and shall provide reports thereon as prescribed in this regulation and in Program Regulation Guides and Program Instructions issued by SRS.

(d) *Reconsideration of penalty imposition.* Whenever a penalty is imposed under the provisions of this section, the State shall be entitled to and upon request shall receive a reconsideration of the imposition of the penalty in accordance with section 1116(d) of the Social Security Act and regulations issued thereunder.

2. Section 249.10(a)(3) is revised as set forth below:

§ 249.10 Amount, duration, and scope of medical assistance.

(a) *State plan requirements.* * * *

(3) In carrying out the requirements in paragraph (a) (1) and (2) of this paragraph with respect to the item of care set forth in paragraph (b)(4)(ii) of this section, provide:

(i) For establishment of administrative mechanisms to identify available screening and diagnostic facilities, to assure that individuals under 21 years of age who are eligible for medical assistance may receive the services of such facilities, and to make available such services as may be included under the State plan;

(ii) For identification of all eligible individuals, including those who are in need of medical or remedial care and services furnished through title V grantees, and for assuring that individuals eligible for title V services are informed of such services and are referred to title V grantees for care and services, as appropriate;

(iii) For agreements to assure maximum utilization of existing screening, diagnostic, and treatment services provided by other public and voluntary agencies such as child health clinics, OEO Neighborhood Health Centers, day care centers, nursery schools, school health programs, family planning clinics, maternity clinics, and similar facilities;

(iv) That early and periodic screening and diagnosis to ascertain physical and mental defects, and treatment of conditions discovered within the limits of the State plan on the amount, duration, and scope of care and services, will be available to all eligible individuals under 21 years of age; and that, in addition, eyeglasses, hearing aids, and other kinds of treatment for visual and hearing defects, and at least such dental care as is necessary for relief of pain and infection and for restoration of teeth and maintenance of dental health, will be available, whether or not otherwise included under the State plan, subject, however, to such utilization controls as may be imposed by the State agency. See § 205.146(c) of this chapter relating to reduction in Federal financial participation under title IV–A of the Act for failure to provide early and periodic screening, diagnosis, and treatment of children.

* * * * *

(Sec. 1102, 49 Stat. 647 (42 U.S.C. 1302))

Effective date. These regulations shall be effective July 1, 1974

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program and 13.761, Public Assistance—Maintenance Assistance (State Aid)).

Dated: May 30, 1974.

JAMES S. DWIGHT, Jr.,
Administrator, Social and Rehabilitation Service.

Approved: July 18, 1974.

CASPAR W. WEINBERGER,
Secretary.

[FR Doc. 74–16945 Filed 7–23–74; 8:45 am]

THE HOUSE AND IMPEACHMENT

HON. GEORGE M. O'BRIEN

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Friday, August 2, 1974

Mr. O'BRIEN. Mr. Speaker, the Wall Street Journal has offered us some good advice on impeachment. In an August 2 editorial entitled "The House and Impeachment," the Journal said:

At this state of the proceedings, every one of the 435 members of the House has a constitutional obligation to face the issue squarely, hear the issues debated and render his own judgment, putting aside bandwagon psychology, preconceptions and fears of political consequences.

The Journal has defined our duty in terms everyone should understand and respect. Its complete editorial follows:

THE HOUSE AND IMPEACHMENT

Broadcast projections that the House of Representatives will impeach the President by a landslide vote, 300 or more in favor, have been creating a bandwagon atmosphere in the capital, with a mass psychology developing not exactly appropriate to a grand inquest. Among the most serious offenders in contributing to this atmosphere are elements of the right wing of the GOP.

The concern in that quarter has little or nothing to do with the pros and cons of the three articles of impeachment reported by the House Judiciary Committee. Rather it is purely and unabashedly political. The assumption is that in his presumed impeachment and disgrace, Richard Nixon will bring down the Republican Party in the November elections, especially decimating the ranks of the House Republicans.

This will occur, so it is reasoned, because there is no way Republican incumbents can vote, aye or nay, without embittering one faction or the other within their core of support at home. A vote to impeach will lose Nixon supporters in the GOP; a vote to not impeach will lose Nixon critics both in the GOP and among the swing voters. The solution, propounded most persistently by William Buckley of The National Review, is for Mr. Nixon to stipulate House impeachment and invite one and all to vote the articles, without prejudice, in order to expedite a Senate trial.

Presidential aide Patrick Buchanan has now floated the idea that this is a possibility. That Mr. Nixon would even consider this option, if he has, would further damage him. It could only be viewed by the public as a sign of panic and an outbreak of political frivolity. If it were done, those House Republicans who attempted to lean on this rationale to explain their abdication of constitutional obligations would deserve the response they would surely get at the polls.

At the same time we find this idea of a harmonized congressional cop-out despicable, we are no less disheartened by the other side of the coin—the bandwagon notion that an avalanche of impeachment votes is already in the bag. If there are now 250 or 300 votes in the bag, the House is dealing in hypocrisy if it does *not* suspend the rules and vote without debate.

For more than a year, the nation has been pulled one way and another by blocs either favoring or opposing the President's impeachment, with charges, evidence and inferences changing from one day to the next. For the very first time, the people can now focus—through their representatives—on genuine articles, on specific charges, and on the evidence in support of same.

By a wide margin, the Judiciary Committee believes it can prove its case to the satisfaction of the House, the Senate and the American people. But there are those on the committee who obviously were not overwhelmed. We cannot discount one iota the intellectual honesty of men like Wiggins of California or Sandman of New Jersey, both of whom were among the minority of Republicans who voted against the unseating of Adam Clayton Powell. There are still two sides to the impeachment argument, and before judging a matter of this overwhelming importance the House has a duty to allow those arguments to be developed to the fullest.

At this stage of the proceedings, every one of the 435 members of the House has a constitutional obligation to face the issue squarely, hear the issues debated and render his own judgment, putting aside bandwagon psychology, preconceptions and fears of political consequences. The process is spelled out in the Constitution and should be allowed to run its due course.

Public reaction to Judiciary Committee members on both sides of the argument has been uniformly favorable. Similarly, those Representatives who have the intellectual honesty to follow the high course and vote their consciences will be able, however they vote, to defend themselves at home.

SENATE—*Monday, August 5, 1974*

The Senate met 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:

Almighty God, whose glory is in all the world; we commend this Nation to Thy merciful care, that being guided by Thy providence, we may dwell secure in Thy peace under Thy higher rulership. Grant to the President, the Congress and all in authority, wisdom and strength to know and to do Thy will. Fill them with the love of truth and righteousness; and make them ever mindful of their calling to serve this people in Thy fear. In these fateful days keep us "one Nation under God," mindful that as we are under Thy guidance, so also we are under Thy judgment and that "the judgments of the Lord are true and righteous altogether." Redeem us by Thy grace for the making of Thy coming kingdom.

We pray in the name of Him who is the Way, the Truth, and the Life. 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).

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., August 5, 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.

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Friday, August 2, 1974, be dispensed with.

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

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Marks, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Acting President pro tempore (Mr. JOHNSTON) laid before the Senate sundry messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Berry, one of its reading clerks, announced that the House had passed the following bills and agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H.R. 15046. An act to authorize appropriations for the U.S. Information Agency, and for other purposes;

H.R. 15736. An act to authorize, enlarge, and repair various Federal reclamation projects and programs, and for other purposes; and

H. Con. Res. 574. A concurrent resolution authorizing the Clerk of the House of Representatives to make corrections in the enrollment of H.R. 15074.

The message also announced that the House had passed the following Senate bills, with amendments, in which it requests the concurrence of the Senate:

S. 3190. An act to authorize appropriations for fiscal year 1975 for carrying out the Board for International Broadcasting Act of 1973;

S. 3270. An act to amend the Defense Production Act of 1950, as amended; and

S. 3331. An act to clarify the authority of the Small Business Administration, to increase the authority of the Small Business Administration, and for other purposes;

HOUSE BILLS REFERRED

The following House bills were read twice by their titles and referred as indicated:

H.R. 15046. An act to authorize appropriations for the U.S. Information Agency, and for other purposes; to the Committee on Foreign Relations; and

H.R. 15736. An act to authorize, change, and repair various Federal reclamation projects and programs, and for other purposes; to the Committee on Interior and Insular Affairs.

WAIVER OF 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.

EXCHANGE OF LANDS ADJACENT TO TETON NATIONAL FOREST IN WYOMING

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 1013, S. 3489.

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

The legislative clerk read as follows:

A bill (S. 3489) to authorize exchange of lands adjacent to the Teton National Forest in Wyoming, and for other purposes.

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 in the Committee on Agriculture and Forestry with an amendment on page 2, line 3, strike out "quarter," and insert in lieu thereof "quarter", so as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of the Act of March 20, 1922 (42 Stat. 465), as amended and supplemented by the Act of February 28, 1925 (43 Stat. 1090), and the Act of June 11, 1960 (74 Stat. 205), are hereby extended to the following described lands:

TOWNSHIP 41 NORTH, RANGE 116 WEST, SIXTH PRINCIPAL MERIDIAN

Section 34, northwest quarter southwest quarter.

SEC. 2. Lands conveyed to the United States under this Act shall, upon acceptance of title, become parts of the Teton National Forest and shall be subject to the laws, rules, and regulations applicable thereto.

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. The Senator from Pennsylvania is recognized.

Mr. HUGH SCOTT. Mr. President, I yield back my time.

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

Mr. PROXMIRE. Mr. President, I yield back my time.

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of routine morning business, for not to exceed 15 minutes, with statements therein limited to 5 minutes.

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

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

COMPREHENSIVE STUDY OF CHILD NUTRITION PROGRAMS

A letter from the Assistant Secretary of Agriculture, transmitting, pursuant to law, the Comprehensive Study of Child Nutrition Programs (with an accompanying report). Referred to the Committee on Agriculture and Forestry.

FINAL DETERMINATION OF THE INDIAN CLAIMS COMMISSION

A letter from the Chairman of the Indian Claims Commission transmitting, pursuant to law, a report on the final determination of the claims of the Potawatomi Indians, et al. v. United States (with accompanying reports). Referred to the Committee on Appropriations.

PROPOSED DISPOSAL OF DETERRENT STOCKS

A letter from the Secretary of the Army advising of the determination made on the disposal of certain deterrent stocks. Referred to the Committee on Armed Services.

REPORTS OF THE DEPARTMENT OF THE ARMY

A letter from the Secretary of the Army transmitting, pursuant to law, reports of the number of officers on duty with Headquarters and detailed to the Army General Staff (with accompanying reports). Referred to the Committee on Armed Services.

PROPOSED LEGISLATION BY THE DEPARTMENT OF THE ARMY

A letter from the Secretary of the Army transmitting a draft of proposed legislation to remove the limitation on the number of cadets or midshipmen who may be appointed from the two-year Senior Reserve Officers' Training Corps Course (with accompanying papers). Referred to the Committee on Armed Services.

PROPOSED FACILITIES PROJECTS BY THE AIR NATIONAL GUARD

A letter from the Acting Deputy Assistant Secretary of Defense notifying, pursuant to law, the Congress of certain proposed facilities projects to be undertaken for the Air National Guard. Referred to the Committee on Armed Services.

REPORT OF THE ASSISTANT SECRETARY OF DEFENSE

A letter from the Assistant Secretary of Defense transmitting, pursuant to law, a report of Department of Defense procurement from small and other business firms for July 1973–May 1974 (with accompanying papers). Referred to the Committee on Banking, Housing and Urban Affairs.

REPORT OF THE DEPARTMENT OF STATE

A letter from the Assistant Secretary of State for Congressional Relations transmitting, pursuant to law, a report on deliveries of excess defense articles during the third quarter of fiscal year 1974 (with accompanying papers). Referred to the Committee on Foreign Relations.

INTERNATIONAL AGREEMENTS OTHER THAN TREATIES

A letter from the Assistant Legal Adviser for Treaty Affairs of the Department of State transmitting, pursuant to law, copies of international agreements other than treaties entered into during the past 60 days (with accompanying papers). Referred to the Committee on Foreign Relations.

REPORT OF THE COMPTROLLER GENERAL

A letter from the Comptroller General of the United States transmitting, pursuant to law, a report entitled "Actions Recommended To Alleviate Serious Financial Problems Facing United Nations" (with an accompanying report). Referred to the Committee on Government Operations.

REPORT ON FEDERAL PRODUCTIVITY

A letter from the Executive Director of the Joint Financial Management Improvement Program transmitting Volume II, Productivity Case Studies (with an accompanying report). Referred to the Committee on Government Operations.

PROPOSED PLAN FOR DISTRIBUTION OF PONCA JUDGMENT FUNDS

A letter from the Acting Secretary of the Interior transmitting, pursuant to law, a proposed plan for the use or distribution of Ponca judgment funds awarded in dockets 322, 323, and 324 before the Indian Claims Commission (with accompanying papers). Referred to the Committee on Interior and Insular Affairs.

REPORTS OF THE IMMIGRATION AND NATURALIZATION SERVICE

A letter from the Commissioner of the Immigration and Naturalization Service transmitting, pursuant to law, reports concerning visa petitions which the Service has approved (with accompanying papers). Referred to the Committee on the Judiciary.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. FULBRIGHT, from the Committee on Foreign Relations, with amendments:

S. Res. 329. A resolution relating to the participation of the United States in an international effort to reduce the risk of famine and lessen human suffering (Rept. No. 93-1070).

