee report is strong. But, Mr. President, as I say, the real force, the moral justification, the absolute mandate for our voting in favor of this treaty was expressed as no words could express it by that devastating film on Hitler's genocide shown on the local CBS television outlet on Friday night.

Mr. CHURCH. Mr. President, will the Senator yield at that point?

Mr. PROXMIRE. I am happy to yield to the Senator from Idaho.

Mr. CHURCH. I commend the able Senator from Wisconsin for his reference to the gripping film that did appear, as he stated, on a local television station. It is hard to believe that so many Americans have forgotten the terrible Nazi persecution of the Jews during World War II. This motion picture consisting largely, as the Senator knows, of film taken during the period, some by the Nazis themselves, and some by the Allied occupation forces following the conquest of Germany, makes a more eloquent statement of the Genocide Convention than anything we might say on this floor.

Two articles have appeared in the Washington press, one in the Washington Evening Star and the other in the Washington Post, reviewing the film. I ask unanimous consent that the two articles be printed in the RECORD at this point.

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

[From the Washington Evening Star, Feb. 1, 1974]

ON THE AIR: THE NAZI HORRORS

(By Philip M. Kadis)

"What we went through will be difficult to understand, even for our contemporaries . . . and even much more difficult for those who have no experience of those days."

Resonant and somber, the voice of Laurence Olivier intones the declaration by an unidentified survivor of one of Hitler's death camps.

It is a stark prologue to one of the goriest chapters of the British-produced "World at War" television series documenting the massive carnage of World War II. The installment will be shown tonight at 7:30 p.m. on WTOP-9.

Station officials are warning the public that sections of the program on genocidal Nazi extermination camps may be too strong for some stomachs. They say the caveat is no publicity ploy, but acknowledge they would like as many people as possible "who might want to see it" to have the opportunity to do so.

As a good faith gesture, the station has excised all commercials from the showing. The resulting seven-minute gap in program time is filled with remarks by Sens. Frank Church, D-Idaho, and Jacob K. Javits, R-N.Y., who are managing debate on the proposed Genocide Convention that has reached the Senate floor for the first time in 25 years.

And to be sure, there are scenes that might upset even the non-squeamish:

Human nakedness. A charred skull with jaws stiffened into an eternal gape of unspeakable horror. Mass executions . . . by hanging, shooting, gassing. A huge pile of women's scalps waiting to be made into wigs. And an ultimate numbing obscenity . . . the use of bulldozers to dispose of a heap of rotting, emaciated corpses as though they were trash at the city dump.

For viewers whose relatives or friends were victims of Nazi persecution, the whole experience may be too painful to recall.

But others who are dissuaded from watching the hour-long segment by the possibility they may be offended are also cheating themselves of challenge: to try to grasp what it meant to be arbitrarily and brutally condemned to annihilation as an individual, a family, a people and a tradition.

One now hefty Jewish survivor, whose starvation rations had reduced him to 42 pounds when his camp was liberated, describes how the more able-bodied inmates were given buckets to bail out the fat rendered from bodies in a burning pit.

"Every person was capable of doing the worst things just to live another minute," said the survivor, apparently an Israeli citizen, in Hebrew. "Since then, I bless every day that I live . . . every day is pure profit."

But sympathy for the victim is only one side of the coin. A corollary challenge is to try to understand the mentality that spawned Auschwitz, Belsen and Dachau.

And so we listen to an "exonerated" former adjutant to Heinrich Himmler, Reichsfuehrer of the elite S.S. which ran the camps.

Himmler wanted to see how the exterminations were carried out, according to Reichard Bock.

As he watched row upon row of the inmates being shot, his face and elegant Nazi greatcoat were suddenly spattered with the brains of one of the victims.

"Himmler went green and pale," said Bock, who had to hold him steady and lead him away from the open grave. Faced with the reality of murder, the Nazi functionary could reel with nausea, but he couldn't sustain the empathic jump that was necessary to halt the slaughter.

He and his fellow Germans, the program shows, were also prisoners of their mind sets—a pseudo Social Darwinism and equally unfounded but no less pernicious racial theories.

To understand is not to pardon, but to recognize the dark potential in ourselves and guard against it.

[From the Washington Post, Feb. 1, 1974]

HITLER'S "FINAL SOLUTION"

(By Alan M. Kriegsman)

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 material, 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. PROXMIRE. Mr. President, I thank the distinguished Senator. One of the strongest points that was made by Senator JAVITS and Senator CHURCH, and one of which we should remind ourselves, is that the strongest argument and the

only really logical argument I have heard against the treaty is that it might conceivably jeopardize American citizens and result in their being tried for genocide in a way that would not give them the protections of our Constitution.

Mr. President, this is why the Church reservation is so important. While there was objection within the American Bar Association and by one or two members of the Committee on Foreign Relations, it seems to me that that Church reservation goes right to the heart of the matter, because it does provide the clearest kind of protection for an American citizen in the event that he is tried for engaging in this crime and in the event that the trial did not give him all the protections of the American Constitution.

What the reservation does—and I hope the Senator from Idaho will correct me if I am wrong—is to provide that if an American citizen is accused by a foreign government, before he will be extradited to that foreign country, the President must be assured that constitutional safeguards under our Constitution will be observed in any trial in which he may engage, or he will not be extradited. It has been brought to my attention by a Member of the Senate that perhaps our prisoners of war or Americans overseas might be seized in a foreign country and tried. This is a legitimate concern, and a concern I share. But I point out that this treaty, if we ratify it, will provide additional protections which, absent our ratification, a citizen would not have, because there is no question that if a citizen should engage in what is considered genocide, he can be tried now in a foreign country whether we ratify this convention or not.

We have constituents who have been subjected to travail. I have one right now, who is in Turkey and was sentenced to death—a sentence which was commuted—under a drug statute that they have there. But what this treaty would do, however, if we ratify it, would be to put us in a much stronger position to insist, with the force of our Government, that because we have ratified the treaty and are part of it, because the Church reservation was ratified during the ratification process, then any citizen tried in any foreign country would be given protections that we have insisted, as part of our reservation, should be provided to him.

Mr. CHURCH. Mr. President, if the Senator will yield on that point, I would like to comment on the very strong argument he is making. As the Senator has mentioned, any American arrested abroad and charged by a foreign government with a violation of its laws can now be subjected to trial for any crime, including genocide. With the adoption of the reservation we propose, there is no question at all that a larger measure of protection would be extended, not only to American citizens within the United States who might be charged by a foreign government with having committed genocide outside this country, but, indeed, to those who are abroad and might be subject to arrest and trial in some foreign land.

Either way we look at it, a greater measure of protection will be afforded American citizens with this treaty in force than without it.

I thank the Senator for calling this so forcefully to the attention of the Senate.

Mr. PROXMIRE. Mr. President, as I understand it, the pending business before the Senate is the ratification of the genocide treaty; is that not correct?

The PRESIDING OFFICER (Mr. HELMS). That is correct.

Mr. PROXMIRE. Mr. President, I hope we can come to a vote now. I do not see any reason why not—unless the Senator from Alabama (Mr. ALLEN) or the Senator from Idaho (Mr. CHURCH) wishes to speak on the treaty further. I think we are ready for a vote and I would hope that the Senator from Alabama, with his mastery of the rules and his understanding of equity and fairness, will agree that this is a good time to come to a vote. We have spoken now for more than a week on the treaty. It has been before the Committee on Foreign Relations for more than 20 years, and before the country for some 24 or 25 years.

Under the circumstances, I would hope, at long last, that we could come to a vote. Would the Senator from Alabama agree that we could vote now? I mention him, because I know the Senator from Idaho is in favor of the treaty and I would hope that the Senator from Alabama would be able to join us in enabling us to come to a vote now.

Mr. ALLEN. Mr. President, does the Senator from Wisconsin yield the floor?

Mr. PROXMIRE. I am happy to yield the floor.

Mr. ALLEN. I thank the distinguished Senator from Wisconsin (Mr. PROXMIRE). I believe, actually, the question would be on the adoption of some reservations first; would it not?

Mr. PROXMIRE. The Senator is correct. That is right. I just want to start voting on the treaty.

Mr. ALLEN. I would be in favor of the additional reservation offered by the Senator from Idaho, but I have not had the opportunity before now to speak to the convention and I would like to have some little something to say in opposition, not to the reservation of the Senator from Idaho (Mr. CHURCH), because I have no objection to loading down the convention with any number of reservations that will weaken the thrust of the convention, the thrust being to subject our citizens to trial before international courts, rather than in our own domestic courts.

Mr. President, after extensive hearings——

Mr. PROXMIRE. Mr. President, would the Senator yield on that point, just for a question?

Mr. ALLEN. Yes. I am delighted to do so.

Mr. PROXMIRE. Is it not true that there is no international court that would have any standing on that at the present time, and such a court would not come into existence if ever until some future date? And then it would be necessary for the Senate to act again in order to concur with the creation of such an institution.

Mr. ALLEN. Yes; but it would be the understanding of the Senator from Alabama that these further actions could be statutory in nature as distinguished from a treaty obligation which requires a two-thirds vote. Also, it seems logical to the Senator from Alabama that the steps be taken as a condition precedent to the ratification of the treaty rather than as steps subsequent to the ratification of the treaty. As the distinguished Senator from Wisconsin says, also joined in by the Senator from Idaho, these foreign governments can try law violators in their countries now, even if they be Americans, under their existing rules and laws.

Mr. PROXMIRE. Without our taking any action on the treaties——

Mr. ALLEN. Sir?

Mr. PROXMIRE. Whether we acted on the treaties or not.

Mr. ALLEN. That is correct. The treaty would add the fact that American citizens could be tried before this court for offenses committed in this country.

Mr. PROXMIRE. The fact is that the reservation would make it clear that we would not permit a citizen who committed such a crime to be extradited unless he had all the protections necessary.

Mr. ALLEN. The reservation has not yet been adopted. It was only offered—I do not even know that it has been offered.

Mr. CHURCH. Would the Senator from Alabama yield at that point for an observation?

Mr. ALLEN. Yes.

Mr. CHURCH. The International Penal Tribunal to which the Convention refers is set out in article 6.

Article 6 of the treaty states:

> 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.

Now, in the hearings, when witnesses were questioned concerning the meaning of the article, the testimony was uniform with regard to two points. One, the International Penal Tribunal has never been established and it is not now anticipated that it ever will be, even though 78 countries are now parties to the treaty, which has been in effect for some 25 years.

Second, before any party to the treaty would become subject to the jurisdiction of an international tribunal, were it to be established, that party would have to give its consent. Under the language of the treaty, the consent would have to be given by the treaty process and, therefore, before the United States could become a party to any such international tribunal, even in the unlikely event it were to be set up, we would have to do so through the treaty process, which would bring the question back to the Senate for ratification, and a two-thirds vote would be required.

Mr. ALLEN. But this would merely pave the way for that action. If this action were not taken, it would be a moot question about the other action being taken.

Also, if this is such a fine idea, which has been before the Senate for 25 years,

it does not seem that the Senate thinks it is such a fine idea if it has not been willing to give its approval in that time. I believe the distinguished Senator from Idaho said that a large number of nations, possibly 75, have adopted this treaty. If it is so good, why do not these 75 nations put in this court themselves, without waiting for the United States? It is as if the finger of blame and fault and guilt is being pointed at the United States as being the international culprit that does not come in and ratify this convention, which would subject our citizens to trial before an international court.

The Senator from Wisconsin said that the Church reservation cures all that. The Church reservation has not even been offered. It has been discusssed, I believe.

Also, the Church reservation, as I heard it, provided that we would not allow extradition from our country of one of our citizens to be tried before a foreign court unless assurance is given that they would be given the same safeguards in the trial as our citizens are guaranteed in this country. That does not sound like much of a guarantee to the Senator from Alabama. What assurance would be have, if an oath were taken on a stack of Bibles 10 feet high that their rights would be safeguarded in that foreign country and we turned our citizens over to an international court for trial? What sort of protection would they have, once they had the bodies of our citizens in this foreign land?

Mr. JAVITS. Mr. President, will the Senator yield for a question?

Mr. ALLEN. Yes; I would be delighted to yield. But I point out that the distinguished Senator from Wisconsin was inviting the Senator from Alabama to speak on this subject, and no sooner does the Senator from Alabama speak, than he is interrogated by three Senators who favor ratification of this treaty; and the Senator from Alabama has not even been able to give one sentence stating his position on the treaty before he is interrupted.

Mr. JAVITS. I thank the Senator.

I doubt that we would find many Senators, considering the Senator from Alabama's ability, who would think him outdistanced by the three of us. I think the Senator is well able to hold his own.

I point out to the Senator that in his remarks he assumes two things which in my judgment are not true. One is that the only criterion under the reservation by which an extradition may be judged is the third item on page 2, lines 21 to 23 of the criteria. It reads:

> Where the person whose surrender is sought would not be guaranteed all the basic rights of an accused under the United States Constitution.

I point out that the two others are equally applicable. One is where the United States is competent to prosecute and intends to exercise its jurisdiction. We have but to say so. The word "or" then appears, and it reads "or where the person whose surrender is sought has already been or is at the time of the request being prosecuted—"

The other point I would like to leave with the Senator is this: The fact is that our contention is—I believe it is valid, and I will undertake to prove it when I make my own speech—that the treaty does not require this reservation; that this reservation represents caution, endeavoring to satisfy the concerns of some few Members who may feel that the treaty is not adequate; and that the binding proof that the treaty is adequate—and I hope the Senator will address himself to this question—is that an article of the treaty specifically provides for implementing legislation. This treaty is not operative until there is implementing domestic legislation. With that implementing legislation, attached to the draft which Senator SCOTT and I have introduced to this committee report, it is made crystal clear that unless we want to or unless we have entered into some other treaty for an international tribunal, requiring two-thirds, we are not obliged to surrender anybody, any more than we are under this reservation, which simply locks it in, in so many words.

Mr. ALLEN. Would the Senator enlighten the Senator from Alabama as to whether it is necessary to ratify the convention before taking the enabling legislation?

Mr. JAVITS. Yes, it is. I believe that in order to get the enabling legislation properly before the Senate, it is necessary to ratify the convention. Otherwise, what is it all about? What are we implementing? We are committed in the report, and the administration is committed, not to file the instrument of ratification until such time as it is enacted, together with whatever amendments we may think of.

Mr. ALLEN. Would that take a majority vote?

Mr. JAVITS. A majority vote of the two Houses—unless we have the same situation we have now, when there is no argument to speak of, what we have called the silent filibuster, something unique. The measure managed to be hung up, although nobody said anything in opposition until today.

Mr. ALLEN. The Senator makes the point that there is nothing wrong with going ahead and ratifying the convention, which takes a two-thirds vote, because we have a safeguard built in here. Enabling legislation, which takes only a majority vote, will have to be approved before the ratification can be deposited. So it seems to the Senator from Alabama that the wisdom of ratification or nonratification should be decided at a time when it takes a two-thirds vote for passage.

I have not yet heard the explanation given, on the floor, as to why this fine convention, which has been before the Senate for 25 years and which has been adopted by scores of foreign countries, has to wait on ratification by the United States before it is implemented. It seems to me that something so good, so protective of the rights of citizens of foreign countries, should not wait on the action of the United States.

What is the Senator's answer to that?

Mr. JAVITS. May I state to the Senator that the reason for the 25 years is exactly such groundless fears as are now being voiced, and the fact that the Senate was unwilling to face them. I do not want to be invidious to the Senate; but it has the backbone, the vertebrae, to face these issues at long last and fight them out and let the United States stand in the eyes of the world as ratifying a genocide convention, or, if it does not want to, at least to face the issue and vote it down, and then the world would know where it is. That is all it is, and that has taken 25 years, and it is no credit to the Senate or to the country.

Second, the other countries have ratified, and the convention is in effect. They are not waiting on us, except that we are, I believe, without any question, the most powerful nation on Earth, which has carried the enormous burden of World War II, in which this possibility first came to light. Naturally, there is an enormous amount of significance in our ratifying this convention as compared with other countries ratifying it. That is all it amounts to.

Really, the 25 years is nothing for us to brag about, I assure the Senator from Alabama. I realize his position, and I know it is as sincere as mine.

Speaking from the vantage point of some like myself, for 7 years Senator PROXMIRE has stood up here and protested the assault on our own conscience in allowing this matter to drag.

I have said this many times before but the indefatigable zeal with which he has pursued this subject has been one of the most splendid examples of true Americanism that I know.

Mr. ALLEN. Can the Senator answer this question? Is or is not the international court provided under the convention in operation?

Mr. JAVITS. It is not.

Mr. ALLEN. I see.

Mr. JAVITS. It may be in operation but it will not bind us until we ratify the treaty making us a party to it.

Mr. ALLEN. Then the Senator was not correct when he said it is already set up and in operation.

Mr. JAVITS. Not at all; the Senator was correct. This treaty is entirely operative in terms of its declaratory aspect, or what any individual nation wishes to do about it when a given number of ratifications are deposited to bring it into operation. The treaty contemplates that the international courts will be a matter for the future. As the Senator from Idaho (Mr. CHURCH) just read, the article in question states clearly:

> Or by such international penal tribunal as may have jurisdiction with respect to those contracting parties which have accepted its jurisdiction.

Mr. ALLEN. If there is a need for this convention and this international court, why not have these nations—is the number 78? I heard that number mentioned.

Mr. JAVITS. That is correct.

Mr. ALLEN. These 78 nations having ratified the convention and put it into effect—and this would seem to be splitting hairs; their not having implemented it—would the Senator tell me why these nations have not seen fit to implement the convention by setting up this desirable court that will supposedly serve the ends of justice? It seems to me that the

finger of blame is being pointed at the United States and it is being said, "If the United States does not come into this convention so we can have defendants to try we are not going ahead with the court."

Mr. JAVITS. As far as the finger is concerned, I am pointing it at ourselves. As far as implementation is concerned, this treaty does not require implementation by an international court. That is an extra added matter which may or may not occur. It is self-implementing which we must do before this treaty affects our country. By implementing legislation we would be making genocide a crime. The fact that the law may not be enforced in many nations is something which unfortunately in this rather lawless world you cannot control, but at least you have a beginning. Enough nations, including the United States, will have defined, denounced, and made an international crime of genocide.

Then, we have our implementing statutes; other nations will have theirs. Maybe there will be an international court; maybe there will not be. But we do not undertake to make one or join in one which does not give full protection, which I feel the treaty does, and which the reservation works toward, to any individual American, which I always understood was the argument of those who oppose the treaty. I think the Senator from Idaho, in offering this reservation, has reiterated in unmistakable language, so no one can have doubts that no individual American is in jeopardy unless this country puts him in jeopardy. We can extradite anybody, anywhere if according to the laws of the country that can happen and today that cannot happen with an individual American we wish to try the minute we pass this implementating legislation.

Again, I would like to repeat to the Senator from Alabama, and the Senator and the Senate know me well—those on the other side are just as sincere as we are. I do not challenge that, but really I think that here is a call to decency by mankind.

Implementation fully locks in, especially with the reservation, any individual American's right to be tried here. There is no international tribunal—if there is one, we will see about it—which may deal with this subject. It may deal with other subjects, but in such a lawless world, it seems to me that at least this is a declaration we can make.

Mr. ALLEN. Is any machinery provided at this time for the trial and punishment of those who are guilty of the crime of genocide in those nations which have now ratified the convention?

Mr. JAVITS. That depends upon the national laws of those nations which have implemented it by statutes which they have passed. We can make a study overnight, but I assume there are nations in which such laws are in effect, just as such a law would be in effect in our own Nation when we pass an implementing statute. The important point I wish to emphasize to the Senate and to the country is that it does not put any individual American in jeopardy of being chained and sent abroad. The treaty itself does not say that, and the reservation certainly lacks any. That is my basic point.

As to international basic tribunal, that is not the proposition we now have. When and if it does come around to the proposal, we will have to ratify it by a two-thirds majority. But there will be plenty of time. The essence now is that if we pass the implementing statute, genocide will be a domestic crime, and it would put us in line with so many of the other nations. I think that is really what it comes to.

It is regrettable that it has taken so very long to get to it, but I think that is an argument against our own dereliction rather than against the proposition.

Mr. ALLEN. The Senator from Alabama finds it hard to be charged with the delay that has taken place in acting on this convention, inasmuch as he has been talking for only about 15 minutes. So this Senator is not to blame for the delay.

One thing I should like to inquire of the Senator from New York: Does he know of any acts that have been charged as being crimes of genocide, and that have been punished under the convention that has been ratified by 78 states?

Mr. JAVITS. I do not know of one. I could not answer the Senator. But I will undertake to get some answers to his question.

Mr. ALLEN. I should like to know if there have been any.

Mr. JAVITS. We cannot get that information today, as I explained, while we are debating the matter; but I will take pains to ascertain the answer to the question and have it for the RECORD by either tonight or in the morning, if there is any question on that.

There have been many charges, and that is one of the things that I think have incited opposition to the treaty. But such charges can be made anywhere.

Look at the terrible charges against young people in connection with narcotic violations in countries like Greece and Turkey. I myself have had occasion to deal with them, as have other Senators.

We simply are powerless when a person is outside the jurisdiction of this country.

Surely, many accusations are made. Lots of letters have been written to the United Nations. Lots of accusations have been made here. Lots of complaints are lodged. If we are going to ratify treaties or pass implementing laws because of some claim that somebody makes, the work would be just endless; we would never get anywhere. We would hardly be men of character and decision, which I think history shows that, in the main, we are, and which our country expects of us.

People are going to claim that somebody who has to do with Indians is committing genocide by trying to take over Wounded Knee. Some people will claim genocide in the killing of four policemen in Chicago. Somebody else will claim genocide in the killing of Japanese or Cubans. They will make all kinds of claims.

See what the Russians have claimed about us. They claim they invented baseball. It is ridiculous, of course. Nonetheless, they seem to have had a very important influence in respect of the quarter of a century's delay in respect to this treaty. That is the only reason I mention it, but the claims do not stand up in the face of the treaty itself.

In addition, in the understandings, in the declaration, now in the reservation, it seems we have provided a triple lock on the safeguards for individual Americans. If we have not done it—I think we have most thoroughly—it certainly is not the result of any intention on our part not to do it.

Mr. ALLEN. Mr. President, will the Senator yield further?

Mr. JAVITS. The Senator has the floor.

Mr. ALLEN. Will the Senator indulge me to the extent of asking some questions, then?

The Genocide Convention was initiated back in December 1948 in the United Nations. Is that correct?

Mr. JAVITS. That is correct.

Mr. ALLEN. Was not an effort made in the U.N. to require that the crime of genocide be directed against government participation in the act which was claimed to be genocide?

Mr. JAVITS. No; as a matter of fact, it was directed against rulers, because it was felt nothing could be directed against governments, which were sovereign, and a government could not be arraigned or tried, but ruler for the time being in any government could be arraigned or tried, and that is contained in article IV, which is defined as follows:

Persons committing genocide or any of the other acts enumerated in Article III—

Which is the definition article—

shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.

And to that extent the treaty covers official personalities, but it cannot cover a government, and it is not seeking to, because of the point of governmental sovereignty, which is fully recognized in the United Nations or its convention.

Mr. ALLEN. Yes, but the effort was made that there be a requirement that it be linked to government action or sanction rather than individual action.

Mr. JAVITS. Not at all; there is no requirement that it be linked to government action.

Mr. ALLEN. I know there is not. I say, there was an effort made to require that.

Mr. JAVITS. In the case of Hitler's Germany it was governmental action, but against it was the rulers who were held responsible in Nuremberg—that is, the individuals who carried out that act—but there is nothing in the treaty which would make a crime of genocide some action by some government that practiced genocide. The definition in article IV includes "responsible rulers, public officials, or private individuals." It seeks to cover the crime—that is the standard here—not who perpetrated it. The thrust of the treaty, as I say, is not to indict or arraign governments, because that just cannot be done.

Mr. ALLEN. When the convention refers to the wiping out or destruction of a race or any part of a race, would the

Senator feel then that action against one individual might possibly constitute genocide?

Mr. JAVITS. Definitely not, and we have made clear the great difference between "homicide" and "genocide" in two ways: One, by the provision that the action must affect a substantial part of the group, and our understanding, and the implementing statute reads as follows:

"Substantial part" means a part of the group of such numerical significance that the destruction or loss of that part would cause the destruction of the group as a viable entity.

That is locked in further by the other definition respecting genocide which says it shall be with the intent to eliminate the whole group.

Mr. ALLEN. Who would determine that? Would it be an international court?

Mr. JAVITS. If it were an international court, if we were to agree by treaty that it would be; but we are not going to be so quick to give this jurisdiction to an international court which we do not know front and back. Without this, we still have complete volition, whether there is or is not an international court, as to whether we will participate or extradite. We retain that jurisdictional authority whether or not there is an international court. That is the thrust of this treaty, but certainly it is made crystal clear, with which I think the Senator from Idaho (Mr. CHURCH) will agree, that we have preserved that.

Mr. ALLEN. Who would have power to set up the court?

Mr. JAVITS. The court would be set up pursuant to whatever the treaty said. I do not know what that treaty would say. It is not even a gleam in anybody's eye at this time.

Mr. ALLEN. Does the Senator mean that the 78 nations that have ratified the convention have not yet seen fit to set up a court?

Mr. JAVITS. That is right, perhaps for the same kind of concerns we discuss here. In any event, they have bitten off the genocide treaty, but they are not biting off the court yet.

Mr. ALLEN. Suppose we ratify the convention and then the other nations set up the court. We have the authority not to go under the court?

Mr. JAVITS. That is absolutely right, I would like to state—and I hope the Senator from Idaho (Mr. CHURCH) will agree—that there is nothing whatever in this treaty, its ratification, the reservation, or anything else, that we contemplate by way of intent or argument at all, which will make this ratification a precedent or an initiation of a process by which we will then claim, "Well, we have got to ratify the treaty for an international tribunal." Not at all. This stands strictly on its own, by itself, with a strict reservation for the Senate to cut it off, and to say we are not going to an international court even if one is proposed.

Mr. CHURCH. Mr. President, I am in complete accord.

Mr. ALLEN. So the establishment of an international court is not necessarily included?

Mr. JAVITS. Not necessarily. The international court may come up whether we ratify this treaty or not. We may be asked to ratify an international court whether or not we ratify the treaty.

Mr. ALLEN. Would the Senator be in favor of that?

Mr. JAVITS. I have no notion on that. I am in favor of a world court which deals with civilian matters and does retain jurisdiction, but I cannot say here whether I would be for this kind of international court. I cannot define at this time what such a court of penal jurisdiction is going to be when it is submitted.

Mr. ALLEN. Would the Senator be willing to state what benefit such a Convention has served in the 25 years it has been in existence?

Mr. JAVITS. I think it has served the benefit of being an instrument which contains the declaration by mankind that genocide is a crime, and indeed, if there were genocide, that it would serve the taking cognizance of it and avoiding the argument that surrounded the Nuremberg trial, which was that it was an undefined international crime. At least it is now a defined international crime, but everybody would be given advance notice that it is an international crime, even if one is a ruler of government, and that goes for the Soviet Union, too. That is pretty important. It is one of the few things upon which we are all surrounded with that kind of definition. Speaking unilaterally, I believe it is extremely desirable in the interest of the morality of this world that this be also iterated by our own country.

Mr. ALLEN. If such a court were in existence, how could that international court enforce its decree against the Soviet Union, and if so, how?