By Mr. MAGNUSON, from the Committee on Commerce, with amendments:

S. 1694. A bill to amend the Federal Trade Commission Act to regulate commerce and to assure adequate and stable supplies of petroleum products at the lowest cost to the consumer, and for other purposes (Rept. No. 93-1071).

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

S. 3879. An original bill to amend the Mineral Leasing Act of 1920, and for other purposes (Rept. No. 93-1072).

By Mr. CANNON, from the Committee on Rules and Administration, without amendment:

H. Con. Res. 566. A concurrent resolution to provide additional copies of hearings and the final report of the Judiciary Committee on the impeachment inquiry (Rept. No. 93-1073).

ORDER FOR STAR PRINT OF COMMITTEE REPORT ACCOMPANYING H.R. 16027

Mr. ROBERT C. BYRD. Mr. President, at the request of the distinguished senior Senator from Nevada (Mr. BIBLE) I ask unanimous consent that there be printed a star print of the committee report accompanying H.R. 16027, the Department of Interior and Related Agencies Appropriation bill for 1975.

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

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bill and joint resolutions were introduced, read the first time and, by unanimous consent, the second time, and referred as indicated:

By Mr. DOLE:

S. 3878. A bill to amend the Emergency Daylight Saving Time Energy Conservation Act of 1973. Referred to the Committee on Commerce.

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

S. 3879. An original bill to amend the Mineral Leasing Act of 1920, and for other purposes. Placed on calendar.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DOLE:

S. 3878. A bill to amend the Emergency Daylight Saving Time Energy Conservation Act of 1973. Referred to the Committee on Commerce.

DAYLIGHT SAVING TIME

Mr. DOLE. Mr. President, I have introduced a bill to exempt the months of November, December, January, and February from the Emergency Daylight Saving Time Energy Conservation Act. In view of the failure of the act to meet the goals initially intended and because of the difficulties the act has caused for many Americans, this bill is necessary to better meet the needs of our society.

In the State of Kansas, we have a large number of farmers and rural residents who have special problems with daylight saving time during any months except the summer months. However, in view of the need to conserve energy and the preferences of urban populations, this bill represents a compromise which hopefully will be an improvement over the existing situation.

ENERGY GOALS NOT MET

The initial goal of year-round daylight saving time—YRDST—was to conserve energy. It has become apparent from the interim report recently published by the Department of Transportation that any energy saved under this measure is highly questionable. The details of this study have been well published and I will not go into them further here. However, it should be noted that the Department of Transportation has recommended that standard time should be used for the period from the last Sunday in October through the last Sunday in February, as provided in my bill.

Contrary to the objective of saving energy, year-round daylight saving time has actually resulted in additional expenditure of energy in some cases. For example, in schools the heat and lights must be turned on at an earlier time under daylight saving time. In addition, many parents find it preferable to drive their children to school rather than have them walk in darkness. Both of these consequences of YRDST result in additional expenditures of fuel and point to the need for modifying the Emergency Daylight Saving Time Act, as I have proposed.

DANGER TO SCHOOLCHILDREN

The most terrible impact of the year-round daylight saving time bill has been in the numerous deaths of schoolchildren in the early morning hours when it is still dark under daylight saving time. The tragic instances which occurred last winter have been well publicized in the press. In addition, numerous parents have contacted me protesting the increased danger daylight saving time has meant for their children, and I am sure every other Member of Congress is well aware of this problem. For this reason alone, daylight saving time should be stopped for the 4 months that I have proposed.

In spite of the fact that the casualties among schoolchildren declined last winter under daylight saving time, it appears that moving the clock backward has a detrimental effect on safety of students going to school in the morning. The decline in student fatalities undoubtedly was at least partially a result of the lower speed limits and the lighter volume of traffic during the energy shortage last winter. The increased danger from daylight saving time is indicated by the increase of fatalities among schoolchildren during the early hours of the day.

Numerous people from the State of Kansas have contacted me here to emphasize this fact and I have personally spoken to many more people of the same opinion in my trips to the State in recent months. I ask unanimous consent that a representative letter from Mr. Norman E. Linton, superintendent of Unified School District No. 328, be entered in the RECORD at this point.

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

UNIFIED SCHOOL DISTRICT No. 328,
Lorraine, Kans., February 13, 1974.

Senator BOB DOLE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR DOLE: I wish to voice our opposition to Daylight Savings Time for Kansas during the school-term months.

We are not saving energy. In fact, our schools are using more energy in the form of heat and lights since we are commencing the school day one-hour earlier. The after-school activities remain the same and expend as much energy as under Central Standard Time.

The added danger and the nuisance of having students on the roads and streets to

school in darkness is ridiculous. The need for daylight to do some types of farm chores often makes a number of our students tardy for school. During the cold months, families are not outside to enjoy any outside or leisure activities after school or work. They are in-doors consuming more energy, of course.

While the question will become moot for this term of school within a few weeks, I do hope that you will seek a re-evaluation of the subject and seek provisions by which Kansas will return to Central Standard Time during September through May, the school-term months.

Sincerely yours,

NORMAN E. LINTON, *Superintendent.*

IMPACT ON BUSINESSES AND AGRICULTURE

Mr. DOLE. Mr. President in addition, daylight saving time has been detrimental to many businesses and to farmers. The measure I have introduced would hopefully permit a more rational time system to be enacted.

The impact of daylight saving time is especially severe for farmers. Farmers, by the nature of their activities, must do most of their work during daylight hours. Those working with dairy herds and other livestock find it especially unnatural to use the daylight saving time schedule. My bill would help reduce this hardship, although the total repeal of daylight saving time during winter months would be much more desirable for the farm population.

In addition, many other businesses have found daylight saving time to be objectionable. Many workers are not as productive during the early hours when it is still dark. Many businesses have found that their sales have declined because of daylight saving time.

The interim study submitted by the Department of Transportation provides inconclusive data on these issues. In order to give the Department adequate time to produce sound conclusions, my bill extends the date for which the final DOT report is due from June 30 to September 30, 1975. Hopefully, that report will give us more precise indications of what actions should be taken on year-round daylight saving time. However, it is clear to me that the modification I have proposed is greatly needed at this time.

Mr. President, a large number of Kansans have clearly stated their position on year-round daylight saving time to me, and it is obvious that a reduction in the period for daylight saving time is necessary. My bill provides that daylight saving time shall exist for a shorter period and I urge every Senator to support this measure.

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

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

S. 3878

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 4(a) of the Emergency Daylight Saving Time Energy Conservation Act of 1973 is amended by striking out "June 30, 1975" and inserting in lieu thereof "September 30, 1975".

Sec. 2. Section 7 of the Emergency Daylight Saving Time Energy Conservation Act of 1973 is amended by deleting the period at the end thereof and adding ", except that section 3(a) shall not be in effect from 2 o'clock antemeridian on the last Sunday of October 1974 until 2 o'clock antemeridian on the last Sunday of February 1975.".

ADDITIONAL COSPONSORS OF BILLS AND JOINT RESOLUTIONS

At the request of Mr. MANSFIELD, the Senator from Washington (Mr. MAGNUSON) was added as a cosponsor of S. 1694, a bill to amend the Federal Trade Commission Act to regulate commerce and to assure adequate and stable supplies of petroleum products at the lowest cost to the consumer, and for other purposes.

S. 3098

At the request of Mr. DOLE, the Senator from New York (Mr. JAVITS) was added as a cosponsor of S. 3098, a bill to amend the Emergency Petroleum Allocation Act of 1973 to provide for the mandatory allocation of plastic feedstocks.

S. 3686

Mr. BEALL. Mr. President, on June 20, 1974 I introduced S. 3686, to reverse a recent Internal Revenue ruling that portions of students loans which were canceled as a result of service in certain professions or service in certain areas, is taxable income.

Cosponsoring this legislation with me were Senators DOMENICI, BAYH, YOUNG, MCGEE, INOUYE, PELL, MATHIAS, DOLE, and DOMINICK.

I am pleased that Senators HOLLINGS, TOWER, BROCK, and BUCKLEY have also agreed to cosponsor this measure and I ask unanimous consent that their names be added at the next printing of the bill.

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

Mr. BEALL. Mr. President, this measure has also been endorsed by the Association of American Universities. In addition, the American Hospital Association has endorsed the legislation and I ask unanimous consent that their letter be printed in the RECORD.

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

AMERICAN HOSPITAL ASSOCIATION,
Washington, D.C., July 22, 1974.

Senator J. GLENN BEALL, Jr.,
U.S. Senate,
Washington, D.C.

DEAR SENATOR BEALL: On behalf of the American Hospital Association I am writing to express our appreciation to you for your leadership in introducing in the Senate S. 3686 to render nontaxable any portion of educational loans cancelled or forgiven for service in certain professions or geographical areas where a shortage of health personnel exists.

The purpose of the forgiveness features of the educational loans covered by Revenue Ruling 73-256 is, of course, to encourage students to prepare themselves for certain professions and then to work where their services are urgently needed. By declaring the forgiven portion of such loans taxable income, this Revenue Ruling would have the government take back part of the incentive it provided such students. We think this is wrong and that applying the ruling retroactively would be especially unfair to those who have fulfilled their obligations in accordance with the loan forgiveness provisions in effect at the time they participated in the program.

We hope the Congress will act promptly to nullify Revenue Ruling 73-256 in both its retroactive and prospective aspects by enactment of legislation along the lines of your bill S. 3686, and assure you of our full support in this regard.

Sincerely,

LEO J. GEHRIG, M.D.,
Vice President.

S. 3784

At the request of Mr. STENNIS, the Senator from Ohio (Mr. TAFT), the Senator from South Dakota (Mr. MCGOVERN), the Senator from North Carolina (Mr. HELMS), the Senator from Idaho (Mr. CHURCH), and the Senator from Wyoming (Mr. HANSEN) were added as cosponsors of S. 3784, a bill to terminate the Emergency Daylight Saving Time Energy Conservation Act of 1973 on the last Sunday of October 1974.

SENATE JOINT RESOLUTION 224

At the request of Mr. MONTOYA, the Senator from New Mexico (Mr. DOMENICI) was added as a cosponsor of Senate Joint Resolution 224, to authorize and request the President to issue annually a proclamation designating January of each year as "March of Dimes Birth Defects Prevention Month."

ADDITIONAL COSPONSORS OF RESOLUTIONS

SENATE RESOLUTION 347

At the request of Mr. MANSFIELD (for Mr. INOUYE), the Senator from Tennessee (Mr. BROCK), the Senator from New Jersey (Mr. WILLIAMS), the Senator from North Dakota (Mr. BURDICK), the Senator from Nebraska (Mr. CURTIS), the Senator from New Mexico (Mr. MONTOYA), the Senator from Iowa (Mr. HUGHES), the Senator from Texas (Mr. TOWER), the Senator from Maine (Mr. MUSKIE), the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Nebraska (Mr. HRUSKA), the Senator from Ohio (Mr. METZENBAUM), the Senator from Missouri (Mr. SYMINGTON), the Senator from Washington (Mr. JACKSON), the Senator from New Mexico (Mr. DOMENICI), the Senator from Minnesota (Mr. MONDALE), and the Senator from California (Mr. CRANSTON), were added as cosponsors of Senate Resolution 347, authorizing an investigation on the policy and role of the Federal Government on tourism in the United States.

SENATE RESOLUTION 352

At the request of Mr. Moss, the Senator from Maine (Mr. MUSKIE), was added as a cosponsor of Senate Resolution 352, to amend rules XXV and XVI of the standing rules of the Senate with respect to jurisdiction of energy research and development matters, and for other purposes.

AMENDMENT OF FOREIGN ASSISTANCE ACT—AMENDMENTS

AMENDMENT NO. 1767

(Ordered to be printed and referred to the Committee on Foreign Relations.)

Mr. McGEE. Mr. President, today I am submitting an amendment to S. 3394, the foreign assistance authorization bill for fiscal year 1975, which would provide an additional authorization for the Gorgas Memorial Institute of Tropical and Preventive Medicine located in the Republic of Panama.

Financial assistance for the Gorgas Institute was pledged by the 70th Congress of the United States when Public Law 350 was enacted in 1928. That law committed the United States to permanent annual contributions to the institute for the operation of a Gorgas Memorial Laboratory.

Gorgas Memorial Institute has operated since its inception as a technical institution committed to conduct research in the biomedical sciences on diseases of the tropics. Its objectives are to help prevent disability, defect, and death from exotic diseases.

The U.S. contribution was originally made to the Gorgas Memorial Institute through the Department of State. In 1954, this responsibility was transferred to the Public Health Service, specifically, the National Institute of Allergy and Infectious Diseases—MIAID.

The laboratory, strategically located in Panama where the natural biocommunication route between North and South America forms, has been likened to a southern disease early warning system for the United States.

Under the present contractual agreement with NIAID, which expires in December of this year, Gorgas has operated, since 1972, the Middle America Research Unit—MARU—1-mile distant in the Canal Zone. The operation of this unit has increased Gorgas' research capabilities, especially in the arbovirus and viral diseases.

Throughout the years, the Congress has reaffirmed its support of the Gorgas operation by increasing the U.S. contributions and providing funds for the construction of one of the research facilities now in use. This has been accomplished through five amendments to the original act, the most recent in 1965, setting a ceiling of "not to exceed $500,000" as the permanent annual congressional authorization. The basic U.S. contribution has thus remained at the same level for the past 8 years. Clearly, there is an urgent need for a substantial increase to this basic contribution, if Gorgas is to maintain its professional competence and its consolidated current programs, which include vitally important viral disease and ecological studies.