Mr. JAVITS. I do not know that it will or will not. I do not know what the court would do to enforce its decrees, but I believe that such a declaration, such a definition, is better than not having it—much better—enough better so that we should ratify this treaty. Indeed, all the arguments about it, all the arguments that it is nothing but a declaration, even when we add the word "pious," are all the more reason why we should ratify it.

Mr. ALLEN. Would not a resolution be just as effective as a convention?

Mr. JAVITS. It would not, because it would not put us in the company of a great assemblage of nations who would be putting themselves together under one tent.

Mr. ALLEN. Is Russia one of those nations?

Mr. JAVITS. Yes.

Mr. ALLEN. That would put us in good company, then?

Mr. JAVITS. I think we put ourselves together in the SALT agreement, where each said it would not go ahead and use the MIRV. Is the Senator against that?

Mr. ALLEN. I was before.

Mr. JAVITS. That is the Senator's privilege, but I do not believe that ought to be the view of this country.

Mr. ALLEN. Mr. President, I thank the Senator from New York.

Mr. JAVITS. Mr. President, I thank the Senator from Alabama.

Mr. ALLEN. Mr. President, after extensive hearings on the Genocide Convention by the Senate Committee on Foreign Relations in 1950, it was not sent to the Senate again until 1970 by President Nixon. The reasons for its rejection are as valid today as they were in 1950, and our moral condemnation of the crime of Genocide is as firm as ever.

It does not take reaction to this convention to put the U.S. Senate and the Congress of the United States and the American people in opposition to the crime of genocide.

Objections to ratification relate to constitutional limitations on the treatymaking power of the United States, the danger of subjecting our Government to the jurisdiction of the International Court of Justice, and to the possibility of subjecting our citizens to trials in nations where our constitutional safeguards are not observed.

The Senator from Idaho has a reservation which says—

We will not allow the extradition of American citizens to answer to a crime in a foreign country unless they are guaranteed the same safeguards that defendants in our courts are guaranteed.

As I stated a moment ago in answer to some of the questions raised on the floor, it would seem to the Senator from Alabama that assurances of observance of U.S. constitutional safeguards in a criminal trial would not be worth the paper they are written on if the foreign court was determined to punish American citizens.

What good would their assurances be if they guaranteed the right to trial by a jury, if they guaranteed the right of a defendant to be confronted with his accuser, if they guaranteed any other right which the defendant might enjoy? That guarantee would be absolutely worthless unless they saw fit to honor it, unless they thought it was to their advantage.

Mr. President, many respected authorities have been marshaled in support of and in opposition to ratification. From the welter of conflicting arguments, one central and controlling question emerges. Is the crime of genocide an appropriate subject for the exercise of the treatymaking power of the United States?

Mr. President, I hope to be able to demonstrate that it is not because the inherent constitutional limitations on the treaty power would not allow it. I believe, too, that it can be demonstrated that even if the crime of genocide were an appropriate subject for exercise of the treaty power, the convention would be fatally defective because the understandings attached to the resolution of ratification recognize constitutional conflicts but do not and in fact, cannot cure them.

Mr. President, the most effective way to demonstrate these points may be to examine the arguments of those who advocate Senate consent to the resolution of ratification.

Mr. President, it does seem, if this treaty is of such humanitarian concern and interest and if it has been adopted by 78 nations, that these nations would have gone forward to set up this international court to try all of these crimes that have been committed.

Could it be said that in the last 25 years there have been no acts of genocide committed in Russia and other nations behind the Iron Curtain, or in South America? I believe I saw in the paper the other day an article which said that some 3,000 people were killed in the overthrow of the Allende government. Seventy-eight nations, over half of the nations of the world, would be signatories to this treaty. I believe that there are some 132 or 133 members of the United Nations. But if this convention is so good, if these other nations are so anxious to ratify and implement it, why have they not done it?

Mr. President, another important fact for consideration occurs to the Senator from Alabama. And that is that many nations of the world do not have the same regard for individual liberties, individual freedoms, individual rights, human rights, and the dignity of the individual that the United States has.

Why, we recall that North Vietnam said, when there was some discussion over the exchange of prisoners of war, that they did not have a single North Vietnamese that was a prisoner of war in South Vietnam. They said that not even a single one of the North Vietnamese was a prisoner of the South Vietnamese. So they do not care anything about the individual. He is just a little bit of the great corporate state.

However, here in the United States, Mr. President, we do value human life. We do have concern for individual rights. We do not want to see one of our citizens picked up bodily and returned to a foreign nation or to a foreign court or to the international court and tried far away from these shores without any of the guarantees that we accord to American citizens.

It seems to me, with or without the Church reservation, that they would not have any rights that are really guaranteed them that are similar to those which our citizens receive in a trial before an American tribunal.

You know, there has been a concern on the part of the courts, for which the Supreme Court has been criticized a great deal, and I will say that the Senator from Alabama has joined in that criticism, where they have leaned over backwards to protect the rights, freedoms, and privileges guaranteed our people under the Constitution. But with an international court, we do not know what rules they would operate under. We do not have any idea.

I asked the Senator from New York how many acts constituting genocide had been tried in the 25 years since the Genocide Convention was proposed by the United Nations, and he did not know of any. He stated that he was taken by surprise, and that there may have been some or there may not; he would have to check.

What good has this convention accomplished up to now? Seventy-eight nations have adopted it. They are perfectly free to put it into effect, get the vast benefits supposedly obtainable under the convention, and go their merry way, and point to the United States as a country which has little concern for those who might be convicted or those who might have been treated in such a way that the acts committed against them would constitute the crime of genocide.

This convention was transmitted by President Truman to the Senate on June 16, 1949, after having been adopted by the General Assembly of the United Nations on December 9, 1948. Hearings were held by the Committee on Foreign Relations.

In 1953, Secretary of States John Foster Dulles expressed—

> Some doubts as to whether * * * the Genocide Treaty is going to accomplish the purposes which were in the minds of those who drafted it.

Dulles added:

> I believe that the solution of the problem which must be envisaged by that treaty could better be reconsidered at a later date. I would not press at the moment for its ratification

Well, the proponents of ratification might state that 20 years have now elapsed since Secretary of State Dulles said that it would be reconsidered at a later date, and here the matter is before the Senate, nothing having been accomplished by the ratification of the treaty by other nations, so far as has been presented here on the floor. We have heard a lot of pious utterances about how ratification would put us on the side of equal rights, or put us in a position of humanitarian concern, but I have not heard of one single constructive act—not one single constructive act—that has resulted from the adoption of this convention by 78 nations of the world. If one such act has resulted, the Senator from Alabama would like to be advised about it.

Mr. President, the most effective way to demonstrate some of my objections to the ratification of the convention may be to examine the arguments of those who advocate Senate consent to the resolution of ratification.

In this connection, it was pointed out in an article by Phillips and Deutch, entitled "Pitfalls of the Genocide Convention," which appeared in the July 1970, issue of the American Bar Association Journal, that the Department of State, as far back as 1950, had supported the proposition that, there is no longer any distinction between "domestic" and "foreign" affairs. The same point of view is expressed somewhat differently in "A Report in Support of the Treatymaking Power of the United States in Human Rights Matters," published by the President's Commission for the Observance of Human Rights in 1968. It is a stated conclusion of this report that:

> Treaties which deal with the rights of individuals within their own countries, as a matter of international concern, may be a proper exercise of the treatymaking power of the United States.

Can you imagine anything more ridiculous than that statement by the President's Commission for the Observance of Human Rights? These Presidential commissions that are set up from time to time by the President have a very poor batting average, in the opinion of the Senator from Alabama, in coming back and recommending anything that is worthwhile. As far as I am concerned, I think this is about as ridiculous a statement as I have heard:

> Treaties which deal with the rights of individuals within their own countries, as a matter of international concern, may be a proper exercise of the treatymaking power of the United States.

I surely do not want to make a treaty with the Soviet Union respecting the rights of individual Americans here in this country. I do not believe that is a proper subject of treatymaking powers. That is something we decide here in this country. We may have a whole lot of differences about how to approach it, but once the duly constituted authorities in this country—that is, Congress and the President—have passed legislation and put it into execution, the fact is that the legal manner in which we act in this country is by statute or by constitutional amendments, not by treaty with foreign nations dealing with our citizens' rights in our country.

Mr. President, I call attention to the word "may," because the statement would be just as meaningful and just as revealing had it said "may not" be a proper exercise of the treatymaking powers of the United States. In fact, nothing is said in the statement to suggest limitations on the rights of individuals which may or may not properly be regulated by treaty laws. So, three criteria are developed in the text of the report to test the appropriateness of a treaty's subject matter. First, the subject matter must be of international concern. This is as set up in the report of the President's Commission. Second, the exchange of international obligations on the subject must serve U.S. interests. Third, the treaty must not "contravene a specific provision in the Constitution" in a manner that cannot be cured by a reservation.

Mr. President, let us examine each criterion in sequence. Let us consider the "international concern" criterion. Every treaty between two or more nations is, by definition, of international concern. However, a subject which may be of international concern is not necessarily a proper subject of treaty law under our Constitution. This criterion simply begs the question.

The second criterion to the effect that to undertake international obligations consistent with the objects of the treaty must serve the interest of the United States is empty verbiage. Hopefully, every treaty is negotiated with the intent of serving the interest of the United States. Yet, I confess that the United States is a party to many treaties, which in my judgment, do not serve the interest of the United States. The point is that this criterion, like the first, does not help us determine what subjects are and are not appropriate for treatment by treaty law under the U.S. Constitution.

Mr. President, the third criterion applies a constitutional conflict test. It is flawed by the fact that it presumes the validity of the first two criterion. In other words, it assumes that if individual rights happen to be of international concern, and it is decided that it is in our interest

to regulate these rights by treaty law, then such rights thereby become appropriate for the exercise of the treatymaking power. Let us test these criteria against commonsense reasoning.

The 10 commandments deal with individual rights of international concern, and it might well serve the interests of the United States to undertake international obligations to enforce them. So that would comply with two of the criteria. But are the commandments an appropriate subject for regulation and enforcement by treaty law? I submit that they are not.

Again, the Communist manifesto, which deals with individual rights, is of international concern. Judging by the extent to which the objectives of the manifesto have already been implemented by the United States, it could reasonably be argued that it would serve the interest of the United States to undertake treaty obligations to help implement the manifesto throughout the world. But is it an appropriate subject for enforcement by treaty law? I think not.

If a subject is tested only by the criteria of "international concern" and "U.S. interest," we could properly enter into a treaty to implement any or all of the provisions of the "Universal Declaration of Human Rights." In fact, such a course of action is strongly advocated by the President's Commission on Human Rights which I have already mentioned—not in complimentary fashion, however. It may be helpful at this point to examine some of the human rights covered by that declaration. The subjects reach every phase and aspect of the life of individuals from birth to death. The 30 articles of the declaration cover civil, economic and political rights, social and cultural rights, religious and educational rights, and even such personal domestic relations matters as marriage. But are political, religious, economic, and similar rights proper subjects for negotiation and treaty regulation? I think not.

Mr. President, the prevention of the crime of genocide is but one of the many objects of the Declaration of Human Rights. All are worthy goals, but by their nature they are domestic and internal problems of a nation. They cannot be made international problems without obliterating the distinction between domestic and foreign affairs and this distinction cannot be removed without doing extreme violence to the Constitution.

In short, the internal affairs of this Nation, normally not matters subject to negotiations between nations and regulation by treaty, cannot be made subject to treaty regulation simply by first subscribing to a convention on the subject and then declaring the subject to be a matter of international concern and, as such, a proper subject for the exercise of the treatymaking power.

If this argument were valid, we would have to concede that there are no limitations on the treatymaking power. As a consequence, we would have to admit also that there are no limitations on subjects over which Congress has the power to legislate. The Constitution specifically delegates to Congress the power to enact legislation in the implementation of treaties. So, the power of Congress to legislate would extend to every domestic subject which might be made the subject of a treaty.

Unfortunately, or probably more properly, fortunately, this is not permissible in the Constitution. Unfortunately for those who advocate the ratification of the genocide convention, but fortunately for those who oppose it.

The limitations on the powers of Congress to legislate are well known. Yet, there are those on the President's Commission, to which I have referred, who insist that the United States may invoke the treatymaking power to reach any subject that does not contravene "a specific prohibition in the Constitution." The argument is carried a step further by implying that a treaty can contain provisions which conflict with the Constitution if such provisions can be cured by reservations.

Mr. Justice Story, in his commentaries, appealed to commonsense reasoning in pointing out that the treatymaking power must be limited by the provisions of the Constitution, which created the Government and which distributed, balanced and limited, its powers.

Among other things, he said, and I quote:

> A power given by the Constitution cannot be construed to authorize a destruction of other powers given in the same instrument.

That is certainly a logical statement.

> It must be construed, therefore, in subordination to it; and cannot supersede or interfere with any other of its fundamental provisions. Each is equally obligatory and of paramount authority within its scope; and no one embraces a right to annihilate any other.

The same sentiment is expressed more concisely by Mr. Justice Field:

> The treaty power, as expressed in the Constitution, is in terms unlimited, except by those restraints which are found in that instrument against the action of the government, or of its departments, and those arising from the nature of government itself, and of that of the States.

Mr. President, it should not be necessary to demonstrate inherent constitutional limitations on the treaty power. However, others have failed to acknowledge such limitations and I feel compelled to make the demonstration.

All will agree, I believe, that the rules of the House and the Senate and their organizational structure are not proper subjects for negotiations and regulation by treaty. Yet, there is no specific prohibition in the Constitution limiting the treaty power in a manner to exclude these subjects from regulation by treaty.

The method of electing a President and Vice President cannot be changed by a treaty. The subject of elections and legislative and judicial reforms are not subject to negotiation with foreign nations and resolution by treaty obligations. States cannot be abolished by treaty, nor can they be deprived, by means of a treaty, of the powers reserved to them under the Constitution. These and hundreds of other subjects are nowhere expressed in the Constitution as specific limitations on the treaty power. Yet, they are inappropriate subjects for the exercise of the treatymaking power because of inherent constitutional limitations on that power.