As indicated earlier in my statement, the Gorgas Memorial Institute assumed operation of the MARU laboratory in 1972, with one-time funds of $1,676,786 allotted until December of this year. In addition to the annual permanent congressional contribution of $500,000 provided for through the Fogarty International Center of the National Institutes of Health, Gorgas also received research grants and contracts through the National Institutes of Health, the Departments of the Army and Navy, and from other sources, totaling $1,198,470 in fiscal year 1974. Budget projections at the same operational level during fiscal year 1975 reflect an overexpenditure of $615,000 of which $400,000 is the result of the termination on December 23, 1974, of the contract for the operation of the MARU unit.

On March 13, 1974, the Subcommitte on Inter-American Affairs of the House Committee on Foreign Affairs, held hearings in support of an increase to the current Gorgas annual authorization. As a result of the hearings, the Hon. DANTE B. FASCELL, subcommittee chairman, introduced H.R. 15887 providing for an increased authorization for Gorgas.

At present, there is pending before the Senate Labor; Health, Education and Welfare Appropriations Subcommittee an add-on request for $500,000 in funding for Gorgas to permit the uninterrupted operation of the vitally important program conducted at the MARU laboratory. The purpose of my amendment is to authorize the appropriation of these funds.

The Gorgas' MARU laboratory is the only laboratory in Central America where yellow fever isolations can be ascertained. There is a current wave of jungle yellow fever moving toward the Canal Zone. It has been reported by the MARU laboratory that there were two isolations of yellow fever, collected from mosquito pools on June 11, 14, and 15, in an area 9 kilometers closer to the Canal Zone than the area in which three deaths occured this last February. The obvious fact that jungle yellow fever in Panama is moving west toward the Canal Zone is a very serious development of which only the MARU laboratory is capable of handling.

Therefore, it is my hope that the committee would approve my amendement which would authorize such sums as may be necessary to continue the present level of operation of the Gorgas Institute's MARU laboratory. If the committee fails to approve the authorization, it will result in the need to fire several highly skilled scientists and researchers who can never be replaced.

I ask unanimous consent that the text of my amendment be printed in the RECORD.

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

AMENDMENT NO. 1767

At the end of the bill add the following new title:

TITLE V—MISCELLANEOUS PROVISIONS

SEC. 11. The first section of the Act entitled "An Act to authorize a permanent annual appropriation for the maintenance and operation of the Gorgas Memorial", approved May 7, 1928, as amended (22 U.S.C. 278), is amended—

(1) by striking out "the sum of not to exceed $500,000, to be paid"; and

(2) by inserting immediately after "(hereinafter referred to as the Gorgas Memorial Institute)," the following: "such sums as may be necessary".

AMENDMENT NO. 1769

(Ordered to be printed and referred to the Committee on Foreign Relations.)

Mr. JAVITS submitted an amendment intended to be proposed by him to the bill (S. 3394) to amend the Foreign Assistance Act of 1961, and for other purposes.

AMENDMENT NO. 1779

(Ordered to be printed and referred to the Committee on Foreign Relations.)

Mr. KENNEDY. Mr. President, I am submitting an amendment today to the Foreign Assistance Act of 1974, S. 3394, to terminate all military assistance to Chile.

Since the overthrow of the Allende government last September 11, reports from Chile consistently have reflected widespread violation of human rights by the authoritarian military junta now in power.

Shortly after the coup, the Senate Subcommittee on Refugees held a public hearing into the condition of refugees and of human rights in Chile. Testimony at that hearing and subsequent reports of respected international groups disclosed the existence in Chile of summary executions, of torture, of mass arrests, of the deaths of two American citizens, and of continued threats to foreign nationals. Those reports prompted me to introduce an amendment to halt all military aid to Chile. That amendment to the fiscal year 1974 foreign aid appropriations bill was adopted by the Senate on December 17, 1973. However, it was deleted in conference.

Unfortunately, in the months since that action, the situation in Chile has not seen a return to the traditional Chilean respect for and protection of human rights. In fact, a series of reports from respected international organizations such as the International Commission of Jurists and Amnesty International as well as private contacts that I have had with both Chilean and third country individuals and agencies convince me that a systematic disregard for human rights continues today in Chile.

Amnesty International, in a letter to General Pinochet, stated:

> Contrary to some statements issued by Chilean Governmental officials abroad, there is substantial evidence of a persistent and gross violation of the most fundamental human rights.

The report went on to charge continuation of summary executions and torture, not only during their November visit, but up to the time of their letter of December 31, 1973.

In February, an ad hoc group of U.S. union officials, professors, lawyers, and church officials traveled to Chile. Their report was presented on February 28 at a congressional conference on the situation in Chile. It, too, disclosed thousands of "politically motivated detentions," the absence of effective legal process, the continued use of torture, the use of economic sanctions against those suspected

of being in sympathy with the previous government and other violations of human rights.

In March, following a lengthy debate by the Commission on Human Rights of the United Nations, a telegram was isued by the United Nations. It stated:

The Commission on Human Rights, while considering the obligation of all states under the charter of the United Nations to promote universal respect and observance of human rights and fundamental freedoms, has considered with deep concern numerous reports from a wide variety of sources relating to gross and massive violations of human rights in Chile in contradiction with the Universal Declaration of Human Rights and other relevant international instruments ratified by a great number of countries including Chile.

The Commission on Human Rights, which has consistently deplored all violations of human rights, calls upon your Government for the immediate cessation of any kind of violations of human rights committed contrary to the principles of the United Nations Charter and other international instruments including the International Covenants on Human Rights.

In April, the International Commission of Jurists sent a delegation to Chile to inquire into the legal situation with regard to human rights. Its three-man delegation included Covey T. Oliver, former U.S. Ambassador to Colombia and former U.S. Assistant Secretary of State for Inter-American Affairs.

In May, the preliminary report of the delegation was released, expressing the "view that present judicial procedures and safeguards do not meet the minimum standards which Chile is bound to observe under article 3 of the Geneva Conventions, 1949." The report also stated:

We received most convincing evidence to support the declaration of the Catholic Bishops on April 24, 1974, that there are "interrogations with physical and moral pressure." We believe that the various forms of ill-treatment, sometimes amounting to severe torture, are carried out systematically by some of those responsible for interrogation and not, as many people sought to persuade us, in isolated instances at the time of arrest.

A study mission of the Senate Refugee Subcommittee traveled in Chile in April as well. It included former U.S. Ambassador to Chile Ralph A. Dungan, former State Department Latin American expert John N. Plank, and Mark L. Schneider of my staff.

Their report, after its conclusions and recommendations previously had been communicated to the junta, was given to the Senate Subcommittee on Refugees at a public hearing on July 23, a summary of which appears in the RECORD of July 23 at S13243.

That testimony once again disclosed—contrary to the continued assurances of the Chilean Government and its representatives—the existence of a systematic, flagrant and continuing disregard for human rights in Chile. They found arbitrary arrest and indeterminate detention without charge. Some 6,000 persons, according to junta statistics, were under detention at the time of their trip. Other sources cited additional persons under detention at less permanent detention sites throughout the country. Last week, the State Department reported that Chilean officials still acknowledge that some 6,000 persons are detained.

The study mission also noted that the Chilean habeas corpus protection had been suspended. Torture and mistreatment of prisoners continued. Some prisoners were held incommunicado for months. Others were permitted to see their families on a somewhat regular basis, but briefly. Most never had a chance to see lawyer. Due process appeared limited in all instances; totally absent in some. Schools and colleges were under military control. Freedom of the press did not exist. Many thousands of individuals were fired arbitrarily for their political beliefs from public and private employment. Labor unions were barred from striking and restricted in their normal activities.

The study mission also noted that the Congress had been closed; the Constitution abridged; political parties abolished or suspended; and the number of Chilean refugees in neighboring countries was rising.

In May, the Inter-American Commission on Human Rights of the Organization of American States sent a telegram to the junta in which it stated:

During this session, the study of the present situation of human rights in Chile has taken a great part of our time. On the one hand, we have examined those individual cases, clearly determinable, in which the violation of certain fundamental rights of one or several specified persons has been denounced. But, in addition, it has been necessary to analyze separately that which we might call a "general case," that is, the aggregation of charges from different sources according to which there is a policy in Chile which would imply, according to the claimants, the systematic disregard of fundamental human rights.

After some delay, the Commission was granted permission to visit Chile. Its recommendations were made public on Friday in Santiago. According to news reports, they indicated the Commission "had found evidence that torture is used in interrogations of political prisoners, that people detained without charges are required to do hard labor, that Chileans sometimes disappear for days or weeks after being seized by police or military intelligence services and that military courts have limited lawyers' access to their clients and tried people under wartime rules, for acts committed before the September 11 coup."

In June, other observers, including the former Attorney General of the United States, Ramsey Clark and New York City Criminal Court Judge William Booth, traveled to Chile. They visited the trials, now concluded, of former air force officers and several civilians who had held posts in the previous government of Salvadore Allende. Recently, the sentences were announced. They included four death sentences. Hopefully, those sentences will be commuted particularly since the former Attorney General and Judge Booth described the proceedings as "show trials." They cited, along with other observers the lack of due process in the military court martial proceedings which operate for military and civilian alike.

One attorney was thrown out of court for speaking "too warmly" of Allende. Another was reprimanded for reporting that his clients had been tortured. Virtually all defendants were prosecuted on the basis of "statements" given by others who were themselves under indictment or under detention. And many of these defendants had told their families and their visitors of the systematic torture used during interrogations to obtain those "statements." The full texts of former Attorney General Clark and Judge Booth's opening testimony to the Refugee Subcommittee are reprinted on pages 25962–64 of the CONGRESSIONAL RECORD of July 31, 1974.

Despite this unrefuted testimony from numerous respected international organizations and knowledgeable individuals, the attitude of the U.S. Government has been one of "business as usual." Despite the passage last fall of my amendment and its signature into law, stating the sense of Congress that—

The President should request the Government of Chile to protect the human rights of all individuals, Chilean and foreign, as provided in the Universal Declaration of Human Rights, the Convention and Protocol Relating to the Status of Refugees, and other relevant international legal instruments guaranteeing the granting of asylum, safe conduct, and the humane treatment or release of prisoners.

There is little evidence of forceful U.S. Government action.

The most obvious, and to me, the most unacceptable evidence of our policy has been the military aid program.

The administration has requested a near doubling of its fiscal year 1974 budget proposal for military assistance to Chile. Originally, a $10 million military credit sales program for fiscal year 1974 was recommended. Following the coup, that figure was increased to $15 million, a 50 percent hike. In its budget request for fiscal year 1975, the administration recommended another substantial increase, to $20.5 million, for credit sales and another $800,000 to support the training of Chilean military officers.

With a virtually unchallenged verdict of respected international organizations and respected jurists and scholars of a continuing pattern of gross violations of human rights in Chile, I believe the proposal for additional military aid to Chile to be unjustifiable and unacceptable. It contrasts with the announcements of Britain and France to withhold military equipment and it signifies a disturbing lack of commitment to basic human rights on the part of the administration.

For these reasons, I am submitting this amendment, which I ask unanimous consent to be printed in the RECORD, along with several articles, to halt all military aid to Chile.

There being no objection, the amend-

ment and articles were ordered to be printed in the RECORD, as follows:

AMENDMENT NO. 1779

On page 6, between lines 23 and 24, insert the following:

(4) At the end thereof add the following new section:

"SEC. 514. Termination of Assistance to Chile.—No funds made available under this chapter or the Foreign Military Sales Act may be obligated to furnish assistance to Chile on or after the date of enactment of this section.".

[From the Washington Post, Aug. 3, 1974]

"JUSTICE" IN CHILE

The "Justice" of the victors is being relentlessly administered in Chile by the officers who overthrew the Allende government last fall. Given the chaos of his last days, it is conceivable that some of Allende's supporters sensed that a coup was coming and hoped to forestall it by creating a power center of their own within the Chilean armed forces. At any rate, the coup came, destroying any such hopes, and the would-be hunters became the prey. The officers who had seized power looked about them for a dramatic way to legitimize their authority, to convince others inside and outside Chile that they had indeed saved the country by their own intervention. For Chileans are, despite their recent trauma, a law-minded people, and even the new leaders appreciate the benefits of winning their countrymen's respect. To fulfill this vital legitimizing purpose, they decided on a mass trial of Allende supporters, who were accused of trying to take over a substantial part of the Chilean air force. Sentences were handed down in that trial the other day.

Now, only in a country as politically riven as Salvador Allende's Chile could a group of 54 air force men (and 10 civilians) have contemplated a kind of coup within one branch of the armed forces in order to assure military support to keep the elected government in power. That is a fair measure of how things were in Santiago at that time. But only in a country as politically restrictive as General Pinochet's Chile would these defendants have been tried with so little a sense on the government's part of its own basic illogic.

Note that, despite government promises of a prompt public trial, a considerable number of Allende's civilian officials have remained in prison or otherwise under detention for almost a year, untried and uncharged. But apparently the military was offended by the thought that some of its own—air force men—supported Allende. The military perhaps also wanted to intimidate would-be dissenters still within its ranks. These seem to be the particular reasons why the 60-odd defendants were brought to trial before an air force court martial. That court sentenced four of them—a former Socialist Party leader, and a colonel, captain and sergeant—to be shot, while 56 others received prison terms. Carrying out those sentences is a virtually certain way to build more hate and bitterness into Chilean society, which is desperately in need of a turn toward domestic peace.

In a trial where the crime charged is essentially loyalty to the previous government, there can be no question whether the trial is political: It is. Nonetheless, the Pinochet leadership permitted foreign observers to attend the sessions that were open—presumably to bear witness to the correctness of the proceedings or, at the least, to attest to the good faith of the Santiago junta. Whether the observers, simply by going, sanctioned the purpose of the trial would seem to be a fair question. Anyway, the reports of the several American observers, made to the Kennedy and Fraser congressional subcommittees, hardly gave the junta the clean bill of health it desired. The torture of political prisoners still goes on, the observers reported. Due process is an occasional thing. The exodus of political refugees runs high.

Official American interest in how the Chilean government lives up to international standards of human rights is hard to perceive. American military aid is high and getting higher. And in respect to Chile there is not even the excuse, offered most recently for instance, in respect to police excesses in South Korea, that the United States has strategic interests requiring it to look the other way.

[From the Washington Post, Aug. 4, 1974]

OAS GROUP URGES CHILE STOP TORTURE

(By Joseph Novitski)

SANTIAGO, CHILE.—The Human Rights Commission of the Organization of American States has recommended to the Chilean military junta that it stop physical and psychological torture, punishment without trial and pretrial detentions that amount to prison terms.

The recommendations, made privately to the government on Monday and given to the press last night, were the result of the first on-the-spot investigation of human rights violations in Chile by an international organization. Members of the Human Rights Commission spent two weeks in Chile talking to government officials and detainees and visiting prison camps, detention centers and military courts. They were not permitted to visit three military installations identified by detainees as torture centers.

The eight members of the commission did not make public the findings of their investigation. However, the 11 recommendations they made to the government clearly implied that they had gotten behind the increasingly easy-going normality of daily life in Chile and looked at the continuing repression of known or suspected Marxists since President Salvador Allende was overthrown last year.

The commission's recommendations indicate that it had found evidence that torture is used in interrogations of political prisoners, that people detained without charges are required to do hard labor, that Chileans sometimes disappear for days or weeks after being seized by police or military intelligence services and that military courts have limited lawyers' access to their clients and tried people under wartime rules, for acts committed before the Sept. 11 coup.

The Human Rights Commission, a permanent body of the OAS, is limited in its ability to investigate charges of human rights violations by requirements that it work with the government that has been accused. The governments of Cuba, Guatemala and Brazil, for example, have refused to allow commission representatives to visit their countries.

The OAS as a whole has never taken action on allegations of human rights violations by a member country, and in June tabled a commission report on torture in Brazil.

The government's decision to permit the commission to visit Chile appeared to be part of an effort by the junta to improve its international image. The jurists from the United States, Argentina, Brazil, Bolivia, Chile, Mexico, Venezuela and Uruguay said the government had cooperated with their mission.

Carlos Dunshee de Abranches of Brazil, vice president of the commission, called the Chilean foreign minister's response to their recommendations "positive." That response was not made public immediately, but Santiago's pro-government newspapers published, the commission's recommendations prominently today without comment.

In the military view, Chile's image has been hurt over the last 7 months by the very reports that the OAS commission came to investigate. Government officials and individual officers have dismissed the reports of violations of human rights as Communist propaganda. They have termed the individual Chileans, foreign journalists and church groups that have reported on the details and dimensions of repression here Communists, bad Chileans or Marxist dupes.

"They told me that they're always being lied about," U.S. Secretary of the Army Howard Callaway said last month at the end of a courtesy visit to Chilean army officials. "They categorically and adamantly denied that this (torture) was happening and showed me orders that had gone out. They said some soldiers had disobeyed these orders and had been punished."

There is no doubt that Communist and Socialist parties outside Chile particularly in Western Europe, have organized a continuing campaign to denounce repression of leftists and others in Chile.

However, no communist or socialist countries belong to the OAS, a regional diplomatic grouping of the United States and 22 Latin American and Caribbean countries.

While the commission was here, according to an official estimate, 5,800 people were being held for political offenses in Chile, a country of 10 million.

About one-third of those held have had no charges lodged against them.

Hundreds of people most of them women, went to the offices set up by the commission to add to the list of complaints before it. According to members of the commission, many came to report that relatives had disappeared after being detained.

While the commission was here, Jorge Montes, a Communist senator during Allende's government, was arrested with his wife and daughter. Relatives could not find out from junta officials where they were being held for more than a week.

Also during the commission visit, an air force court martial condemned a Socialist lawyer and three air force men to death for treason, for their role in supporting the Allende government.

The sentences, junta spokesmen emphasized are subject to review by the commander of the Santiago air force garrison and by Gen. Augusto Pinochet, the leader of the junta. While the OAS commission was here, officials hinted that one or both of the officers would probably be moved to commute the sentences.

[From the Washington Post, Aug. 2, 1974]

CHILE JUNTA DEALS DEMOCRACY OUT OF LONG-TERM PLANS

(By Joseph Novitski)

SANTIAGO.—The Chilean military junta, after governing for 10 months with improvised policies and structures, has settled down for a long stay in power.

The junta, which replaced President Salvador Allende after the coup in which he died last September, began its tenth month by reordering the country's government, burning the national voter registry and breaking off relations with Chile's largest political party, the Christian Democrats. It all added up to a declaration that the military plans to govern for an indefinite span, without elections or organized civilian political support.

Government spokesmen, when asked how long military rule may last, answer, "We have plans, not deadlines."

The plans are for the long term and on a large scale.

"If we don't do big, lasting things, we might as well go home now," an adviser to the junta said recently.

Thus far, in what it calls "the second stage," the junta has made known its intention to rebuild the economy, to make it grow with the help of foreign investment, to reduce and reorganize the government bureaucracy and to enforce a total ban on civilian political activity by continuing the detentions and military-court trials that have been the rule since last September.

The first step of government reorganization came late in June, when the armed forces agreed to shift from a four-man junta to a one-man presidency. Since the military overthrew Allende and uprooted his Marxist-oriented government, the commanders of the army, the navy, the air force and the *carabineros*, Chile's national police force, had exercised the powers of the presidency. They also took over the law-making power of the Congress, which was closed last year.

Now, Gen. Augusto Pinochet, commander-in-chief of the army and leader of the junta, has been named president for an indefinite term with the formal title of "supreme chief of the nation."

The point of the change, government sources said, was efficiency. The four-man junta had been slower in reaching decisions than one would be, they said. The commanders of the army, navy, air force and police have retained the role of drawing up laws for promulgation by decree.

Pinochet's rise also represents the ascendancy of the Chilean army over the navy, air force and police. Some civilian observers, believing that the army officers in government had shown more moderation than air force and navy officers, thought this might mean an easing of repression. This has not yet been the case.

Chilean families report that men and women are still disappearing for days and sometimes weeks. A businessman told friends recently he had been arrested, held for four days alone in a tiny cell and then released without charges.

While Gen. Pinochet was forming a new Cabinet of 14 military men and 3 civilians, two of them technocrats with international reputations the government burned the national voter registration records. A government spokesman explained that the lists of a 4 million voters were "notoriously fraudulent." No plans were announced for making new lists or reregistering voters.

The remote expectation that the junta might call elections to carry out its announced aim of restoring Chilean democracy disappeared with the electoral records. There remained another possibility, suggested to the junta by leaders of the Christian Democratic Party. The party leadership, who opposed Allende and publicly accepted the coup as a necessary evil, had hoped for a return to civilian government within three to five years.

That hope, according to Christian Democrats familiar with party affairs, disappeared when the junta publicly broke off its semi-public relations with the party in July. Formally, there has been no political party activity in Chile since the junta outlawed the country's Marxist parties and declared the others, including the Christian Democrats, in recess.

During the recess, Christian Democratic leaders continued to meet privately. Last January they presented a memorandum to the government that criticized the military's treatment of prisoners and its disregard for legal and human rights. Also in January, former Sen. Patricio Aylwin, recognized by the junta as the party's president, suggested privately to a military minister that Christian Democrats saw no need for more than five years of military dictatorship in Chile.

It was not Christian Democratic political opinions, but censorship imposed on a Santiago radio station owned by the party that caused the party's complete break with the junta.

After an exchange of letters, the government called the party an "instrument of international Marxism" and told Aylwin bluntly to keep a respectful tongue in his head when he spoke to the military government.

Christian Democrats said the government's move looked like a signal from the army that its contacts with Christian Democrats were at an end.

Some party leaders said the break helped the party overcome the reputation of having helped in the coup. Even former President Eduardo Frei, the grand old man of Chilean Christian Democracy who had gone, with other former presidents, to a thanksgiving Mass with the junta last year, was reliably reported to be critical of the military government now.

"In the end it's probably better this way," said a Christian Democratic lawyer. "They tell us to shut up and we stop arguing. It shows everyone that this is a dictatorship and that's that."

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73 SOCIALISTS ON TRIAL IN SOUTHERN CHILE

SANTIAGO, August 1.—Seventy-three members of the outlawed Socialist Party are being tried on charges ranging from the illegal possession of arms to treason by a court martial in the town of Linares, about 172 miles south of Santiago, lawyers for the accused said today.

The lawyers said the prosecutor had demanded death penalties for four of the defendants charged with assisting the enemy during a state of internal war.

[From the New York Times, Aug. 4, 1974]

CHILE GETS SUGGESTIONS

Since the overthrow in Chile of the government of Dr. Salvador Allende Gossens, there have been repeated charges of torture and other abuse by the military regime of its political prisoners. Last week a human rights committee from the Organization of American States implicitly confirmed those charges, calling on the regime to ban the application of physical and psychological pressure on detainees.

The six-nation group, after 15 days of inquiry into allegations that human rights were being violated by the junta, did not in its statement explicitly accuse the regime. It confined itself instead to suggestions that human rights should be honored. Among its "suggestions" was a proposal that the Government inform families of detainees that their relatives were being held, and the reasons.

ENERGY REORGANIZATION ACT OF 1974—AMENDMENT

AMENDMENT NO. 1768

(Ordered to be printed and to lie on the table.)

Mr. TAFT. Mr. President, today I am submitting an amendment to S. 2744 the Energy Reorganization Act of 1974, to repeal daylight saving time from the last Sunday in October through the last Sunday in April.

As I have said previously on a number of occasions in the Senate Chamber, I do not believe year-round daylight saving time has saved a material amount of energy, and I know it has proved to be a major inconvenience and hardship to many Americans. The Department of Transportation has issued its report on the effects of the daylight saving time experiment, and the report recommends that DST be continued for only 8 months, rather than 12.

The report states that the effects were so small after the January 6, 1974 transition, that they could not be reliably separated from effects of other changes occurring at the same time. These other changes included fuel availability constraints, speed limit reductions, Sunday gasoline station closings, and voluntary reductions in the use of lighting, hearing, and unnecessary travel.

Year-round daylight saving time may have resulted in a flattening of the daily peakloads and a decrease on the order of 0.75 percent of our daily consumption of electricity for January and February. Savings of approximately 1 percent for March and April in fuel consumption for electricity production are inferred only from the experience of transitions to DST in previous years. The savings of 1 percent of our electricity consumption translates into six-tenths of 1 percent of our daily consumption of 17 million barrels of oil per day. The predominant fuel saved is coal, but we are not short of coal. The estimated savings of oil, the commodity in shortest supply, is minuscule, 14,500 barrels a day.

No significant effects on traffic safety can be attributed to winter daylight saving time, according to the report.

In my State of Ohio, the Columbus Board of Education noted fears of parents whose children had to go to school in the darkness last winter. The board sent questionnaires to the parents, asking if a later school opening would be beneficial and helpful; 66.4 percent of the schools indicated they would prefer a later starting time. However, the school board, anticipating congressional action on this matter, has delayed any change.

Elementary schools many times begin the school year in August, this month. The Congress must take action swiftly, if it is to help school districts across the country avoid another year of inconvenience for many families, who must drive their children to school, if they do not want them to walk in the dark. If we act now, we can insure that chaos will be avoided, and school officials will not have to change their opening hours in the middle of the school year.

The Commerce Committee has indicated to my staff that hearings are not expected to be held on this matter before the end of this session; therefore, I feel it is imperative that the Senate take action on the floor to rectify this situation.

I ask that the amendment be printed at this point in the RECORD.

There being no objection, the amend-

ment was ordered to be printed in the RECORD, as follows:

AMENDMENT No. 1768

On page 91, after line 15, insert the following:

TITLE V—TERMINATION OF EMERGENCY DAYLIGHT SAVING TIME

OCTOBER 1974 TERMINATION

SEC. 501. Section 7 of the Emergency Daylight Saving Time Energy Conservation Act of 1973 is amended by striking out "April 1975" and inserting in lieu thereof "October 1974".

AMENDMENT NO. 1776

(Ordered to be printed and to lie on the table.)

Mr. PERCY. Mr. President, I am today introducing, with my colleagues Senators DOMENICI and MONTOYA, an amendment to S. 2744, the Energy Reorganization Act. The purpose of our amendment is to assure that the Administrator of the new Energy Research and Development Administration—ERDA—will devote particular attention to preventing a shortage of manpower to accomplish the energy R. & D. mission.

With the rapid expansion in energy R. & D. programs projected over the next 10 years, and the long-term decline in college trained engineers over the last 7 years, the United States faces the possibility of a severe manpower shortage in the technical and scientific fields. Such a shortage would be a serious blow to our Nation's efforts to develop economically viable alternatives to fossil fuel energy sources in the years ahead.