Mr. President, the criminal laws of the separate States and of the United States relating to murder, manslaughter, assault, rape, arson, and other criminal offenses are traditionally matters of national and not international concern. Defendants in such cases cannot be deprived of constitutionally protected rights by an act of Congress, by the Executive, or by a combination of the President and the Senate acting in the exercise of the treatymaking power. The Genocide Convention conflicts not only with inherent constitutional limitations on the treatymaking power, but also with a specific provision of the Constitution concerning the vesting of judicial power.

For example, the Constitution provides by article III, section 1:

> The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish.

The judicial power of the U.S. Supreme Court is extended to treaties by section 2 of the same article.

Yet, article IX of the Convention vests in the International Court of Justice the judicial power to interpret the treaty, to determine its proper application, and the adequacy of the fulfillment by the United States of its obligations assumed under the treaty.

It would be like sending a rabbit on a mission to deliver a carrot to a distant place, to have the United States in the hands of an international court of justice which has the judicial power to interpret the treaty, to determine its proper application, and the adequacy of the fulfillment by the United States of its obligations assumed under the treaty.

Mr. President, I will hazard this guess: If this convention is ratified by the Senate and it occupies whatever position it would hold as a treaty, whether on a level with the constitutional provision or not—and there seems reason to believe that this court, when established, would have authority to determine these factors—there will not be many days before we will see an effort made to set up whatever additional enabling legislation is necessary, which requires only a majority vote, as against the two-thirds vote required to ratify this treaty.

We will see an effort to set up this international court and an effort by Members of the Senate and of the House to put the United States under that court. We will see the right to extradite our citizens for trial before that court, even with the Church reservation adopted, in which assurances are given of protecting the rights of our accused citizens. We will see our citizens tried in whatever manner this international court desires to try them.

Thus, should the Convention be given force and effect of a treaty, three conclusions are inescapable.

First, the U.S. Supreme Court will have been deprived of its constitutional powers to make a final determination in dis-

putes involving the interpretation and application of provisions of the Convention.

Mr. President, it is bad enough to leave this power in the Supreme Court; but to leave this power in this international court of justice—so-called justice—would be absolutely unthinkable. That is what is going to result if we allow this entering wedge. It is said that we have to do other things before this goes into effect. We have to pass legislation. We have to come under the court. And we have to pay the bills, too. We can rest assured that that is going to be part of it. We will pay the bills for this court. Our people will pay the bills, and I dare say that our people will be defendants before that court. People will be tried whether they are guilty of anything or not, just on the say-so of some person in a foreign land who brings our citizens before an international court.

Mr. President, if this Convention is so good, why have not these 78 nations gone forward with implementing it? For all that appears, they have done absolutely nothing but sit around and wait for the United States to come in and, in effect, be the fall guy. They are doing nothing about it. We can rest assured that action will pick up if the U.S. Senate has little enough judgment to ratify this Convention and implement an international court that we will come under and before which our citizens will be in danger of being hailed. How much chance do you think they would have?

Second, the Connally amendment to the reservations of the United States to its declaration of adherence to the International Court of Justice will have been circumvented. The reservation provides that the United States is not to be subjected to the processes of the International Court of Justice as to disputes which are essentially within our domestic jurisdiction, and most importantly, that the question what is within the domestic jurisdiction of the United States shall be determined by the United States.

Mr. President, I take it that even members of the Committee on Foreign Relations—by the way, I believe the convention was reported by that committee by a one-vote margin. I could be wrong but I think I read that in the report. It did not come out by an overwhelming vote. This matter has been carried in the Senate since I have been in the Senate. It has been No. 1 on the calendar and has not been brought up before. I guess Friday was the first day that this matter has been before the Senate; possibly ever within the memory of the Senator from Alabama. So there has not been any lengthy debate in the Senate. If this matter has been voted on in the Senate I do not recall it. The distinguished Senator from Idaho will correct me if I am wrong. I do not believe this matter has been voted on in the Senate although it has been pending in the Senate for some 24 to 25 years. It has gone just about as far this year, within the last few days, as it has been in 25 years.

But the distinguished members of the Committee on Foreign Relations reported the matter favorably with three understandings and one declaration. Now, the distinguished Senator from Idaho comes in with a reservation. It is a new reservation which would be in addition to the three understandings and the declaration.

An understanding, I guess, is where we say on the part of the United States that we understand this to mean thus and so. Maybe that understanding would be effective or not. I do not know.

It has one declaration. I assume that is a statement of our understanding of what the Convention provides. But suppose the other nations say, "We do not understand it to be that way at all. We understand it just as it is written." Our saying we understand it in a different way may not be conclusive in the matter. But who knows what it means? Apparently the signitory nations have not thought it meant enough to activate it.

I say again, Mr. President, that once the Senate puts the head of the United States in the noose to the extent of ratification of this convention it is going to see the action come very rapidly after that.

I say again that such action, coming under the provisions of the court, would take only a majority vote. So if this convention were ratified by two-thirds vote does anyone think there is a possibility of stopping a majority vote? Of course not. So the battleground is right here. We have got to stop them at the pass, as we hear in the late evening movies. We have to stop them at the pass. We cannot say, "Wait until they get on down the trail." We have to stop the entering wedge here and this is where the decisive vote is going to be.

Mr. President, I hope this matter will be defeated. I would rather see it defeated on an up and down vote. I hope the majority leader can get the contending sides to agree to an up and down vote; that is a yea and nay vote on the convention. I believe there will be a vote tomorrow on whether or not debate on this issue shall end and if that cloture vote passes we will have a vote up and down on the issues.

Third, the three understandings attached to the resolution of ratification in an effort to cure constitutional defects in the convention are not worth a row of beans.

Mr. President, the first two of these conclusions needs no elaboration. The third one does. It is utterly futile for the U.S. Senate to pretend that understandings intended to resolve conflicts between the provisions of the convention and provisions of the Constitution will accomplish that end. The judicial power is vested in the International Court of Justice to make these determinations. That agency—not the Senate—is empowered to decide if we adequately fulfill our obligations under the treaty. That agency—not the Senate—is empowered to decide if the understandings are to be given effect. For all practical purposes, the treaty might just as well have prohibited any understandings or reservations—as some international conventions now do. The understandings mean in international law what the International Court of Justice will say they mean. Nothing more and nothing less.

It is sad to say that article IX of the convention not only deprives the U.S. Supreme Court of its constitutional power to render final judgments on questions relating to interpretation of the treaty, but also it is deprived of it power to render a final judgment on the adequacy of the understandings to cure conflicts with the U.S. Constitution. It can not be done by treaty.

Let us read these reservations, Mr. President, this is the text of the resolution of ratification. I think it would be interesting to read it.

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:

So this document was signed by somebody representing the United States on December 11, 1948—under President Truman, of course. These are the understandings that are attached by the United States: That the U.S. Government understands and construes the words—these are words in the definition of genocide—

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.

That is not what the convention says, though. Let us see what the convention says on that subject. The convention says:

Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group.

So "part of a group" unquestionably could be one person. One person is part of a group. So any assault or violence done with intent to kill or to do bodily harm or cause mental harm, the convention says, to a part of any group would be the crime of genocide.

The reservations coming from the Foreign Relations Committee, despite the clear language speaking of intent to destroy in whole or in part, which could mean as few as one person, says:

The United States government understands and construes these words to mean "intent to destroy . . . a national, ethnical, racial, or religious group . . . in such manner as to affect a substantial part of the group concerned."

There is no justification for this understanding. The English clearly indicates that it could apply merely to an altercation between individuals.

So once we adopt this convention with this reservation, the Court of International Justice—what a misnomer—could construe our reservation to mean nothing; that we were wrong in reaching that conclusion. This is not borne out by the facts:

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.

How is that justified from the words "mental harm"? It is ambiguous. It is certainly unclear, because the Committee on Foreign Relations, which has handled literally dozens of treaties, does not understand what it means. They had to write down their interpretation of what they think it means.

There are two areas where our committee does not understand what the convention is saying. The committee puts its meaning on it. What good is that going to do if the Court of International Justice puts an international meaning on it? They are going to say—speaking for themselves—it means what they say. They will say, "You fellows just drew an erroneous conclusion."

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.

Fine. That is what the Committee on Foreign Relations would say the U.S. Government understands. But this does not hit the idea of double jeopardy. Nor would the United States assert its power.

None of this language gives much meaning. Getting down to the words of significance, that "Nothing in article VI shall affect the right of any State"—that would mean any nation, rather than a subdivision of the 50 States of our own Nation—"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."

Would that be before or after trial by the international tribunal? It does not say that we would have exclusive jurisdiction. In fact, it would apply, it would seem to me—I would have to put an understanding on here myself, because I do not understand what the committee says it understands. I do not believe that many other Senators would understand it. Would it mean that the United States could try someone after the International Court of Justice had tried him? Or could the International Court of Justice try an American citizen after he had been tried in our courts? Would the plea of double jeopardy be available anywhere along the line? Or must the person stand trial in both jurisdictions?

I do not believe that the understanding sent up by the Foreign Relations Committee clarifies the matter at all. It seems to me that it obscures it and confounds the meaning.

Three of these are called reservations, and the other is called a declaration.

Paragraph 4 reads 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.

There again is another condition under which this convention would be ratified. Here is what article V would provide:

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.

So actually that is no barrier to the convention going into effect. It has been stated here on the floor that they would have to move forward and enact legislation. However, once the convention or treaty is ratified by a two-thirds vote of the Senate, there is no doubt that a majority vote would come along to support anything necessary to put it into effect, including, in my judgment, a matter going to the International Court of Justice.

We have enough courts already, it seems to me. To subject our citizens to prosecution before an international court, it seems to me, is not in the best interests of the people of Alabama or of this Nation.

Mr. President, it is obvious that neither Congress as a whole, nor the Executive alone, can deprive the Supreme Court of any power vested in it by the Constitution.

That is what this convention would seek to do, if it were to let a court of international justice interpret this treaty or ratification and determine whether we are living up to the requirements placed on us by the treaty, whereas the Constitution of the United States gives our Supreme Court the power to rule upon and to interpret a treaty.

Mr. President, I am not one to decry efforts to limit the power and jurisdiction of the Supreme Court of the United States, provided that power is left in State courts or removed from the Supreme Court altogether. However, I am certainly not in favor of taking power away from the Supreme Court of the United States and lodging it in a court of international justice, sitting I know not where. However, I presume it would not be within the boundaries of the United States of America.

It should be equally clear that the Executive, together with two-thirds of the Senators voting on the issue, cannot do so—that is, deprive the Supreme Court of any power vested in the Constitution—under the guise of exercising the treatymaking power. It stands to reason, and the Supreme Court has so held that the treaty power cannot be used to supersede, amend, modify, or alter the powers of the document from which the treaty power derives.

Neither can the treaty power be used to deprive a single citizen of a constitutionally protected right as finally determined by the U.S. Supreme Court. Yet, article IX of the convention would do just that, and it will not wash.

That is the reason I oppose the ratification of the genocide convention.

Many great Senators have served in this Chamber, Senators who were internationally minded, and great patriots, I am sure, every one of them.

After World War II there was a great emotional surge to do something to prevent the mass extermination of whole populations of people. Certainly we all decry that and want to see that crime punished and see those who perpetrate such crimes brought to justice. However, when we enact something that will bring it down to such a small equation that acts committed against one person of one ethnic group, be he Indian, be he black, be he yellow, or be he white, can be made into a crime of genocide and a person uprooted from this country, transported to a foreign land, and tried before a foreign court, I would say, "Let us stop." That is not what we are talking about. We are talking about a mass extermination of whole populations.

If the Senate of the United States back in 1949 when this matter was first sent to the Senate by former President Truman was not willing to yield to the emotionalism of that issue by a ratification of this convention, I wonder how it is expected that the Senate of the United States today will ratify the convention.

If the great Senators who served in the Senate 25 years ago did not see fit to make the U.S. citizens subject to the possible rule of this international court of justice, then I do not believe that this Senate sitting in the second session of the 93d Congress is going to be stampeded into ratifying this convention.

Mr. President, this brings up an extremely unique situation. In the Resolution of Ratification it is said:

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.

The implementing legislation has been introduced. Whether or not it will be considered adequate to uphold our obligation under the treaty remains a question for determination by the International Court of Justice.

Mr. President, for these and many more compelling reasons, I shall vote against the Resolution of Ratification and trust most sincerely that other Senators will do likewise.

Mr. HELMS. Mr. President, I wish to commend my good friend, the distinguished Senator from Alabama (Mr. ALLEN), for his clear, lucid, and enlightening discussion of this very important matter. As always, he has done his homework. I congratulate him, and associate myself with his remarks.

Mr. President, the presentation of this treaty, the so-called Genocide Convention, marks a watershed in the history of law in the United States. If it is approved by this body, it will bring about profound changes in the independence of our legal system and the objectivity of our system of justice. While the notion of a treaty to prevent genocide has emotional appeal in the abstract, the difficulty of translating such prohibitions into workable law that does not do violence to our system of justice has proved to be insurmountable.

My remarks fall into three categories: On the scope of the treatymaking power of the United States; on the effect of the treaty on domestic legal jurisdiction; and on the articles of the treaty text itself. Since this discussion necessarily involves reference to legal precedent and law, my prepared statement includes the neces-

sary citations, but I will omit them as I read for the sake of clarity.

However, Mr. President, I ask unanimous consent that the citations appear in the RECORD, as though read.

I. SCOPE OF THE TREATYMAKING POWER OF THE UNITED STATES

In a series of cases reaching from *Ware* v. *Hylton* (3 Dall 199 (1796)) to *Santovincenzo* v. *Egan* (284 U.S. 40 (1930)) the Supreme Court has firmly established that the treatymaking power of the United States extends only to "any matter which is properly the subject of negotiations with a foreign country" *Geofroy* v. *Riggs*, 133 U.S. 258, 267 (1890). No court has ever said that the treaty power can be exercised to affect matters which are of purely domestic concern and do not pertain to this country's relations with foreign nations.

The classic statement of the scope of the treatymaking power was made by Charles Evans Hughes, just before he became Chief Justice and after he had been Secretary of State, when he addressed himself to the question whether there are any constitutional limitations of the treaty power. He said on April 26, 1929, in his capacity as president of the American Society of International Law that:

. . . The power [i.e., the treaty power] is to deal with foreign nations with regard to matters of international concern. It is not a power intended to be exercised . . . with respect to matters that have no relation to international concerns. . . . If we attempted to use the treaty-making power to deal with matters which do not pertain to our external relations but to control matters which normally and appropriately were within the local jurisdiction of the States, then I again say there might be grounds for implying a limitation upon the treaty-making power that is intended for the purpose of having treaties made relating the foreign affairs and not to make law for the people of the United States in its internal concerns through the exercise of the asserted treaty-making power."

Charles Evans Hughes in Proceedings of ASIL (1929) 194–196.

In deciding whether a matter of domestic concern was also of sufficient international concern to justify the use of the treatmaking power, Hughes said:

I imagine that the same doctrine [i.e., weighing of interests] would be sustained in regard to the treaty-making power where concerns, which perhaps under former conditions had been entirely local, had become so related to international matters that an international regulation could not appropriately succeed without embracing the local affairs as well. Id.

In commenting on Hughes' statement, Charles Cheney Hyde said that—

These words seem to imply that by the adoption of the Constitution the Republic as a State relinguished the capacity to conclude treaties designed or calculated to restrict the American people in their purely internal concerns, as with respect to matters having no relation to international affairs, and that the existence of an international relationship is to be taken as a test of unrelinguished power.

Hyde explains further in a footnote:

In a word the United States, by adoption of the Constitution, relinguished the capacity to conclude a treaty, which, . . . purported to deal with matters not to be deemed to pertain to external relations."

2 Hyde, International Law, Chiefly as Interpreted and Applied by the United States (1947) 1459.

Similarly, the American Law Institute in its restatement—second—The Foreign Relations Law of the United States, 1965—hereinafter "Restatement" refers in its comment to section 40 which deals with limitations "where two States have jurisdiction to prescribe and enforce rules of law" to—

a. Balancing of Interests: general. It is clear that if each state having a basis of jurisdiction were in every case to exercise its jurisdiction without considering the interests of another state also having jurisdiction, disputes between states and hardship would often arise.

A few years after his aforementioned 1929 statement, Chief Justice Hughes said with respect to the extent of the treatymaking power of the United States, that—

In its international relations, the United States is as competent as other nations to enter into such negotiations, and to become a party to such conventions. . . ." *Burnet v. Brooks*, 288 U.S. 378, 400 (1933).

John Foster Dulles said as Secretary of State that the treatymaking power may be exercised with respect to a matter which—

. . . reasonably and directly affects other nations in such a way that it is properly a subject for treaties which become contracts between nations as to how they should act.

And not with respect to matters—

Which do not essentially affect the actions of nations in relations to international affairs, but are purely internal.

Hearings on S.J. Res. 1 before a Subcommittee of the Senate Judiciary Committee, 84th Cong., 1st Sess., 183 (May 2, 1955).

On an earlier occasion, Secretary Dulles had testified:

I do not believe that treaties should, or lawfully can, be used as a device to circumvent the constitutional procedures established in relation to what are essentially matters of domestic concern.

Hearings on S.J. Res. 1 and S.J. Res. 43 before a Subcommittee of the Senate Judiciary Committee, 83d Cong., 1st Sess., 825 (April 6, 1953).

On December 13, 1955, the Department of State issued Circular No. 175, which reads in part:

2. Scope of the Treaty-Making Power. Treaties should be designed to promote United States interests by securing action by foreign governments in a way deemed advantageous to the United States. Treaties are not to be used as a device for the purpose of effecting internal social changes or to try to circumvent the constitutional procedures established in relation to what are essentially matters of domestic concern.

Both sentences of the circular define the scope of the treatymaking power: The first sentence defines the power in the form of an affirmative statement whereas the second sentence defines it in the negative form of exclusion. Thus, the fact that the second sentence was deleted at a later date, does in no way alter the scope of the power as defined by the circular because the exclusory definition of the second sentence is, of necessity, already inherent in the affirmative statement made in the first sentence.

Similarly, the restatement, supra, states:

Section 118. *Scope of Treaty.*

(1) An international agreement made by the United States as a treaty may deal with any matter as to which the United States has the constitutional power to make an international agreement under the rules stated in Section 117.

These rules are:

Section 117. *Scope of International Agreements.*

(1) The United States has the power to make an international agreement if

(a) the matter is of international concern.

The comment to section 117 of the restatement reads:

An international agreement of the United States must relate to external concerns of the nation as distinguished from matters of purely internal nature. As the effect of international agreements is the creation or modification of relationships under international law, it would be inconsistent to utilize them for the regulation of matters bearing no relation to international affairs.

In conclusion, the treatymaking power of the United States is specifically designed to promote "United States interests by securing action by foreign governments in a way deemed advantageous to the United States." Conversely, since matters which are essentially a domestic concern of the United States are under international law exclusively in the domestic jurisdiction of this country, they are not and cannot be made the object of treaties whose very purpose is that of "securing action by foreign governments."

Incidentally, even those who have habitually been in favor of limiting the domestic jurisdiction of this country and for expanding the frequently ill-defined scope of international law to matters which are in the domestic jurisdiction of the United States, had to admit that—

. . . the treaty-making power is limited . . . with reference to the *ends* for which it may act. . . . In other words (1) treaties must be international in character, not a mere subterfuge for domestic relations. . . . Wright, "The Constitutionality of Treaties" in 13 AJIL (1919) 242, 262–263.

II. CRIMINAL LAW: THE OUTSTANDING EXAMPLE OF A MATTER OF DOMESTIC JURISDICTION

The importance of domestic jurisdiction. The most important right and duty of a state under international law is the preservation and protection of its external independence and of its internal jurisdiction.

From the viewpoint of sovereignty, jurisdiction means internal sovereignty, exclusive control over all persons and things within its territory. . . . In practice, vast powers are left to the states, and the community interferes very little with their internal administration. It should be noted that the state not only administers its own affairs, but acts also as the agent of the community of nations to enforce international law within its territory. Eagleton, International Government (1957) 87–88 as quoted in 5 Whiteman, Digest of International Law (1965) 216–217.

The principle of territoriality. It is well settled that criminal law, that is, the definition and designation of certain acts as crimes and the prescription of punishment for such crimes are within

the "reserved domain" of the domestic jurisdiction of the various nations. An analysis of general principles of international law and of criminal law shows that—

The territorial principle, determining jurisdiction by the place where the act has been committed . . . is everywhere regarded as of primary importance and of fundamental character. Harvard Research on International Law: Jurisdiction with Respect to Crime, 29 Am. J. Int. L , Sup. 1 (1935) 435, 445.

This analysis led to the following formulation of article 3 of the Draft Convention on Jurisdiction with Respect to Crime:

Article 3. Territorial Jurisdiction.

A State has jurisdiction with respect to any crime committed in whole or in part within its territory. Havard Research, *supra*, 439.

The American theory of criminal jurisprudence was clearly set forth in a note of Secretary of State Charles Evans Hughes to the French Ambassador where he said that—

The territorial sovereign has the strongest interest, the greatest facilities, and the most powerful instruments for repressing crimes . . . in his territory . . . 2 Hackworth, Digest of International Law (1941) 181.

Similarly, the Department of State instructed the U.S. Ambassador in Germany that—

. . . under Anglo-Saxon legal theory, crime is territorial, not personal. . . . *Id.*, at 180.

It follows from the rules governing the principle of sovereignty that, to any extent to which states are not limited by international law, they are free to determine, as they see fit, their municipal criminal laws. Thus, in principle, the actual exercise of criminal jurisdiction must take place in the territory of the state in which the crime was committed or in places assimilated to it, for example, territorial seas, flag vessels or aircraft, and so forth.

The practice of extradition is in itself a recognition not only of the principle that crime should be punished, but also of the fact that it can best be punished at the place of its commission. Nowhere else can it be so conveniently and so successfully prosecuted. 2 Hackworth, *supra*, at 182.

Therefore:

It is a rule of international law that no law has any effect of its own force beyond the limits of sovereignty from which its authority derived. *Southern Pacific RR Co of Mexico* v. *Gonzalez*, 61 P.2d 377, 382 (Supreme Court, Arizona, 1936).

Conversely, "A government has no substantial interest in punishing crimes in the territory of another state" 2 Hackworth, supra, at 182, because—

The importance of State territory lies in the fact that it is the space within which the State exercises supreme authority. 1 Lauterpacht, Oppenheim's International Law (1955) 452.

Secretary Hughes concluded from the foregoing that—

The experience of this and other countries show that a criminal law applicable to offenses committed in foreign lands is for the most part a *brutum fulmen*, and that it can rarely be carried into execution. 2 Hackworth, *supra*, at 181.

The American doctrine has been set forth in restatement—second—supra, under the heading "Jurisdiction to Prescribe with Respect to Conduct—or Other Interest Within Territory" where it states that—

A state has jurisdiction to prescribe a rule of law

(a) attaching legal consequences to conduct that occurs within its territory. . . .

Within the aforementioned limits it is left to every system of municipal law to determine for itself whether, and to what extent, it applies to crimes with a foreign element, that is to say, to crimes committed abroad. In this sense, international criminal law does not belong to international but to municipal law.

Only if the interests of a nation are threatened by criminal conduct, do states prescribe rules of law attaching legal consequences to extraterritorial acts, provided that the conduct is generally recognized as a crime—Restatement, supra, section 33, entitled "Protective Principle". In the words of Justice Holmes:

They [sovereign nations] go further, at times, and declare that they will punish any one, subject or not, who shall do certain things, if they can catch him, as in the case of pirates on the high seas. In cases immediately affecting national interest, they may go further still and may make, and, if they get the chance, execute similar threats as to acts done within another recognized jurisdiction. An illustration from our statutes is found with regard to criminal correspondence with foreign governments. . . . But the general and almost universal rule is that the character of an act as lawful or unlawful must be determined wholly by the law of the country where the act is done. . . . For another jurisdiction, if it should happen to lay hold of the actor, to treat him according to its own notions rather than those of the place where he did the act would not only be unjust, but would be an interference with the authority of another sovereign, contrary to the comity of nations. . . . *American Banana Company* v. *United Fruit Company*, 312 U.S. 347, 355–357 (1909).

It is important to realize that there are fields in which the various systems of municipal criminal law claim concurrent or conflicting jurisdiction—Lotus case, PCIJ, series A, No. 10, page 20 (1927). However, in practice, the chaos that might result from such concurrent or conflicting claims is reduced to manageable proportions by the governing principle of the territoriality of criminal jurisdiction.

The foregoing shows clearly that criminal law is one of the outstanding examples of matters which are of purely domestic concern even if a nation under the protective principle should attempt to extend its jurisdiction to extraterritorial conduct. Therefore, it has been aptly stated that—

It is not the function of treaties to enact the . . . criminal law of a nation. . . . Congress may be under a duty to enact that which has been agreed upon by treaty, but duty and its performance are two separate and distinct things. Nor is there any doubt that the treaty-making power has its limitations. . . . Certain it is that no part of the criminal law of this country has ever been enacted by treaty. *The Over The Top*, 5 F 2d 838 (D.C., D. Conn., 1925).

Offenses against the law of nations. Article I, section 8, clause 10 of the Constitution reserves to Congress the power "To define * * * offenses against the law of nations". This covers acts which under customary international law are already considered crimes by the state practice of civilized nations, that is, crimes which are not artificially created by treaties but which have organically developed by way of state practice and which have only to be defined by Congress in order to meet the constitutional requirement that criminal statutes must not be so vague as to leave the standard of guilt to the "variant views of the different courts and juries which may be called to enforce it" *United States* v. *Cohen Grocery Co.*, 264 F. 218, 220 (1920), aff'd 225 U.S. 81 (1921). Therefore, the aforementioned power of Congress refers to acts which customary international law prescribes, or authorizes, to be treated as criminal law under the municipal law of the United States—ex parte Quirin, 317 U.S. 1 (1942)—and to crimes which, owing to their general noxious character, are punishable in most civilized countries—*United States* v. *Arjona*, 120 U.S. 479 (1887). Again, both categories of crimes can be described only in the loosest sense as offenses against the law of nations.

Since criminal law is in the reserved domain of domestic jurisdiction, the concepts "international crime" or "crime under the law of nations" has a very limited scope. In fact, it has been correctly said that "international law has not yet evolved a criminal law of its own" Schwarzenberger, "The Problem of an International Criminal Law" in Three Current Legal Problems (1950) 263, 275, as quoted in 11 Whiteman, supra, 837. The same author (Schwarzenberger) has also aptly said that—

This term [international criminal law] has at least six different meanings. It may be identified with the territorial scope of municipal criminal law. It may be equated with internationally authorised municipal criminal law. It may mean municipal criminal law common to civilised nations. It may signify international co-operation in the administration of municipal criminal law, and finally, stand for international criminal law in the material sense of the term. 1 International Law (1957) 255 as quoted in 11 Whiteman, *supra*, 837.

Thus, five of the aforementioned six meanings of the term "international criminal law" are clearly identified either as the internationally recognized reserve domain of domestic jurisdiction of which criminal law is an essential part; as international or extraterritorial implications and ramifications of municipal law. Only one of these meanings stands for "international criminal law in the material sense of the word" which, as the author admits "has not yet evolved."