Surveys on the need for engineering manpower and nuclear manpower were reported in the June 1974 issue of Nuclear News. One independent study concluded that "the nuclear industry is facing a nuclear manpower shortage that will severely limit the country's nuclear power program unless steps are taken immediately to correct the situation." The same could be said of other energy industries and energy research and development endeavors.

In order to insure that the manpower situation is monitored closely and that training efforts are supported adequately, our amendment would add two important responsibilities to those of the ERDA Administrator:

First. He would be charged with assuring the collection, analysis, and dissemination of manpower supply and demand data relating to energy R. & D.

Second. He would be responsible for recommending educational programs in universities, colleges, and vocational schools, and for carrying out such programs when authorized by the President and the Congress. Through these educational programs, the Administrator would help assure that a shortage of manpower would not become a deterrent in the accomplishment of the energy R. & D. programs.

The function of recommending appropriate education support programs to assure an adequate supply of technical manpower would be specifically assigned to an officer of ERDA compensated at Level V of the Executive Schedule.

In the development of this amendment, we are indebted to the Education Division of the American Nuclear Society and particularly to its chairman, Dr. Robert L. Long, professor of nuclear engineering at the University of New Mexico. The tireless efforts of Dr. Long and his colleague, Dr. Jack Ohanian of the University of New Mexico, have brought the issue of a potential shortage of scientific and technical manpower to the attention of educators throughout the country, as well as the Federal agencies concerned with technical manpower training.

Mr. President, I ask unanimous consent that our amendment be printed in the RECORD, along with the supporting material from Nuclear News and the Education Division of the American Nuclear Society.

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

AMENDMENT No. 1776

On page 32, line 15, after the period, add the following:

"One of these officers shall be assigned the responsibility for recommending appropriate educational support programs to assure an adequate supply of technical manpower."

On page 35, strike out line 16.

On page 35, line 19, strike out the period and insert in lieu thereof a semicolon.

On page 35, between lines 19 and 20, insert the following:

"(9) assuring the collection, analysis, and dissemination of manpower supply and demand data relating to energy research and development; and

"(10) helping to assure that at no time shall a shortage of manpower be a deterrent in the accomplishment of energy research and development programs by recommending, and carrying out when authorized by the President and the Congress, educational programs in universities, colleges, and vocational schools."

EDUCATION DIVISION,
AMERICAN NUCLEAR SOCIETY,
Hinsdale, Ill., June 20, 1974.

To: Nuclear Engineering Department Heads, Committee and Education Division. Executive Committee

From: R. L. Long and M. J. Ohanian.

Subject: AEC and GOCO Professional level manpower requirements—Report of meeting with AEC personnel—June 13, 1974.

I. INTRODUCTION

At the invitation of Mr. Harold Young, USAEC Division of Biomedical and Environmental Research (DBER), Professors Long and Ohanian participated in a half-day meeting at AEC Headquarters on AEC and GOCO professional level manpower requirements.

The following AEC Headquarters personnel participated in the meeting chaired by Mr. Young: L. Bogart, CTR; Betty Lockridge, DBER; W. Bixby, RSR; R. Davis, REG; June Chewning, LABR; A. Katz, RRD; W. Burr, Deputy Director, DBER.

The main objectives of the meeting were to discuss and review:

1. Manpower needs over the next 2–5 years in the areas of engineering, health physics, and environmental protection by degree level and extent of specialization.

2. Evaluate means by which AEC training programs can help meet these needs.

3. Flexibility of university programs to meet the identified requirements.

4. Level of AEC support necessary at the various degree levels to produce the current and projected manpower requirements.

II. MANPOWER REQUIREMENTS

Each division representative present at the meeting reviewed the manpower requirements for his division and its associated GOCO organizations. These presentations are summarized below:

Reactor Safety Research (RSR): The needs of this division are reflected primarily in the needs of its primary contractor Aerojet Nuclear/Allied Chemical. Dr. Bixby stressed that the mission of the division is to upgrade and advance the present safety technology, i.e., development rather than research emphasis. RSR's manpower needs can be summarized as follows:

Total engineering/science registration		Bachelor of science	Master of science	Doctor of philosophy
Fiscal year 1975	226	105	90	31
Percent		(46)	(40)	(14)
Fiscal year 1976	185	76	67	22
Percent		(46)	(41)	(13)

For both fiscal years the breakdown among the various disciplines is approximately: 40% mechanical engineers, 20% nuclear engineers, 28% other engineering (i.e. chemical, civil, electrical and materials), 12% physics and mathematics. The breakdown between BS/MS/PhD requirements in each discipline very closely follows the breakdown between degrees shown above.

Mr. Bixby noted that RSR preferred experienced people, but because of the ever increasing competition for such people the Division is increasing its participation in the AEC intern program. It was noted by AEC personnel that recruitment for this program during FY '74 did not go well. Although the quality of applicants was very high, the acceptance rate was running well below 50% due to the severe competition from all sectors of the nuclear industry.

Reactor Research and Development (RRD): Dr. Katz briefly reviewed RRD's requirements at headquarters; he had not been able to obtain all the necessary information from their GOCO's and agreed to provide this information within the next 2–3 weeks.

RRD's FY '75 requirements closely parallel their FY '74 needs which are summarized below:

In FY '74 48 college graduates were hired: Of these 28 were at the MS/PhD level. At the BS level hirees are primarily recruited into the intern program (first year at Headquarters, second year at school full-time for Master's degree, third year at an AEC lab).

The present technical staff breakdown at RRD is approximately as follows: ME–52, ChE–30, Materials–20, Physics–23.

Regulatory (REG): This division continues to experience very significant growth, reflecting the demands being placed on regulatory activities due to the major expansion in the nuclear industry (e.g. regulatory has 156 licensing cases to review at present). In FY '68 this division had 250 personnel at headquarters and its regional offices; in FY '74 it has 1218 personnel.

For FY '75 OMB authorization calls for no less than 345 (and possibly as many as 571) additional personnel of which 280 (460) will be technical people. This figure does not include an additional 100 technical personnel for a safeguards division proposed under the new Nuclear Safety and Licensing Commission (NSLC) nor an additional 400 management and support personnel which will be re-

quired when the NSLC is established as a separate agency.

Mr. Davis presented the following projections for technical manpower requirements to satisfy the needs at Headquarters, regional offices and laboratory support functions: (these figures are projected total *employment* levels)

B.S./M.S.	Fiscal year— 1974	1975	1976	1977
Chemical engineering	14	31	35	41
Electrical engineering	8	19	21	25
Nuclear engineering[1]	350	900	955	1,100
Civil	13	30	33	39
Materials	6	13	44	16
Mechanical engineering	105	127	192	258
Health physics	114	258	289	339

[1] That is all personnel involved directly in nuclear activities (for example, some may be M.E. degree holders doing nuclear work).

From the above, it is clear that this demand, especially in the nuclear engineering area, cannot be met (estimated NE BS/MS degree production for FY '74 is 551/442). Mr. Davis indicated that they expect to establish on-the-job training programs for non-N.E.'s. He also noted that the acceptance rate on the intern program had dropped below 50% (three years ago the typical rate was 80%) and ascribed this directly to the major growth in the private sector (he mentioned that at the ANS San Francisco Meeting, Nov., 1973 an all time high of 27 organizations were in a "high recruitment profile".)

Controlled Thermonuclear Research (CTR): No data on manpower needs was presented by this Division; the division representative Mr. Bogart referred us to our discussions with Dr. Bussard during our April visit. At that time, Dr. Bussard had noted the need in FY '75 for 500–600 additional technical personnel about half of whom are to be nuclear engineers.

Labor Relations (LABR): Ms. Chewning presented some data showing the significant reduction in engineering enrollments which will make the engineering manpower supply situation rather acute during the next few years. (Appendix I). She also provided data for R & D employment in AEC laboratories by degree level and compared this to the breakdown for non-AEC laboratories (Appendix 2).

III. EXPANSION OF AEC TRAINING PROGRAMS TO MEET THESE NEEDS

Considerable discussion followed regarding the ways that these manpower demands can be met. Clearly the present traineeship program is very inadequate to meet the very significant demands described by the AEC personnel (see Appendix 3). The first step will be to ask for an increase in FY '75 funds for traineeships. As was noted by all present this will have no effect on the FY '75 situation since these funds—if they become available—can only be used beginning in September 1975. For the longer term everyone agreed that a much expanded traineeship program will be required. The expansion must be two-fold—at the undergraduate and graduate levels.

At the undergraduate level it may be possible to establish traineeships which would support tuition. These would be for those majoring in nuclear engineering as well as for others majoring in non-nuclear disciplines who would take a strong minor in nuclear engineering.

At the graduate level Professors Long & Ohanian emphasized the need for Master's level support and recommended significant expansion of the traineeship program for Master's student. With the, hopefully, changing attitudes in the various Divisions regarding University research support it would then be possible to support Ph.D. students on research projects. AEC personnel also recommended a coordinated and expanded summer employment program for students at AEC laboratories.

IV. CURRICULUM NEEDS

It was repeatedly emphasized by AEC personnel that nuclear engineering graduates—particularly at the BS or MS levels—need additional systems type courses which emphasize safety systems, thermal-hydraulics systems, over-all plant design, balance-of-plant systems and similar considerations. They still perceive too much emphasis on core physics among nuclear engineering graduates, and believe this emphasis to be wrong.

Clearly, a review of nuclear engineering curriculum would be helpful in this regard.

APPENDIX 1

FALL ENROLLMENTS, SELECTED ENGINEERING FIELDS, 1967–73

	1967	1968	1969	1970	1971	1972	1973
Total engineering:							
Fresh	77,551	77,484	74,113	71,661	58,566	52,100	51,925
Masters	34,231	24,469	20,014	23,216	22,405	22,877	22,588
Ph. D	15,376	15,768	14,298	14,802	14,100	13,460	11,904
Electrical engineering:							
Fresh	11,815	11,790	11,512	12,085	9,958	8,027	9,011
Masters	10,025	6,191	4,951	5,516	5,249	5,319	5,163
Ph. D	3,891	4,056	3,539	3,643	3,390	2,928	2,817
Mechanical engineering:							
Fresh	8,224	7,402	6,961	6,718	5,507	4,735	5,403
Masters	5,341	3,681	2,718	2,972	2,793	2,760	2,608
Ph. D	1,934	1,978	1,637	1,735	1,618	1,537	1,218

Source: Engineering Manpower Commission, New York.

APPENDIX 2

R. & D. PERSONNEL BY DEGREE LEVEL

	AEC laboratories 1970	1973	Non-AEC Federal laboratories—1973
English/science	13,000	12,648	13,500
Nondegree (percent)	5.1	5.2	2
Bachelor of science	38.5	37.5	60
Master of science	25.4	24.9	25
Doctor of philosophy	31	32.4	13

Note: A survey of 82,000 R. &. D. personnel gives the following breakdown: 8.5 percent nondegreed, 51.6 percent bachelor of science, 24.6 percent master of science, 15.3 percent doctor of philosophy.

APPENDIX 3

AEC TRAINEESHIPS

	Number of trainees	Cost
Fiscal year:		
1966	120	600,000
1967	151	831,698
1968	148	832,050
1969	150	810,300
1970	149	800,000
1971	122	663,000
1972	136	677,680
1973	117	529,480
1974	89	499,986
1975 (budgetal)	93	551,000

NUCLEAR MANPOWER CRISIS AHEAD

(By R. W. Deutsch and J. W. Whitney)

Currently, utilities are committed to schedules that call for placing new nuclear power plants into commercial operation at an average rate of one new plant a month during the 1970's and two to three new plants a month during the 1980's. Sen. Hugh Scott recently estimated that for the United States to cope effectively with the current energy crisis, it may be necessary to place nuclear power plants into operation at a rate of one new plant every five days during the 1980's. Although the rate of growth of nuclear generating capacity will probably be slower than needed, without question the demand for nuclear power plants over the next decade will be unprecedented. Therefore, it is vital that the nuclear industry anticipate and resolve problem areas that could curtail the nuclear power program.

At the present time, utilities throughout the country are experiencing increasing difficulties manning the engineering and production staffs of their nuclear power plants, a situation that will get worse in the years ahead because of the increased number of nuclear power plants that will be built and operated. In fact, the time is fast approaching when nuclear power plants may be kept from going into operation because of inadequate manpower. This country's nuclear power program may well be limited by our ability to provide the nuclear-trained personnel needed.

In spite of widespread indication of an impending nuclear manpower crisis, the Atomic Energy Commission recently assured the nuclear industry that there is no serious problem. In its report entitled "Utility Staffing and Training for Nuclear Power," WASH 1130 Revised (1973), the AEC published a manpower study that concludes that "nearly 15,500 additional nuclear-oriented plant and headquarters staff will be required for nuclear power plants expected to be placed in operation during the period 1973–1982." Although the AEC report states that "the expected rapid expansion of nuclear power from 1973 to 1982 will create demands for nuclear-trained personnel of a magnitude that could cause a stress on the supply," it concludes that "with the possible exception of quality assurance and short-term radiation protection training, the overall national training and education resources are considered adequate." Nothing in the AEC report suggests a nuclear manpower shortage of catastrophic proportions.

The major deficiency of the AEC manpower study is that it considered the manpower requirements of utilities alone and did not include those of all the other organizations

involved in the design, licensing, construction, and operation of nuclear power plants. Also, the AEC study assumed an unrealistically short schedule of five years between site selection and commercial operation. In an attempt to make a more realistic assessment of the problem, an independent study was undertaken using data provided by several nuclear utilities and architect-engineer organizations.