Clearly, the "offenses against the law of nations" to which article I, section 8, clause 10 of the Constitution refers is in Schwarzenberger's above-mentioned terminology nothing else but "internationally authorised municipal law." In this connection, Whiteman's point that the question as to "What acts should be classified as crimes under international law

is intimately connected with the question of the machinery by which such acts should be dealt with"—11 Whiteman, supra, 835—is of paramount importance.

III.—THE GENOCIDE CONVENTION, ARTICLE-BY-ARTICLE ANALYSIS

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.

It has already been shown in (II), supra, that there are very few offenses which fall under the provision of article I, section 8, clause 10, of the Constitution which confers upon Congress the power to define and punish offenses against the law of nations, and that customary international law by way of continued and uninterrupted state practice is the only legitimate source for designating certain acts as offenses against the law of nations. Congress has the power to define and punish such offenses only if certain acts have been clearly designated as offenses by international customary law. However, article I of the Convention fails completely to state in concrete terms any specific state practices or rules of customary international law which it seeks to confirm in the form of a treaty. In fact, neither state practice nor customary international law have developed any concepts whatsoever which could conceivably serve as the basis for the assumption that the acts to which the Convention refers as genocide are offenses against the law of nations. In the absence of applicable state practice or customary law, any confirmation that genocide is a crime under international law has no basis in fact because both, state practice and rules of customary law, are considered facts which have to be proved and cannot be assumed. Even the fact that it was considered necessary to establish in article I of the Convention genocide as "an international crime" militates against any assumption that it is already a crime against the law of nations. The International Court of Justice has correctly held that the singling out of a set of facts for regulation by treaty leads to the presumption that such factual situations or acts had hitherto not been regulated by international law. In other words, in cases of treaty regulation it has to be assumed that the factual situations or acts regulated there had been hitherto in the domestic jurisdiction of the nations concluding the treaty.—Asylum case, *Colombia* v. *Peru*, ICJ. Rep. 1950, p. 266.

The word "confirm" has been chosen in article I of the Convention because resolution 96(I) of the U.N. General Assembly—1949—had affirmed that genocide was a crime under international law. However, resolution 96(I) as all other U.N. resolutions has no constitutive or legally binding effects. Such resolutions are mere recommendations—Kunz, "The Genocide Convention," 43 Am. J. Int. Law (1949) 741.

Thus, the Convention proposes to remove legislation and jurisdiction with respect to the acts listed in articles II and III of the Convention from the domestic sphere of the ratifying countries by making them by way of a treaty a matter of international concern. It will be shown below that this is an attempt to use a treaty as a vehicle for legislating on essentially domestic matters. This would make ratification of the Convention not only unconstitutional but would also undermine the most important right and duty of a State under international law, namely that of preserving and protecting its sovereignty and jurisdiction—Eagleton, International Government (1957) 87, as quoted in 5 Whiteman, supra, 216.

Judge Orie L. Phillips, then chief judge, U.S. Court of Appeals for the 10th circuit, drew the logical conclusion from article I of the Convention when he said:

If genocide and kindred offenses defined in the treaty are in fact international crimes, would not the wise course be to enact domestic legislation under Section 8, Clause 10, Article I of the Constitution of the United States, defining such offenses, and providing for the trial and punishment of persons committing such offenses, in our domestic courts, ... We would thus set our own house in order, would offer the same protection to the accused as one charged with any domestic crime, and would reserve to our own courts the final determination of questions as to the interpretation of the penal statute. To agree, by international convention, to so define, try, and punish persons . . . would avoid many serious questions with respect to the incipient effects of ratification of the Convention on our constitutional and legal system. . . . ABA Journal (August 1949) as quoted in Hearings on Genocide Convention, 91st Cong., 2d sess., 210.

Article I of the Convention provides also that genocide is a crime under international law "whether committed in time of peace or in time of war." So far, insufficient attention has been given to this unconventional phraseology of article I. If genocide were a crime under international law, it would be such at all times. Why then, the specific phraseology of article I? The only possible interpretation of the aforementioned phraseology leads to the conclusion that the vague terminology of articles II and III of the Convention is expressly to be applied to otherwise legitimate acts of warfare. If ratified, the treaty would remove—even without implementing legislation on the part of the United States—the members of the armed forces from the protective umbrella of international law—customary and codified—and would subject them not only to jurisdiction but to the hitherto unknown implementing legislation of potentially hostile countries.

In this connection, the testimony of Carl B. Rix, then chairman of the American Bar Association's Committee on Peace and Law through the United Nations before the Senate Foreign Relations Committee has to be recalled. He said that—

The mere fact of the necessity of implementation by legislation, such as . . . fixing penalties, does not make a treaty non-self-executing. Only clear intent in the treaty itself can prevent the automatic operation of the Constitution of the United States. Thus there may be created, as law, a third body of treaty law in this country with no constitutional basis whatsoever, of equal dignity with our Constitution, as supreme law of the land. . . . Con. Digest (Dec. 1950) 299–300.

If ratified, the treaty would immediately clearly provide enemy countries not only with a powerful propaganda but also with a psychological warfare weapon of unique effectiveness. The more ruthless the implementing legislation of various countries, the greater the deterrent effect upon members of the Armed Forces of the United States to execute their otherwise perfectly legitimate military duty.

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 measure intended to prevent births within the group;

(e) Forcibly transferring children of the group to another group.

In other words, the aforementioned acts are considered to constitute a "crime under international law" if they are committed against an individual or a group of individuals "with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such. * * *"

Article II of the Convention introduces a completely new intent element; namely "intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such. . . ." Since it is difficult to prove intent in even otherwise simple felony cases, the December 1970 report of the Foreign Relations Committee—Executive Report 91–25; page 5—emphasized this point when it said that "article II is so written as to make it, in fact, difficult to prove the intent element. . . ." If in view of these practical difficulties the intent element is disregarded, it becomes obvious that essentially all of the acts defined in article II and punishable under article III of the Convention are already, when committed on U.S. territory, identical with or, at least, similar to the common law crime of homicide and other offenses and torts under American law. Jurisdiction with respect to common law offenses, as well as the legislative jurisdiction to define other common offenses and/or statutory torts, has been essentially and primarily vested in the several States of the United States. It has been correctly said that—

There are no common law offenses against the United States. Only those acts which Congress has forbidden, with penalties for disobedience of its command, are crimes. The Constitution of the United States of America: Analysis and Interpretation, Senate, 88th Cong., 1st Sess., Doc. No. 39 (1964) 999–1000.

Since the legislative and judicial jurisdiction with respect to practically all of the aforementioned felonies and/or torts has been vested in the several States of the United States, Congress has used its power to declare such acts to be Federal crimes only in cases where—

. . . the law of nations casts upon every government [the duty] to prevent a wrong being done within its own dominion to another nation with which it is at peace, or to the people thereof. . . . *United States* v. *Arjona*, 120 U.S. (1887) 479, 487, 488; as quoted in The Constitution of the United States, *supra*, 325.

Therefore, when Executive Report 91–25, page 7 says that—

Moreover, the Congress has enacted laws making certain homicides Federal crimes; i.e., the killing of heads of foreign states and other designated foreign officials.

It refers to the protection of the aforementioned foreign officials while on U.S. territory which protection is clearly a duty imposed upon the United States by the law of nations. This being the case, Congress had the power to define and punish such homicides pursuant to article I, section 8, clause 10 of the Constitution. Where—

. . . Congress defines with particularity a crime which *is* (sic) "an offense against the law of nations", the law is valid. . . .

The Constitution of the United States, *supra*, 325.

The very fact that the legislative and judicial jurisdiction with respect to offenses and torts identical with or similar to those listed in articles II and III of the convention is vested in the several States of the United States shows clearly that they have been traditionally within the reserved domain of domestic jurisdiction and are essentially a matter of domestic concern to which the treaty power does not extend. Ratification of the convention would thus be an unconstitutional device to bypass the constitutional procedures established for matters which are essentially of domestic concern. In addition, the proponents of ratification have never claimed and/or shown that existing State and Federal laws are not sufficient to cope within the constitutional framework and under the constitutional safeguards of this country with such offenses as the convention would designate as genocide. Therefore, as far as the United States is concerned, a need for international regulation has not been established.

The argument that genocide would become a matter of international concern after ratification of the convention is self-defeating because it admits that it is now essentially a matter of domestic concern to which, as already stated, the treaty power does not extend. It has recently been correctly said that—

. . . the adherence of developed states to the current human rights treaties would be tinged with the hypocritical intent to interfere abroad without permitting any interference at home. . . .

By the test of realism, therefore, the previous internal matters of the political, economic and social rights of nationals of developed states *inter se* within their own territories remain entirely internal, and are not appropriate subjects for the exercise of the treaty power. G. L. Dorsey, "Subject Matter Limitation on Treaty Power", 6 International Lawyer (1970) 220.

The working of the Genocide Convention shows that a similar line of reasoning applies to all ratifying states with respect to the acts listed in articles II and III of the convention.

However, regardless of the unconstitutionality of concluding a treaty concerning matters which are essentially a domestic concern, the treaty must be regarded as void or unconstitutional if it obligates the United States to enact implementing legislation or perform other acts which—without such treaty—would be void or unconstitutional. The statement filed in behalf of the Department of State with the subcommittee of the Committee on Foreign Relations on April 24, 1970, shows that the proposed implementing legislation defines genocide exactly as it is defined in the convention.

It has already been said that a criminal statute must be unambiguous, definite and precise in order to meet the constitutional requirements protecting the rights of defendants to be informed of the nature and cause of the accusation. See United States against L. Cohn Grocery Co., supra.

The first question which has to be raised in this connection is that of the vagueness of the intent element, namely to inflict different kinds of harm upon individuals: First, because they are members of a national, ethnical, racial or religious group; and second, because the ultimate aim or purpose of the harm is the destruction of such a group in whole or in part.

The precise meaning of the various groups has been left vague. A group has been judicially defined as a number of persons or things existing or brought together with or without interrelation, orderly form, or arrangement, 18A Words and Phrases, 630, citing *Hope* v. *Flentge*, 140 Mo. 390, 41 S.W. 1002 (1897). One example will suffice to show the indefiniteness of the term. Since the Communist countries have opposed the inclusion of political groups, the designation of group members of one of the listed groups as "enemies of the state" would leave the individuals concerned without the protection supposedly provided by the Convention. How can national, ethnical, racial, or religious groups be clearly defined in the absence of objective natural standards as, for example, territory; or legislative standards as, for example, nationality; corporate membership, et cetera. Against how many individuals do the acts listed in articles II and III of the Convention have to be committed in order to prove intent to destroy the group? Is it sufficient to harm two individuals? Or is it 10 or 500,000 individuals?

Article II is also vague with respect to the concept of "mental harm." The question arises as to what the constituent elements of mental harm are.

Article III raises the issue of the specific nature of "direct and public incitement to commit genocide."

Article IV: What does article IV understand by "constitutionally responsible rulers"? The French text of the Convention uses in this connection the French term for "government." Are, then, members of the administration of any other government punishable under article IV? Without violent overthrow of a government or defeat of a nation in war, can it be assumed that members of a government or public officials will be held liable under article IV? This would pose a problem if the number of individuals against whom an act under article II had been committed is such that it suggests "complicity in genocide" pursuant to article III (e).

Article VI raises the issue of the concurring jurisdiction of an international penal tribunal. Article VI is sufficiently vague to give rise to the question whether or not, once the Convention is ratified, the President has the power under the treaty to accept jurisdiction of an international tribunal by executive agreement.

The argument that such a tribunal does not exist now is no protection against it being organized in the future and in a way which would infringe upon the sovereignty of the United States by claiming jurisdiction over acts committed on American territory by individuals within the United States.

Attention has to be directed to the fact that the Nuremberg and Toyko tribunals were organized and set up on the basis of executive agreements.

Article VII raises the issue whether the rule of general international law that political crimes are not extraditable can be set aside by treaty even if it is clear that genuine acts of genocide could only be political or politically motivated crimes.

Again, article VII raises the question whether the Convention, if ratified, confers sufficient power upon the President to enter into executive extradition agreements.

Article VIII: This article raises the question of the general nuisance and propaganda value of this treaty by offering an opportunity to bring charges before the United Nations to the effect that a country failed to take appropriate action for the prevention and suppression of genocide.

Article IX: This article, ratified, would not only be a violation of the Connally reservation, but also an admission of the "responsibility of a state for genocide or for any of the other acts enumerated in article III." What does the convention specifically understand by "responsibility of a state for genocide" or for any of the aforementioned acts?

In conclusion two questions have to be raised:

First, in view of the various reservations attached by Communist and other countries and in view of the doubts whether these reservations do or do not substantively influence their ratification of the Convention, the following issue arises: If the reservations do substantially influence ratification, has the Convention not to be renegotiated? In view of the reservations by other countries, do we actually know what the present status of the Convention is? Would not the United States find itself in a position where it would be the only major power ratifying the Convention without serious reservations?

Second, similarly, if the Senate gives its consent to ratification of the Convention, subject to serious and legally

binding reservations, would it not be necessary to renegotiate the Convention before it can be ratified? On the other hand, "understanding," or reservations would be legally completely meaningless if they do not in legally binding form challenge the substance of the Convention.

Mr. ALLEN. Mr. President, I have discussed somewhat the four reservations by the Committee on Foreign Relations to the Genocide Convention. I would certainly favor each and every one of those reservations, because they state the position of the United States with regard to certain of the language in the convention. But this would only open the door for further confusion, further misunderstanding, and a further hodgepodge as to the exact meaning of the convention.

As a matter of fact, Mr. President, it is most interesting in the report of the Committee on Foreign Relations—and I do not have the privilege of serving on that committee—to find that the United States is not the only country which does not understand this convention, or its legislative body does not. Many other nations, in ratifying it, have said, "We do not want this to be construed to mean this or that or the other."

The effect of our reservations is that we take certain language and say, "We think this means thus and so."

Let us look at this just a little bit. I read beginning on page 29 of the record of hearings on the Genocide Convention.

Mr. CHURCH. Mr. President, will the Senator be good enough to yield to me for a unanimous-consent request?

Mr. ALLEN. I yield.

Mr. CHURCH. I have previously spoken to the Senator about it, and also the distinguished Presiding Officer.

Mr. ALLEN. Yes.

Mr. CHURCH. Mr. President, I ask unanimous consent that notwithstanding the fact that the understandings and declarations reported by the committee have not been agreed to, I be permitted to call up my reservation and amendments to the resolution of ratification, and that my amendments be considered en loc.

The PRESIDING OFFICER (Mr. HELMS). Is there objection to the request of the Senator from Idaho? The Chair hears none, and it is so ordered.

Mr. ALLEN. Mr. President, may I make one inquiry? Does this add the additional reservation to the reservations already made?

Mr. CHURCH. The committee's report included three understandings and one declaration, but not a reservation, which has a different legal effect.

Mr. ALLEN. Yes.

Mr. CHURCH. So this would, if adopted by the Senate, substitute the reservation proposed in place of the delcaration that the committee reported out.

Mr. ALLEN. Would the Senator drop that?

Mr. CHURCH. No, it would substitute. Under the language of the reservation, clause 3 as it appears in the proposed resolution of ratification would be stricken, and in its place the proposed reservation would be inserted.

Mr. ALLEN. Mr. President, I favor the Senator's reservation.

The PRESIDING OFFICER. The Chair would inquire of the Senator whether he wishes to call up his reservation.

Mr. CHURCH. Yes, I call up the reservation.

The PRESIDING OFFICER. The reservation will be stated.

The assistant legislative clerk read as follows:

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 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

Mr. ALLEN. Mr. President, the Senate Committee on Foreign Relations is not the only legislative group or government that has issued reservations, declarations, or understandings with respect to this convention. On page 29 of the record of hearings before the subcommittee of the Committee on Foreign Relations of the 91st Congress, 2d session, on Executive O, 81st Congress, 1st session, there are listed a number of reservations and declarations of other nations, and some of those reservations are summarized.

The point that I am seeking to make, Mr. President, is that when you get through with all of the reservations, understandings, and declarations of all of the nations, you do not know what in the world you have when you get through as to who is bound by what.

Starting off here, the Philippine Government cannot sanction any situation which would subject its head of state who is not a ruler, to conditions less favorable than those accorded other heads of state, whether a constitutionally responsible ruler or not.

Then it goes on and develops that for a while.

Then on the matter of what is competent penal tribunal, Algeria, Burma, and Morocco, they say that the provisions of the article shall not be construed as depriving courts and tribunals of the said country of jurisdiction over acts of genocide or other acts enumerated in article III committed within its territory, nor conferring jurisdiction on foreign tribunals.

Mr. President, Algeria, Burma, and Morocco, they see the same danger in this that the Senator from Alabama did, as to conferring jurisdiction on foreign tribunals.

Algeria and Morocco may, in exception cases, recognize the competence of international tribunals by specific agreement.

So, Mr. President, these nations of Algeria, Burma, and Morocco, they are not world powers by any means, but they see the defects in this convention and they are interested in maintaining their sovereignty. They might not have sovereignty over very much, but they are intent on retaining their sovereignty over the rights and privileges and the lives, if you please, Mr. President, of their nationals.

The Philippines and Venezuela—proceedings to which Venezuela may be a party before an international penal tribunal would be invalid without Venezuela's express acceptance of the jurisdiction of such international tribunal.

Here again a nation such as Venezuela, with its chief asset, I assume, being its oil deposits down there, they are seeking to protect their sovereignty by putting in this stipulation.

Now the Philippines and Venezuela have exceptions on extradition and genocide.

On article VIII, Burma says that this article would not apply to it. They accepted without article VIII.

On article IX, on submission of disputes to the International Court of Justice—this is interesting, Mr. President—Albania, Bulgaria, the Byelorussian Soviet Socialist Republic, Czechoslovakia, India, Mongolia, Morocco, Poland, Romania, the Ukrainian Soviet Socialist Republic, and the Union of Soviet Socialist Republics—I believe that is the U.S.S.R.—Agreement of all parties to a dispute is required for submission of that dispute to the court.

If I recognize some of these nations correctly, they are behind the Iron Curtain and they have stipulations that the agreement of all parties to a dispute is required for submission of that dispute to the court.

Algeria, Hungary, Spain—they reserve their rights or do not consider themselves bound by article IX.

So, Mr. President, these other nations at the time they accepted this convention, reserved their rights and did not go along with the full document.

Argentina reserved the right not to submit to the procedure laid by in article IX. The Philippines the same thing. And Venezuela.

On article XI, states eligible to accede to the convention—on Mongolia, they declare that the convention deals with matters which affect the interests of all states and should, therefore, be open for accession by all states.

On article XII—the Territorial Application of the Convention—Albania, Algeria, Bulgaria, Byelorussian Soviet Socialist Republic, Czechoslovakia, Mon-

golia, Poland, Romania, the Ukrainian Soviet Socialist Republic, and the Union of Soviet Socialist Republics—the U.S.S.R.—say that the provisions of the Convention should extend to non-self-governing territories, including trust territories.

Albania has an exception as to article IX. Algeria—the Democratic and Popular Republic of Algeria—does not consider itself bound by article XI of the Convention, which confers on the International Court of Justice jurisdiction in all disputes relating to the said Convention.

Hurrah for Algeria.

The Democratic and Popular Republic of Algeria declares that no provision of article VI of the said Convention shall be interpreted as depriving its tribunals of jurisdiction in cases of genocide or other acts enumerated in article III which have been committed in its territory or as conferring such jurisdiction on foreign tribunals.

That is Algeria speaking, Mr. President. They do not want their nationals tried by foreign courts. I do not blame them.

Argentina makes exceptions to article IX and article XII. Bulgaria has exceptions as to article IX. Burma offers reservations as to article VI. The Byelorussian Soviet Socialist Republic has exceptions as to articles IX and XII. Czechoslovakia the same way.

Finland says—subject to the provisions of article 47, paragraph 2, of the Constitution Act, 1919, concerning the impeachment of the President of the Republic of Finland.

They do not want that matter considered by the tribunals.

Argentina and Hungary reserve their rights with regard to the provisions of article IX. India, Mongolia, Morocco, the Philippines, Poland, Romania, as to articles IX and XII, likewise.

Spain has a reservation with respect to the whole of article IX—the jurisdiction of the International Court of Justice. The Ukrainian Soviet Socialist Republic and the U.S.S.R. both have exceptions as to articles IX and XII.

Here is what the U.S.S.R. has to say on article IX:

> The Soviet Union does not consider as binding upon itself the provisions of article IX which provides that disputes between the Contracting Parties with regard to the interpretation, application and implementation of the present Convention shall be referred for examination to the International Court at the request of any party to the dispute, and declares that, as regards the International Court's jurisdiction in respect of disputes concerning the interpretation, application and implementation of the Convention, the Soviet Union will, as hitherto, maintain the position that in each particular case the agreement of all parties to the dispute is essential for the submission of any particular dispute to the International Court for decision.

In other words, as I read this, they have the veto power on whether they would be hailed into Court, about the same way as they have in the U.N. Security Council.

Venezuela, Australia—all have filed reservations.

Belgium, they do not accept the reservations made by Bulgaria, Byelorussian Soviet Socialist Republic, Czechoslovakia, Poland—on, on, and on.

So one group says we accept with certain reservations and another group says we do not accept your making those reservations.

Brazil objects to reservations by other countries. Ceylon does not accept reservations made by Romania.

China objects to all the identical reservations made at the time of the signature on the ratification by the Soviet Republics here.

The Chinese Government considers the above-mentioned reservations as incompatible with the object and purposes of the convention; and therefore, by virtue of the advisory opinion of the International Court of Justice—I thought someone said that had not been set up yet—of May 28, 1951, would not regard the above states as being parties to the convention.

Mr. President, we might sign this document with our reservations, and China might come forward and say, "We do not regard you as having signed this, as being a party to the convention."

Cuba objects to some of the reservations made by some of the other nations.

Ecuador is not in agreement with reservations made by some of these governments.

Greece:

> We further declare that we have not accepted and do not accept any reservation which has already been made or which may hereafter be made by the countries signatory to this instrument or by countries which have acceded or may hereafter accede.

The Netherlands declares that it considers these reservations to be incompatible with the object and purpose of the convention. The Government of the Kingdom of the Netherlands therefore does not deem any state which has made or which will make such reservation a party to the convention.

Norway does not accept the reservations made to the convention by the Philippines.

Let us see what the Republic of Vietnam objected to.

Referring to the reservations to articles IX and XII made on signature by the Byelorussian Soviet Socialist Republic, Czechoslovakia, the Ukrainian Soviet Socialist Republic and the Union of Soviet Socialist Republics, and on accession by Bulgaria, and to the reservations to articles IV, VI, VII and IX of the convention made on ratification by the Philippines, the Government of the Republic of Vietnam informed the Secretary-General that it was the intent of the Government of Vietnam in acceding to the Convention for the Prevention and Punishment of the Crime of Genocide, to accept only the text of that convention as approved on December 9, 1948 before the United Nations and not the reservations submitted by the above-mentioned states or by any other state at the time of signature by their representatives, or of deposit of their instruments of ratification or accession to the convention.

These are some of the reservations made by some of the signatory States; and if we come in with reservations which I think are all valid and should be made, I am wondering just what our position is going to be. Will we be a signatory? Will we be regarded by the other signatories as having properly signed, or will they file objections? Who would decide, if it is not the court of international justice, what applies to what nation and what does not apply and who are valid signatories?

It seems to the Senator from Alabama that we are just opening a can of worms here if we go forward with the ratification of the convention.

If this matter does come to a vote on the floor, I am hopeful that the Senate, in the exercise of its wisdom, will vote against the ratification of the convention.

Mr. President, I yield the floor.

Mr. THURMOND. Mr. President, the Genocide Convention was adopted by the General Assembly of the United Nations on December 10, 1948. It was submitted by President Harry S. Truman to the Senate for its consideration on June 16, 1949. In my judgment, it is an unnecessary and dangerous treaty. I am glad that its ratification has been delayed during the past 25 years. In 1950, the Senate Foreign Relations Committee appointed a subcommittee, composed of very able Senators, which conducted hearings and reported to the full committee that the United States should not ratify the convention in any event, unless the Senate adopted four substantial understandings and one substantial declaration. Since this report was made, the Senate Foreign Relations Committee and the Senate itself, by inaction, have refused to ratify this convention.

In contrast to the attitude represented by this inaction during the preceding 25 years, the Senate Foreign Relations Committee has revived the question of ratification during the past few months, notwithstanding the fact that there has been no change of circumstances which would make what was unwise in 1950, wise in 1974.

The major argument now advanced for ratification of this convention is that it would improve the image of the United States in the eyes of Russia and other totalitarian parties to the convention, which, strange to say, have repudiated by understanding and reservations many of the provisions of the convention.

Before discussing the provisions of the Genocide Convention and the objections to it, I would like to emphasize that what I am going to say in no way militates against the good intentions of those who drafted the convention, or those who seek its ratification. All of us are strongly opposed to the systematic, planned annihilation of any national, ethnical, racial, political, or religious group. However, we should not permit ourselves to ratify a convention which would have such a drastic impact upon the system of law which has always existed in our land.

Briefly, the provisions of the Genocide Convention are as follows:

In article 1, the contracting parties affirm "that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent or to punish."

Article 2 reads as follows:

"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.

Article 3 states that:

"The following acts are 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."

Article 4 specifies that persons committing genocide or any of the other acts enumerated in article 3 shall be punished, whether they are constitutionally responsible rulers, public officials, or private individuals.

Article 5 obligates the contracting parties to enact the necessary legislation to give effect to the provisions of the convention and to provide effective penalties "for persons guilty of genocide or of any of the other acts enumerated in article 3."

Article 6 provides that "persons charged with genocide or any of the other acts enumerated in article 3 shall be tried by a competent tribunal of the nation 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."

Article 7 provides that the parties to the treaty pledge themselves in genocide cases to grant extradition in accordance with their laws and treaties. Article 8 provides that "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 3."

Article 9 provides that "disputes between the contracting parties relating to the interpretation, application, or fulfillment of the present convention—shall be submitted to the International Court of Justice at the request of any of the parties to the dispute."

This brings me to the considerations which ought to deter the Senate from ratifying the Genocide Convention. Time compels me to limit my statement to only the most substantial of them.

First, if the Senate should ratify the Genocide Convention, the United States would be obligated by it to prosecute and punish public officials and private citizens of our country for acts alien to the concept embodied in the term genocide.

The definition of genocide appears in article 2 which states that the term genocide embraces five specified acts "committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such." The convention definition of genocide is inconsistent with the real meaning of the term, which is "the systematic, planned annihilation of a racial, political, or cultural group." The word annihilation clearly contemplates the complete destruction or the complete wiping out of the designated group.

Yet, the convention definition covers the destruction, either in whole or in part, of members of a group embraced by it. This could mean that a public official or a private individual is to be subject to prosecution and punishment for genocide if he intentionally destroys a single member of one of the specified groups.

The Senate Foreign Relations Committee has recommended the Senate announce that it understands this article to mean "the intent to destroy a national, ethnical, racial, or religious group by the acts specified—in such a manner as to affect a substantial part of the group concerned." While this does clear up some of the ambiguity, in my opinion it is still not celar enough. The phrase "substantial part" is obviously subject to interpretation.

Second. Article 2, section 2 of the Constitution provides that "the President shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur." Article 6 of the Constitution provides that "the Constitution and the laws of the United States, which shall be made in pursuance hereof, and all treaties made or which shall be made under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding."