OVERALL MANPOWER STRUCTURE

Before assessing the manpower requirements to support the design, licensing, construction, and operation of nuclear power plants during the next decade, it is important to define the overall manpower structure that provides this support. This structure includes not only utilities but such other groups as architect-engineers, nuclear steam supply system (NSSS) vendors, technical consultants, construction organizations, nuclear suppliers, and government regulatory groups. The manpower requirements of all of these organizations must be considered since all of them must grow simultaneously in the next decade while they will be competing for the same personnel and using the same nuclear training resources.

This study considered the following components of the over-all manpower structure that supports the design, licensing, construction, and operation of nuclear power plants:

Utilities. Nuclear utilities are organized in a variety of ways; however, for the purposes of this manpower study, their organizations were functionally subdivided into three groups: (1) the senior management and administrative support staff, which performs functions having cross-company applicability, such as over-all management, employee relations, public relations, industrial security, purchasing, and accounting, (2) the engineering and technical-support staff, which performs those functions within the utility necessary to directly support the design, licensing, construction, and operation of the utility's nuclear power plants, and (3) the operations staff, which performs those functions at the nuclear power plant site necessary to operate the plant.

Architect-engineers. Architect-engineers are responsible for the over-all design of a nuclear power plant except for the nuclear steam supply system and all of its components and auxiliaries. Some utilities have their own architect-engineering organizations; most contract for this service. For the purposes of this manpower study, architect-engineer organizations were functionally subdivided into three groups: (1) those that perform senior management and administrative support functions, (2) those that perform the engineering and design functions necessary to design a nuclear power plant and prepare the detailed plans and specifications, and (3) those that assist the utility in the licensing process, preoperational testing, and operation of a nuclear power plant.

Nuclear steam supply system vendors. This group is responsible for the design of the NSSS and all of its components and auxiliaries. In addition to research, development, and design functions, these vendors provide direct support to specific utility customers. For the purposes of this manpower study, these organizations were functionally subdivided into three groups: (1) those that perform senior management and administrative support functions, (2) those that perform research, development, and design functions not directly related to providing a specific NSSS to a specific utility, and (3) those that perform engineering and design functions that directly assist the utility in the licensing process, pre-operational testing, and operation of a nuclear power plant.

Technical consultants. Utilities normally require the services of several technical consultants to assist in the design, licensing, construction, and operation of a nuclear power plant. These personnel supplement the engineering and technical support staff and the operations staff of the utility. They perform those functions not designated for the architect-engineer or the NSSS vendor, including licensing and environmental report preparation, personnel training, startup assistance, preoperational and operational test procedure preparation, quality assurance program development, audit and review, and surveillance testing and audit.

Construction organizations. The construction of a nuclear power plant is directed by an organization that specializes in construction management of such plants. The actual construction is performed by various subcontractors having the craft manpower required. Some utilities have their own construction management organizations; most contract for this service.

Nuclear suppliers. Numerous organizations supply equipment and components for installation in nuclear power plants. First-line suppliers are those organizations that manufacture the end products, such as fuel elements, turbine-generators, condensers and pumps, that are installed in these plants. Numerous other suppliers provide the materials and sub-components from which these end products are manufactured. First-line suppliers provide considerable direct support to specific utility customers.

Other organizations. Numerous other organizations, both public and private, are part of the over-all manpower structure for nuclear power plants. The federal and state governments are involved in the regulation and licensing of these plants. The federal government and its laboratories and other organizations such as the Electric Power Research Institute are involved in the research, development, and design of nuclear power systems.

Since the objective of this study was to identify the manpower requirements of the next decade for personnel who will require specialized nuclear training, the study focused on those components of the over-all manpower structure that are directly involved in the design, licensing, construction, and operation of nuclear power plants. The manpower requirements for the other components were also estimated, and their impact assessed.

SCHEDULE FOR A NUCLEAR POWER PLANT

The over-all schedule for design, licensing, construction, and operation of a nuclear power plant has a critical effect on manpower requirements because this schedule determines when personnel must be assigned to a particular nuclear power plant project. Figure 1 shows the over-all schedule typical for a single-unit 1,100-MWe plant based on current experience, a schedule indicating almost 10 years from site selection to commercial operation. The AEC manpower study (WASH-1130 Revised) shows an overall schedule of about five years, a goal wholly inconsistent with current experience. There is a good chance of shortening the schedule to less than 10 years through standardizing plant design and streamlining licensing procedures, such as those recently proposed to Congress by the AEC. However, over the next 10 years shortening the schedule will further add to the manpower requirements.

The staffing schedules for the design, licensing, construction, and operation of a nuclear power plant were defined in this study using the results of a questionnaire sent to several utilities with nuclear power plant experience. Utilities responding to the questionnaire were Carolina Power and Light Company, Detroit Edison Company, Northeast Utilities Service Company, and Yankee Atomic Power Company.

In addition, discussions were conducted with several other utilities and with several architect-engineers to compile additional data on staffing schedules. In all cases the reference was a single-unit 1,100-MWe nuclear power plant. Staffing schedules were defined for both the nuclear utility, including its operations staff and its engineering and technical-support staff, and for the direct-support organizations, including the architect-engineer, the NSSS vendor, technical consultants, and the construction management organization.

Nuclear utility staffing schedules. Although the size of nuclear utility operations staffs varies somewhat, a typical single-unit 1,100-MWe nuclear power plant staff is shown in Table I. The AEC requires that each shift have five operators, including one shift supervisor with a senior reactor operator's license, two control operators with reactor operator's licenses, and two unlicensed auxiliary operators. Normally, plants operate with five full shifts and a small number of additional operators. The technical and maintenance groups of plant staffs also vary; however, the numbers shown in Table I are typical of several plant staffs reviewed. The over-all composition of a typical plant staff of 75 is 15 engineers and 60 non-engineers, where an engineer is defined as an individual with a four-year engineering degree or experience equivalent to such a degree. In addition, about 25 utility personnel—15 engineers and 10 non-engineers—are required to provide support services after the plant goes into operation.

Defining the size of nuclear utility engineering and technical support staffs is more difficult than defining the size of their operations staffs. There are no formal AEC requirements as there are for the operations staffs. Further, many of the functions of the engineering and technical-support staffs can be performed in-house by the utility or under contract by the architect-engineer, the NSSS vendor, or technical consultants. Although some utilities retain a rather large in-house staff and obtain less contract support while others retain a rather small in-house staff and obtain more contract support, the over-all manpower requirements are generally consistent. The recommended baseline in-house engineering and technical-support staff for a single-unit 1,100-MWe nuclear power plant consists of 10 engineers at the initiation of the project, increasing to about 35—25 engineers and 10 non-engineers—during the six years prior to commercial operation, and decreasing to about 25—15 engineers and 10 non-engineers—after commercial operation. This in-house staff can be much larger if the utility elects to obtain less contract support.

TABLE I.—Typical nuclear utility operations staff

[Single-unit 1,100-MWe nuclear power plant]

Plant superintendent	1
Assistant plant superintendent	1
Operations supervisor	1
Training coordinator	1
Shift supervisors (SRO licenses)	6
Control operators (RD licenses)	12
Auxiliary operators	12
Technical supervisor	1
Technical staff	3
Technicians	12
Maintenance supervisor	1
Electrical and mechanical maintenance personnel	19
Total	75

Table II includes the typical staffing schedule for the utility's operations staff and its engineering and technical-support staff for a single-unit 1,100-MWe nuclear power plant. The number of engineers and non-engineers required on each staff is given by year. The table indicates that a total of 285 man-years from the operations staff and 275 man-years from the engineering and technical-support staff are required prior to commercial operation. A total of 75 man-years per year and 25 man-years per year, respectively, are required from these two staffs after commercial operation.

The utility staffing schedule shown in Table II is based on a single-unit plant. From a manning standpoint, there should be significant savings for multiple units on the same site. For example, the operations staff for a two-unit station is typically about 125 compared to 75 for a single-unit station, representing a potential savings of about 15 percent. However, at the present time, many multiple-unit stations are not identical, and the expected manpower savings cannot be realized. Often the first unit is staffed with additional personnel for subsequent units. Further, when personnel turnover is considered, the manpower requirements for all units treated as single units are likely to be a more accurate prediction of manpower requirements for the next decade. For this reason, single-unit staffing was used for all units in this study.

TABLE II.—COMBINED NUCLEAR UTILITY AND DIRECT-SUPPORT STAFFING SCHEDULES

[Single-unit, 1,100-MWe nuclear powerplant]

Year	Utility		Direct-support organizations				
	Operations staff (engineers/non-engineers)	Engineering and technical support staff (engineers/non-engineers)	Architect engineer (engineers/non-engineers)	Nuclear steam supply system vendor (engineers/non-engineers)	Technical consultants (engineers/non-engineers)	Construction management organization (engineers/non-engineers)	Total (engineers/non-engineers)
1	0/0	10/0	10/5	5/0	10/0	0/0	35/5
2	0/0	10/0	10/10	10/0	10/0	0/0	140/115
3	0/0	15/5	25/25	15/5	15/0	0/0	40/10
4	0/0	20/5	50/50	15/5	15/0	10/0	70/35
5	0/0	25/10	70/70	15/5	20/0	10/30	110/60
6	5/0	25/10	75/70	15/5	20/0	20/60	160/145
7	15/40	25/10	55/55	15/5	20/0	20/60	150/170
8	15/60	25/10	50/50	15/5	20/0	20/60	145/185
9	15/60	25/10	25/25	10/0	10/0	10/30	95/125
10	15/60	25/10	15/5	5/0	5/0	10/0	75/75
Total man-years prior to commercial operation	65/220	205/70	385/365	120/30	145/0	100/240	1,020/925
Man-years per year after commercial operation	15/60	15/10	(1)	(1)	(1)	(1)	30/70

[1] Not estimated.

Direct-support organizations staffing schedules. It is obvious from the over-all manpower structure that supports the design, licensing, construction, and operation of nuclear power plants that the manpower requirements of nuclear utilities alone are but a small part of the total problem. The manpower requirements of other organizations, such as architect-engineers, NSSS vendors, technical consultants, construction management organizations, and suppliers, must be estimated since they compete for the same manpower and training resources as the utilities. If the only requirements that had to be filled were those of the utility staffs, the problem would be serious but manageable.

The architect-engineer typically provides about 750 man-years of direct engineering and design support for a single-unit 1,100-MWe nuclear power plant. The NSSS vendor typically provides about 150 man-years of design and licensing support to the utility for such a plant. In addition to this basic support, the utility normally contracts with technical consultants for about 145 man-years of additional direct engineering and technical support. Finally, the construction management organization typically provides about 340 man-years of management and monitoring support for the construction of a single-unit 1,100-MWe nuclear power plant. Table II includes the typical staffing schedules for each of these direct-support organizations. The number of engineers and non-engineers required by each organization is given by year.

Combined nuclear utility and direct-support staffing schedule. In order to determine the total staffing requirement for a nuclear power plant, the staffing schedules for the utility must be combined with the staffing schedules for the direct-support organizations. Table II shows this combination. The total staffing requirements each year are the significant numbers. Depending upon the approach used by the utility, functions can shift from one organization to another, but the total staffing requirements remain constant. Table II shows a total of 1,945 man-years prior to commercial operation and a total of 100 man-years per year after commercial operation. This study indicates that the utility staff typically provides less than one-third of the effort prior to commercial operation, but it assumes that the utility staff provides all of the effort after commercial operation. The assumption that additional support from other organizations is not required after commercial operation makes the results of this study all the more conservative. Undoubtedly, support from the architect-engineer, the NSSS vendor, and technical consultants will be required as changes are made in operating plants to comply with new licensing requirements and to correct operating problems.

UTILITY AND DIRECT-SUPPORT MANPOWER NEEDS

Nuclear utility and direct-support manpower requirements for the next decade were determined in this study by defining the planned commercial operation schedule for nuclear power plants through 1991 and applying the staffing schedules shown in Table II to this schedule.

The commercial operation schedules for nuclear power plants in the United States have been subject to substantial changes because of delays. As a basis for estimating nationwide manpower requirements, public announcements and other information on scheduled commercial operation of these plants as of the end of 1973 were used. Table III shows the estimated number of new units to be placed in commercial operation and the estimated total number of units in commercial operation by year through 1991. This schedule shows an estimated total of 180 units in commercial operation through 1982, a conclusion in agreement with the estimate used in the AEC manpower study (WASH-1130 Revised). After 1982, the estimated number of new units to be placed in commercial operation is about four per year less than that used in the AEC study. Many authorities consider that a rate of growth such as shown in Table III is far slower than what is needed. However, the manpower requirements to sustain the rate of growth shown in Table III are so substantial, that consideration of an even faster rate of growth is not realistic.

Manpower requirements by year were determined both for nuclear utilities and for direct-support organizations.

Nuclear utility manpower requirements. Table IV summarizes the manpower requirements for the operations staffs and the engineering and technical-support staffs of nuclear utilities during the next decade based upon the commercial operation schedule shown in Table III. The number of additional engineers and non-engineers required each year is listed. Table IV shows that nuclear utilities currently have about 1,300 engineers and about 4,700 non-engineers on their operations staffs and about 3,300 engineers and about 1,200 non-engineers on their engineering and technical-support staffs. As shown in Table IV, about 2,600 additional engineers and 10,000 additional non-engineers must be recruited and trained by nuclear utilities in the next decade for their operations staffs, and about 4,400 additional engineers and 2,100 additional non-engineers must be recruited and trained in this same decade for their engineering and technical-support staffs. In each case, the number of personnel to be recruited and trained is about twice the number currently trained or in training.

TABLE III.—COMMERCIAL OPERATION SCHEDULE FOR NUCLEAR POWERPLANTS THROUGH 1991

Year	Estimated new units placed in commercial operation	Estimated total units in commercial operation
Through 1973		41
1974	16	57
1975	14	71
1976	10	81
1977	10	91
1978	10	101
1979	16	117
1980	20	137
1981	21	158
1982	22	180
1983	23	203
1984	24	227
1985	25	252
1986	26	278
1987	27	305
1988	28	333
1989	29	362
1990	30	392
1991	31	423

The manpower requirements for AEC-licensed operators were also estimated in this study. Although a utility can satisfy AEC requirements with a minimum of one licensed senior reactor operator and two licensed reactor operators per shift for a single-unit plant, the operations staffs of such plants normally contain about 22 licensed operators, typically 10 senior reactor operators and 12 reactor operators. At the end of 1973, there were about 1,300 AEC-licensed operators on the operations staffs of nuclear utilities, including about 600 licensed senior reactor operators and 700 licensed reactor operators. Between 1973 and 1982, nuclear utilities will have to license about 3,500 additional operators—about 1,600 senior reactor operators and 1,900 reactor operators.

The manpower requirements for additional senior management and administrative support personnel within nuclear utilities were not quantified in this study and are not shown in Table IV. From the standpoint of total manpower requirements, it is important to realize that positions within senior management and administrative support groups are often filled by promoting personnel from engineering and technical-support staffs or operations staffs. For this reason alone, the total nuclear utility manpower requirements for the next decade will be greater than shown in Table IV. In addition, it is important to realize that the nuclear utility manpower requirements shown there are for near minimum engineering and technical-support staffs and do not include the manpower requirements for the functions assigned to architect-engineers, NSSS vendors, technical consultants, and construction management organizations. Some utilities will undertake these functions, and the total nuclear utility manpower requirements will be correspondingly larger.

Direct-support manpower requirements. Table IV summarizes the manpower requirements for the organizations that provide direct support in the design, licensing, construction, and operation of nuclear power plants—namely, architect-engineers, NSSS vendors, technical consultants, and construction management organizations. Although the manpower requirements for each type were developed in the study, only the total direct-support manpower requirements are shown in Table IV. That table shows that these organizations currently have about 10,000 engineers and 8,000 non-engineers involved in providing direct support for the design, licensing, construction, and operation of nuclear power plants. As shown in the table, about 9,500 additional engineers and 8,400 additional non-engineers must be recruited and trained by these organizations to perform direct-support functions in the next decade. As with the nuclear utilities, the number of personnel to be recruited and trained is about twice the number currently trained or in training. Again, the manpower requirements of these organizations for additional senior management and administrative support personnel and for personnel who do not provide direct support for nuclear power plants are not shown in Table IV.

Combined nuclear utility and direct-support manpower requirements. Because they will be competing for the same personnel and using the same training resources, the combined nuclear utility and direct-support manpower requirements for the next decade—shown in Table IV—are of the most concern. The table indicates that a total of almost 17,000 engineers and 21,00 non-engineers must be recruited and trained in the next decade by nuclear utilities, architect-engineers, NSSS vendors, technical consultants, and construction management organizations. The most serious years will be 1976 through 1978 in which more than 2,000 additional engineers and more than 2,500 additional non-engineers must be recruited each year. These personnel are needed to support firm near-term commitments in commercial operation schedules.

The AEC has sent to Congress proposed legislation that, if enacted, would have as a goal shortening the total time to review and license a nuclear power plant from ten to six years. However, the total nuclear utility and direct-support manpower requirements would not be affected to any great extent. If a shortening of the licensing schedule results in a corresponding increase in the rate at which plants are placed in commercial operation, the manpower requirements would increase. A shortening from ten to six years nearly doubles the combined requirement prior to commercial operation shown in Table II remains unchanged, or possibly increases.

TABLE IV.—COMBINED NUCLEAR UTILITY AND DIRECT-SUPPORT MANPOWER REQUIREMENTS (1973-82)

	Nuclear utilities				
	Operations staffs (engineers/nonengineers)	Engineering and technical-support staffs (engineers/nonengineers)	Nuclear utilities total (engineers/nonengineers)	Direct-support organizations total (engineers/nonengineers)	Total (engineers/nonengineers)
Total thru 1973	1,265/4,660	3,285/1,190	4,550/5,850	10,040/7,950	14,590/13,800
Additional for:					
1974	150/600	395/185	545/785	770/345	1,315/1,130
1975	180/600	395/210	575/810	1,040/1,100	1,615/1,910
1976	260/840	440/220	700/1,060	1,465/1,445	2,165/2,505
1977	305/1,120	505/230	810/1,350	1,515/1,590	2,325/2,940
1978	320/1,240	530/240	850/1,480	1,305/1,170	2,155/2,650
1979	325/1,300	565/250	890/1,550	1,090/825	1,980/2,375
1980	360/1,360	510/260	870/1,620	855/650	1,725/2,270
1981	365/1,420	305/276	870/1,690	750/635	1,620/2,325
1982	380/1,480	520/280	900/1,760	750/635	1,650/2,395
Total through 1982	3,910/14,620	7,650/3,335	11,560/17,955	19,580/16,345	31,140/34,300
Additional through 1982	2,645/9,960	4,365/2,145	7,010/12,105	9,540/8,395	16,550/20,500

ADDITIONAL MANPOWER REQUIREMENTS

In addition to the direct-support organizations, the government in its regulatory role must provide several other key functions. Currently, an estimated 1,000 engineers perform government regulatory functions that directly involve the design, licensing, construction, and operation of nuclear power plants. This number will increase, it is estimated, to more than 3,000 by 1982.

Many other organizations in the nuclear industry will be expanding in the next decade and also competing for the same personnel as nuclear utilities and direct-support organizations. For example, the organizations associated with nuclear research and development, including the AEC, the fast breeder reactor program, and the NSSS vendors, will all expand and add personnel whose functions are not directly involved in the design, licensing, construction, and operation of the nuclear power plants. Conservatively, these manpower requirements are estimated to be about 5,000 over the next decade.

Finally, this study does not attempt to estimate the number of personnel required to replace trained personnel who are promoted to senior management and administrative support positions, accept positions outside the nuclear power field, or retire over the next decade. Estimating a 2½ percent-per-year loss would mean that more than 10,000 trained replacements are required. Additional manpower requirements over the next decade for nuclear-trained personnel indirectly or directly associated with the nuclear power plants would thus be more than 15,000.

The manpower requirements of nuclear power plant construction contractors and nuclear suppliers are undoubtedly much larger than those of all the organizations so far discussed because a large number of these personnel are required for each nuclear power plant. During 1973, an estimated 60,000 man-years of construction craft labor were required on nuclear power plants; in 1982, about 130,000 man-years will be required to support the current commercial operation schedule. The manpower requirements of nuclear suppliers are estimated to be comparable. Although most of these personnel do not require extensive nuclear training, they do represent a major simultaneous manpower requirement that con-

tributes to the impending nuclear manpower crisis.

COMPARISON WITH AEC STUDY

The conclusions of this manpower requirements study do not agree with those of the AEC study (WASH–1130 Revised) in several important aspects. The two studies show resonably close agreement on the manpower requirements for nuclear utility operations staffs. The AEC study used a single-unit plant staff of 77, including 11 security personnel. This study used a single-unit plant staff of 75, but security personnel are not included because they do not require significant special nuclear training and are readily available for employment at the time they are needed. Thus, this study used a plant staff of 75 compared to 66 for the AEC study. The AEC study took credit for a plant staff savings of about 20 percent for multiple units at the same site. No savings for multiple units was taken in this study because the amount of savings being achieved in practice is much less than 20 percent and, with increased requirements for quality control and surveillance, the plant staff may be closer to 90 than 75 in the near future.

The two studies show a wide discrepancy in the manpower requirements for nuclear utility engineering and technical-support staffs, explainable in terms of the difficulty in defining a typical size for such staffs. The AEC study used 120 man-years of headquarters management and technical support for a single-unit plant prior to commercial operation and 27 man-years per year after commercial operation and included the functions of five defined groups: power generation, environmental protection, engineering and construction, quality assurance, and security. This study used 275 man-years prior to commercial operation and 25 man-years per year after commercial operation. The differences are due to the variation in the over-all schedules for design, licensing, construction, and operation used in the two studies. The AEC study used an over-all schedule showing about five years between site selection and commercial operation; this study used a schedule showing about ten years. Table V compares the results of the two studies regarding nuclear utility manpower requirements.

The AEC study states that utilities will face sharp competition from other organizations within the nuclear industry without estimating the requirements of those other organizations. This study shows that manpower requirements of these other organizations are as great as those of the utilities.

SOURCES OF TRAINED MANPOWER

Nuclear utilities and the other direct-support organizations have replied upon three main sources of manpower to support the design, licensing, construction, and operation of nuclear power plants: (1) conventional power plant personnel, (2) military (mainly Navy) nuclear-trained personnel, and (3) direct inputs from universities and community colleges. The largest portion of the current engineering and technical-support staffs and operations staffs of nuclear power plants were recruited from similar positions on conventional power plants. However, substantial numbers of personnel who occupy key positions of on these staffs received their nuclear training in the military, particularly in the Navy. An estimated 30 percent of AEC-licensed operators at nuclear utilities are experienced Navy nuclear plant operators, and this percentage appears to be increasing. A relatively small portion of current engineering and technical-support staffs and operations staffs of nuclear power plants were direct inputs from universities and community colleges.

TABLE V.—COMPARISON OF NUCLEAR UTILITY, MANPOWER REQUIREMENTS

	Operations staffs		Engineering and technical support staffs	
	AEC study	Deutsch/Whitney study	AEC study	Deutsch/Whitney study
1973	5,496	5,925	1,956	4,475
1982	16,311	18,530	4,726	10,985
Additional through 1982	10,815	12,605	3,770	6,510

What makes the impending manpower crisis all the more serious is that these three main sources of manpower that have been relied on in the past are likely to provide fewer inputs in the years ahead. First, the number of conventional power plant personnel available for assignment to nuclear power plants is likely to decline in the next 10 years. In many utilities, the best of the conventional power plant personnel have already been reassigned and, with the increased requirements for conventional power plants in the next 10 years, this source will be harder to tap. Secondly, the number of experienced Navy nuclear-trained personnel available to the nuclear industry is likely to decline over the next decade. The military is facing severe budgetary restrictions and is placing much more emphasis on the retention of trained personnel. In the past, nuclear utilities have been able to minimize their staffing problems by recruiting a large number of experienced Navy nuclear-trained personnel. These personnel will not be available in sufficient numbers over the next 10 years to meet projected needs. Finally, the direct-input source is not encouraging. The annual survey of the Engineering Manpower Commission of the Engineers Joint Council [1] showed that the number of four-year engineering degrees granted in the United States in the year ending June 30, 1973, declined to 43,429 bachelor's degrees, 17,152 master's degrees, and 3,587 doctor's degrees, down from 44,190, 17,356, and 3,774, respectively, for 1972. Based on current enrollments, these will decline further in the next four years. The number of two-year associate degrees in engineering technology also declined for the year ending June 30, 1973, to 9,040, down from 9,084 in 1972. The number of engineers that received BS and MS degrees in nuclear engineering in the year ending June 30, 1973, was only 324 and 387, respectively, for the entire country. Mechanical engineers and electrical engineers who have taken nuclear engineering options or courses are also well qualified for positions with nuclear utilities; unfortunately, their numbers are relatively small.

CONCLUSIONS

The major conclusion of this study is that the nuclear industry is facing a nuclear manpower shortage that will severely limit the country's nuclear power program unless steps are taken immediately to correct the situation. The bases for this conclusion are:

Nuclear utilities must recruit and train at least 19,000 technical personnel—7,000 engineers and 12,000 nonengineers—in the next 10 years for the engineering and production staffs of nuclear power plants currently scheduled.

Organizations that provide direct support to nuclear utilities for the design, licensing, construction, and operation of nuclear power plants, including architect-engineers, NSSS vendors, technical consultants, and construction management organizations, must recruit and train about 18,000 technical personnel—10,000 engineers and 8,000 non-engineers—in the next 10 years to support the plants currently scheduled.

The total additional manpower requirement of 37,000 will result in severe competition for technical personnel among utilities and the other organizations in the nuclear industry. In fact, utilities will be recruiting from each other.

Additional nuclear-trained personnel are needed to replace personnel within utilities and organizations furnishing direct support to utilities. Also regulatory agencies and research organizations will be expanding during the next 10 years. The number of trained personnel required to meet these requirements is estimated at more than 15,000.

The three main sources of manpower that have been relied upon in the past—namely, conventional power plant personnel, Navy nuclear-trained personnel, and direct inputs from universities and community colleges, will all provide fewer, not more, inputs in the next 10 years, and will not be able to satisfy the nuclear industry requirements.

Any shortening of the licensing process for nuclear plants can only serve to aggravate further the manpower situation in the short term. The proposed shortening from ten years to six years would nearly double the number of nuclear-trained personnel required.