If the Senate should ratify the Genocide Convention, these constitutional provisions would automatically make the convention the law of the land, put all of its self-executing provisions into immediate effect as such, and impose upon the United States the obligation to take whatever steps are necessary to make its non-self-executing provisions effective. This means that the provisions of the Genocide Convention would immediately supersede all State laws and practices inconsistent with them, and could nullify provisions of acts of Congress and prior treaties of the United States inconsistent with them. Obviously ratification of the Genocide Convention would have a drastic impact on our system of government, particularly on the States.

Third. Another drastic impact that ratification of the Genocide Convention would have upon our system of government is in the criminal field. If the Senate should ratify the Genocide Convention, the duty and the power to prosecute and punish criminal homicides, assaults and batteries, and kidnapings, covered by categories (a), (b), and (e) of article 2 of the convention would be forthwith transferred from the States which have always had such duty and power in respect to these crimes to the Federal Government. To make this transfer of jurisdiction workable, Congress would be required to enact new laws laying down rules of procedure to govern the trial of these newly created Federal and international crimes. Pending the passage of such laws, our country could experience utter confusion in the administration of criminal justice in respect to homicides, assaults and batteries, and kidnapings.

In the absence of ratification of the convention, demands have already been made that the United Nations investigate the slaying of Black Panthers by police officers on the ground that their slaying constituted genocide under article 2(a), and that the United Nations investigate the action of the legislature of one state in respect to welfare benefits on the ground that the legislative action constituted genocide under article 2(c). Furthermore, questions have been raised whether birth control clinics, school busing, discrimination against minority groups, and the incidents at My Lai in Vietnam could also constitute genocide.

I strongly question whether it is desirable to ratify a convention which would necessitate such fundamental alterations in the way in which criminal justice has been administered in the United States ever since our country was founded.

A fourth objection to the convention is that many of its terms are shrouded in uncertainty. For example, if the convention is ratified, article 2(b) would impose upon the United States the duty to prevent and to prosecute and punish public officials and individuals who cause "mental harm to members" of any one of the four groups named in the convention. What mental harm means in this context is totally incomprehensible, and what psychological acts or omissions are made punishable in this context are left in obscurity. The Foreign Relations Committee would construe this term to mean "permanent impairment of mental faculties." In my opinion, this construction adds little clarity.

If the convention is ratified, article 2(c) would impose upon the United States the duty to prevent and to prosecute and punish anyone who deliberately inflicts "on the group conditions of life calculated to bring about its physical destruction in whole or in part." What this means, no mind can fathom. Does it mean that a State or county official who refuses to give to a member of one of the four groups, designated in the convention, the amount of welfare benefits deemed desirable is to be punished or prosecuted for genocide? Does it mean that the Court of International Justice shall have power under article 9 to adjudge that Congress or a State legislature which does not make available to members of one of the four groups what the Court deems to be adequate welfare benefits has violated the convention?

Able lawyers have expressed the fear that article 6 imposes upon the Congress an implied commitment to support the creation of an international court for trials of American citizens for genocide. I find myself in complete harmony with

their opposition to subjecting our citizens and other persons within our territorial jurisdiction to trial, conviction, and sentence for acts of genocide committed in the United States by an international penal tribunal where they might not be surrounded by the constitutional safeguards and legal rights accorded persons charged with a domestic crime.

A fifth objection is that the convention could make American soldiers fighting under the flag of their country in foreign lands triable and punishable in foreign courts—even in courts of our warring enemy—for killing and seriously wounding members of the military forces of our warring enemy.

This is made indisputable by article 1 which provides that genocide is punishable under the convention whether it is committed in time of peace or in time of war, and by the fact that it contains no provision exempting soldiers engaged in combat from the coverage of the provisions of the convention. When soldiers kill or seriously wound members of a detachment of the military forces of a hostile nation, they certainly do so with intent to destroy, in whole or in part, a national group as such. Hence, their acts in combat fall clearly within the purview of the convention. In such cases, they are triable and punishable under article 6 in the courts of the nation in whose territory their acts are committed, or in such an international penal tribunal "as may have jurisdiction with respect to those contracting parties which shall have accepted its jurisdiction." These things being true, American soldiers who killed or seriously wounded North Vietnamese soldiers or members of the Vietcong, or South Vietnamese civilians in South Vietnam, would have been triable and punishable in courts in South Vietnam, and American aviators who bombed North Vietnam would have been triable and punishable in the courts of North Vietnam. No sophistry can erase this obvious interpretation of the Genocide Convention.

A final objection to the convention relates to article 9, which provides that disputes between the parties to the convention relating to the "interpretation, application, or fulfillment" of the convention "shall be submitted to the International Court of Justice at the request of any of the parties to the dispute."

Under this article the International Court of Justice would be empowered to decree that the President of the United States, as Chief Executive Officer of the United States, had interpreted and applied the provisions of the convention incorrectly and by doing so impose upon the President of the United States its notions as to how the convention should be interpreted and enforced. The International Court would have the power to adjudge that legislation enacted by Congress to give effect to the provisions of the convention was insufficient to fulfill the obligations imposed upon it by the convention, and to adjudge that the Supreme Court of the United States and Federal courts inferior to it had interpreted and applied the provisions of the convention incorrectly and by doing so require these tribunals to apply its notions as to how such provisions should be interpreted and applied to future cases coming before them. This would constitute a drastic and dangerous invasion of the sovereignty of the United States of America.

In this short talk, I have attempted to briefly outline the major objections to the Genocide Convention. In my opinion, these objections mandate that the convention not be ratified. The existing laws of the United States and the several States are adequate to punish all of the physical acts of violence denounced by the Genocide Convention. The Genocide Convention is an unnecessary and dangerous treaty which could severely damage our system of law and government.

Mr. McGEE. Mr. President, I find it particularly disturbing that, once again, the Senate business is being hindered by delaying tactics on the part of opponents of the Genocide Convention.

I have supported Senate passage of this convention as long as this issue has been before the Foreign Relations Committee and long before I was elected to this body.

There probably has never been an issue which has generated so many expressions of opinions over so long a period of time as the Genocide Convention. Everyone is familiar with the arguments pro and con. Therefore, I am dismayed that opponents of this measure will not let each individual Senator express his own views on this convention. The U.S. Senate, it seems, has become increasingly plagued by an unwillingness on the part of some Members to allow consideration of legislation which they oppose. Such tactics are only an admission on their part that they are unwilling to allow decisions to be made on the merits of an issue.

As everyone is well aware, the Genocide Convention is the direct outgrowth of the atrocities committed in Hitler's Germany on various minorities during World War II, particularly the Jews. The convention was adopted by the United Nations General Assembly on December 9, 1948, by a vote of 55 to 0. As of today, 75 nations are parties to the convention.

I find it to be a particular anathema that the world's leading economic and military power should find itself in the position of not having exercised its responsibility as the leader of the free world by failing to ratify this convention for the past 25 years.

Our democratic traditions center on the proposition of majority rule. Therefore, I believe these democratic traditions should be placed into practice and the Senate should move quickly to a vote on the Genocide Convention.

ORDER FOR ADJOURNMENT UNTIL 10 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 10 a.m. tomorrow.

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

ORDER FOR RECOGNITION OF SENATORS PROXMIRE AND HUGHES TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on tomorrow, after the two leaders or their designees have been recognized under the standing order, and prior to the recognition of the junior Senator from West Virginia under the order previously entered, the following Senators be recognized, each for not to exceed 15 minutes, and in the order stated: Mr. PROXMIRE and Mr. HUGHES.

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. The cloture motion having been presented under rule XXII, the Chair, without objection, directs the clerk to read the motion.

The 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).

1. Mike Mansfield.
2. Frank Church.
3. Jacob K. Javits.
4. Robert P. Griffin.
5. Charles McC. Mathias, Jr.
6. William D. Hathaway.
7. Gale W. McGee.
8. William Proxmire.
9. Birch Bayh.
10. Hugh Scott.
11. Richard S. Schweiker.
12. Adlai E. Stevenson III.
13. Jennings Randolph.
14. Hubert H. Humphrey.
15. Edmund S. Muskie.
16. James B. Pearson.
17. Charles H. Percy.

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, the Senate will convene at 10 a.m. tomorrow.

After the two leaders or their designees have been recognized under the standing order, the following Senators will be recognized, each for not to exceed 15 minutes, and in the order stated: Mr. PROXMIRE, Mr. HUGHES, Mr. ROBERT C. BYRD.

There will then be a period for the transaction of routine morning business, not to extend beyond 11 a.m., with statements therein limited to 3 minutes each. I so ask unanimous consent.

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

Mr. ROBERT C. BYRD. At the conclusion of the transaction of routine morning business, the Senate will go into executive session, and the 1 hour of

debate under the cloture rule will begin to run.

At 12 o'clock noon, the automatic quorum call will occur; and upon the establishment of a quorum, circa 12:15 p.m., the Senate will proceed to take a yea-and-nay vote, which is also mandatory under rule XXII, on the motion to invoke cloture.

What occurs during the rest of the afternoon depends upon the outcome of the cloture vote.

Mr. President, that is the statement of the program. If I have failed at some point to secure unanimous consent in accordance therewith, with respect to some detail, I ask unanimous consent at this time.

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

ADJOURNMENT TO 10 A.M.

Mr. CHURCH. Mr. President, in accordance with the previous order, I move that the Senate stand in adjournment until 10 o'clock tomorrow morning.

The motion was agreed to; and at 4:45 p.m., the Senate in executive session, adjourned until tomorrow, Tuesday, February 5, 1974, at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate February 4, 1974:

U.S. COAST GUARD

Rear Adm. Owen W. Siler, U.S. Coast Guard, to be Commandant of the U.S. Coast Guard for a term of 4 years with the grade of admiral, while so serving.

Rear Adm. Ellis Lee Perry, U.S. Coast Guard, to be Vice Commandant of the U.S. Coast Guard with the grade of vice admiral, while so serving.

U.S. ARMY

The following-named officer to be placed on the retired list in grade indicated under the provisions of title 10, United States Code, section 3962:

To be lieutenant general

Lt. Gen. Robert Edmondston Coffin, [redacted], Army of the United States (major general, U.S. Army).

HOUSE OF REPRESENTATIVES—*Monday, February 4, 1974*

The House met at 12 o'clock noon.

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

I am ready for anything through the strength of Him who lives within me.—Philippians 4: 13.

O Thou who art from everlasting to everlasting and whose truth endureth forever, prepare us in mind and in heart for the tasks of this week and may the work done be for the highest good of our people.

Give grace and wisdom to those who labor as our representatives under the dome of this Capitol that they may be examples of integrity, insight, and intelligent action on behalf of our beloved country. Enlighten their minds, purify their hearts, strengthen their hands, and so fill them with Thy spirit that their labors may lift our country to loftier levels of united action and to the higher heights of moral living.

In the spirit of the Master we pray. Amen.

THE JOURNAL

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

Without objection, the Journal stands approved.

There was no objection.

MESSAGE FROM THE PRESIDENT

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

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Arrington, one of its clerks, announced that the Senate had passed with amendments in which the concurrence of the House is requested, a bill of the House of the following title:

H.R. 7824. An act to establish a Legal Services Corporation, and for other purposes.

The message also announced that the Senate had passed a concurrent resolution of the following title, in which the concurrence of the House is requested:

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

The message also announced that the majority leader and minority leader, pursuant to Public Law 93–155, appointed Mr. Karl Bendetsen and Mr. Curtis Tarr to the Defense Manpower Commission.

PROJECTED SURRENDER OF U.S. SOVEREIGNTY OVER U.S.-OWNED CANAL ZONE: A DIRECT CHALLENGE TO THE CONGRESS THAT MUST BE MET

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

Mr. FLOOD. Mr. Speaker, the press has recently announced that on Thursday of this week Secretary Kissinger will fly to Panama to sign a "declaration of principles" for a new canal treaty. Any agreement under its guidelines would surrender U.S. sovereign contract over the U.S.-owned Canal Zone, and this without the authority of the Congress to which it is a direct challenge that must be met.

Later today, I plan to address the House on this subject and to offer a plan of action to meet the threat. I trust that as many Members as possible will be present and take part in the discussion for the issue is a crucial one affecting the security of the entire Western Hemisphere and about which citizens all over the Nation are deeply concerned, especially in coastal States with shipping that uses the canal.

ARMY TRADITION—A CRUEL HOAX

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

Mr. ANDERSON of California. Mr. Speaker, many of you can recall your days in the military and you can remember the service's pride in taking care of its family.

A certain esprit de corps was built by the fact that you knew the military would take care of its own.

But today, that tradition of the Army "family" has become a cruel joke to the 100,000 military retirees and dependents in the Los Angeles area.

After serving their country—many through battles ranging from Iwo Jima, Pork Chop Hill, and the Iron Triangle—the Army sergeant or lieutenant colonel retires near a military post for a couple of reasons: first, to stay near the "family," and second, to avail themselves of the services which help make up for the paltry retired pay.

And now, the Department of Defense wants to close Fort MacArthur—established in 1888—the only Army post in all of southern California—the only fort in an area with over 11 million people—a population larger than any State save two—New York and Pennsylvania.

And, so, the Army abandons these Americans—it disregards their needs, it disregards the Army tradition, and it proves the Army "family" to be a hoax—only to be used to draw enlistments, and then forgotten.

THANK YOU, ROY ASH!

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

Mr. HECHLER of West Virginia. Mr. Speaker, on behalf of my colleagues I would like to extend thanks to the Director of the Office of Management and Budget, the Honorable Roy Ash, for his personal intervention to enable Members of Congress to get copies of the President's 1975 budget on Friday at the same time they were made available to the news media.

Otherwise, it had been planned to keep Members of Congress in the dark for 72 hours before making the budget available to Members of Congress today. The ridiculousness of this was made apparent when Tass, the Russian news agency, could get its copy of the budget and inform its readers and leaders in the