SOLUTION TO THE MANPOWER CRISIS

Is there a solution to this problem? Increasing the output of engineers and technical graduates from universities and community colleges would provide a larger manpower source for the nuclear industry. However, it will be very difficult to expand enrollments significantly in a short period of time. Most of the public, including the universities and colleges themselves, still believe there is a large excess of engineers and scientists because of the high rate of unemployment of aerospace engineers and high-energy physicists. It will take time to erase this adverse publicity and interest young people in the nuclear industry.

Providing a larger source of manpower does not guarantee that the utilities would get an adequate number because of the competition of other organizations in the industry.

One way for the utilities to guarantee themselves qualified manpower is to introduce their own training programs for engineers and non-engineers. A recent article [2] suggested that nuclear utilities develop broad education and training programs designed to attract graduates of local high schools. Also, a considerable number of engineers and scientists can be retrained for positions with the utilities by means of these in-house training programs. An added benefit to this approach is that by training personnel living in the area served by the utility, the utility can develop a more stable work force less likely to be attracted by opportunities in other parts of the country.

Another related approach now being actively pursued by a few utilities is to work with area colleges, universities, and technical schools to provide special academic training programs for current and future employees. These utilities then provide in-house training programs in specialty areas such as nuclear power plant systems and operations. This approach also has the advantage of attracting personnel who live in the area served by the utility.

[1] John D. Alden, "Engineering and Technology Degrees, 1972–73," *Engineering Education*, January, 1974.

[2] R. W. Deutsch, "Staffing Nuclear Plants," *Power Engineering*, September, 1973.

The Navy has had to develop a full range of education and training programs to provide the necessary qualified personnel to operate and maintain nuclear propulsion plants. The utilities should take a lesson from the Navy and initiate similar programs to provide for their manpower. While the introduction of such programs is very expensive, the ability to assemble and retain a sufficient number of qualified personnel within the utility salary structure will more than make up for the cost of training.

At the present time, nuclear utilities spend about 1 percent of the capital cost of a nuclear power plant, or about $4 million per plant, on training. Most of this training is devoted to plant operators because of the necessity of obtaining AEC operator licenses. If nuclear utilities expanded their training budgets to about 2 percent of the capital cost of a plant and managed their training programs properly, they could have in-house programs and/or programs with outside educational organizations that would satisfy their manpower requirements both in the near term and for the future.

Engineering Manpower Needs: A Survey

(By William E. Wilson)

In 1969 the American Nuclear Society conducted a survey for the Division of Nuclear Education and Training (DNET) of the U.S. Atomic Energy Commission on the technical manpower needs of the atomic field.[1] This study indicated an adequate supply of nuclear scientists and engineers to meet the demand at that time. However, in 1969 the supply of nuclear engineers at the MS level was below the projected demand while the supply of nuclear engineers at the PhD level exceeded the demand. By 1972 the situation had changed somewhat according to the best available data.

The most recent data compiled by the U.S. Bureau of Labor and Statistics[2] indicates that in 1971 the private sector of the nuclear industry employed about 27,600 engineers. The BL&S data also projects that 1,700 new engineers will be needed per year in the nuclear field for the next several years, about half of this requirement due to growth and half for replacement of loss due to attrition.

A recent survey by DNET [WASH–1228 (72)][3] indicates that in 1972 there were 1,235 full-time third-, fourth-, and fifth-year undergraduates enrolled in nuclear-oriented education programs in the United States. In addition, 912 Master's degree candidates and 70 doctoral candidates were enrolled in nuclear engineering. In 1970–71, the 65 institutions having nuclear programs graduated 956 nuclear-oriented engineers (399 BS, 387 MS, and 170 PhD). According to the Engineering Manpower Commission, approximately 18 percent of all students receiving a BS degree in engineering enter full-time graduate study. Applying this and other correction factors, such as the education of foreign nationals, to the enrollment data yields approximately 800 nuclear-oriented engineering graduates per year to meet the BL&S projected demand of 1,700 per year.[2]

In order to establish more firmly the actual current manpower needs of the nuclear power field, I decided in November 1972 to conduct a nuclear-oriented engineering manpower survey of the nuclear power industry. The prime motive for conducting the survey was simply to assist in defining the direction that the nuclear engineering education program at Washington State University should take. I fully realized that it would not be possible or practical to attempt to duplicate the in-depth survey performed by the ANS–AEC. I also knew that I could not expect to obtain more than about a 25 percent response and that many of the replies would be somewhat incomplete. However, I felt that I could at least obtain a sufficient number of responses to indicate the current need and attitude of the nuclear power industry.

About 100 "Nuclear-Oriented Engineering Manpower Survey" forms were mailed to employers in the nuclear power field. Thirty-one establishments employing 5,821 engineers and thus representing approximately 20 percent* of the nuclear power industry, responded. The responses indicate a total annual requirement of 1,140 nuclear-oriented engineers per year for at least the next three years, representing an employment expansion rate of 19.6 percent for the responding segments of the nuclear power industry. It is not possible to accurately scale up my results to include the entire nuclear industry; however, the data does indicate that the need is probably larger than the BL&S projection. Summaries of the employment data obtained from the respondents are shown in Tables I through V.

TABLE I.—SUMMARY OF NUCLEAR POWER INDUSTRY EMPLOYMENT DATA

Discipline and degree	Current employment	Annual employment increase* Number	Percent
N.E.:			
B.S	455	102.3	22.5
M.S	406	91.5	22.5
Total	861	193.8	22.5
Ch.E.:			
B.S	554	79.0	14.3
M.S	140	45.0	32.1
Total	694	124.0	17.9
M.E.:			
B.S	1,647	267.9	16.3
M.S	422	82.3	19.5
Total	2,069	350.2	16.9
E.E.:			
B.S	1,094	136.7	12.5
M.S	164	28.9	17.6
Total	1,258	165.6	13.2
C.E.:			
B.S	422	73.4	17.4
M.S	104	28.1	27.0
Total	526	101.5	19.3
Q.C.E.:*			
B.S	185	47.1	25.4
M.S	50	23.0	46.1
Total	235	70.1	29.8
R.L.E.:*			
B.S	62	32.9	53.1
M.S	34	12.1	35.6
Total	96	45.0	46.9
E.S.:*			
B.S	53	45.6	86.0
M.S	29	16.3	56.2
Total	82	61.9	75.5
Totals:			
H.S	4,472	813.0	18.2
M.S	1,349	327.0	24.2
Grand	5,821	1,140.0	19.6

*Reference 2 indicates that in 1971, 27,600 engineers were employed in the atomic energy field.

TABLE II.—SUMMARY OF NUCLEAR UTILITY GROUP EMPLOYMENT DATA[1]

Discipline and degree	Current employment	Annual employment increase[2] Number	Percent
N. E.:			
BS	56	21.3	38.1
MS	83	34.0	41.0
Total	139	55.3	39.8
Ch.E.:			
BS	42	9.7	23.1
MS	4	0	0
Total	46	9.7	21.1
M.E.:			
BS	388	43.0	11.1
MS	54	8.0	6.7
Total	442	51.0	11.5
E.E.:			
BS	525	49.7	9.5
MS	51	3.3	6.5
Total	576	53.0	9.2
C.E.:			
BS	219	15.7	7.2
MS	26	3.0	11.5
Total	245	18.7	7.6
Q.C.E.:			
BS	23	18.7	81.3
MS	2	0	0
Total	25	18.7	74.8
R.L.E.:			
BS	5	5.3	107.0
MS	4	3.7	92.5
Total	9	9.0	100.0
E.S.:			
BS	29	8.3	28.6
MS	16	3.3	20.6
Total	45	11.6	25.8
Total:			
BS	1,287	172.0	13.4
MS	240	55.0	22.9
Grand	1,527	227.0	14.9

[1] 16 utilities responding, whose numbers of engineers employed (see totals above) represent approximately 80 percent of the nuclear utility group (based on reference 2 statistics).
[2] Average over the period from 1973 to 1975.

TABLE III.—SUMMARY OF NUCLEAR STEAM SUPPLY SYSTEM MANUFACTURING GROUP EMPLOYMENT DATA[1]

Discipline and degree	Current employment	Annual employment increase[2] Number	Percent
N.E.:			
BS	186	24.0	12.9
MS	251	21.8	8.7
Total	437	45.8	10.5
Ch. E.:			
BS	263	26.7	10.2
MS	82	14.0	17.1
Total	345	40.7	11.8
M.E.:			
BS	794	77.3	9.7
MS	278	33.0	11.9
Total	1,072	110.3	10.3
E.E.:			
BS	315	31.3	10.3
MS	82	10.3	12.6
Total	397	41.6	10.5
C.E.:			
BS	94	12.7	13.5
MS	28	7.0	25.0
Total	122	91.7	16.1
Q.C.E.:			
BS	123	14.7	12.0
MS	25	5.7	22.8
Total	148	20.4	13.8
R.L.E.:			
BS	51	7.3	14.3
MS	28	5.7	20.4
Total	79	13.0	16.5
E.S.:			
BS	0	0	0
MS	0	0	0
Total	0	0	0
Total:			
BS	1,826	194.0	10.6

Footnotes at end of article.

Discipline and degree	Current employment	Annual employment increase [2] Number	Percent
MS	774	97.5	12.6
Grand	2,600	291.5	11.2

[1] 3 companies responding, whose numbers of engineers employed (see totals above) represent approximately 65 percent of the NSSS manufacturing group (based on reference 2 statistics).
[2] Average over period from 1973 to 1975.

TABLE IV.—SUMMARY OF NUCLEAR ARCHITECT-ENGINEER GROUP EMPLOYMENT DATA [1]

Discipline and degree	Current employment	Annual employment increase [2] Number	Percent
N.E.:			
BS	34	27.0	79.4
MS	30	16.0	53.3
Total	64	43.0	67.2
Ch.E.:			
BS	13	16.0	123.0
MS	10	5.0	50.0
Total	23	21.0	91.3
M.E.:			
BS	41	32.0	78.0
MS	30	15.0	50.0
Total	71	47.0	66.2
E.E.:			
BS	11	19.0	172.7
MS	5	5.0	100.0
Total	16	24.0	150.0
C.E.:			
BS	33	29.0	87.9
MS	34	16.3	48.0
Total	67	45.3	67.7
Q.C.E.:			
BS	22	27.7	125.8
MS	20	15.0	75.0
Total	42	42.7	101.6
R.L.E.:			
BS	1	12.0	1,200.9
MS	0	0	0
Total	1	12.0	1,200.0
E.S.:			
BS	10	22.0	220.0
MS	10	10.0	100.0
Total	20	32.0	160.0
Total:			
BS	165	184.7	111.9
MS	139	82.3	59.2
Grand	304	267.0	87.8

[1] 3 firms responding, whose numbers of engineers employed (see totals above) represent approximately 12 percent of this group (based on reference 2 statistics).
[2] Average over the period from 1973 to 1975.

TABLE V.—SUMMARY OF FUEL PROCESSING, AEC, AND SMALL REACTOR COMPONENT MANUFACTURING GROUPS EMPLOYMENT DATA [1]

Discipline and degree	Current employment	Annual employment increase [2] Number	Percent
N.E.:			
BS	179	29.97	16.7
MS	42	19.67	46.8
Total	221	49.64	22.5
Ch.E.:			
BS	236	26.63	11.3
MS	44	26.0	59.1
Total	280	54.63	19.5
M.E.:			
BS	424	115.64	27.3
MS	60	26.33	43.9
Total	484	141.97	29.3
E.E.:			
BS	243	36.67	15.1
MS	26	10.34	39.8
Total	269	47.01	17.5
C.E.:			
BS	76	16.0	21.1
MS	16	1.84	11.5
Total	92	17.84	19.4
Q.C.E.:			
BS	17	13.67	80.4
MS	3	2.33	77.7
Total	20	16.0	80.0
R.I.E.:			
BS	5	8.33	166.7
MS	2	2.67	133.5
Total	7	11.0	157.1
E.S.:			
BS	14	15.33	109.5
MS	3	3.0	100.0
Total	17	18.33	107.8
Total:			
BS	1,194(85.9)	262.24	22.0
MS	196(14.1)	92.18	47.0
Grand	1.390	354.42	25.5

[1] 9 companies responding, whose numbers of engineers employed (see totals above) represent approximately 10 percent of this group (based on reference 2 statistics).
[2] Average over period from 1973 to 1975.

In addition to the information on the manpower needs of the nuclear power industry, the survey also provided information on the areas of academic training that industry desires engineers to receive. A summary of the degree of desirability of the various areas of training specified by the survey respondents is shown in Table VI. The tabulated results were arrived at by weighing each respondent's specifications by that respondent's employment needs. Thus, Table VI would in effect be the specifications for the nuclear-oriented education of the average nuclear engineer desired by the segment of the nuclear power industry that responded to the survey.

The implications of Table VI for the field of engineering education may come as a surprise to some people; however, the more informed educators are well aware of the current needs.[4 5] Comments from many of the respondents to the survey indicate that industry has very definite ideas on the required content of the education of an engineer for the nuclear power field. If one stops long enough to consider the current state of the nuclear power industry, Table VI makes good sense. There are four basic segments of the nuclear power industry, each with a somewhat different viewpoint and set of needs; the nuclear fuel processing group, the nuclear steam supply system (NSSS) design and fabrication group, the architect-engineer group, and the nuclear utility group. The responses received from the first two groups more or less indicate that their needs have in the past been adequately met by traditional nuclear engineering education programs. On the other hand, the needs of the remaining two groups apparently are not being met to their satisfaction.

TABLE VI.—*Academic training for nuclear-oriented engineers in order of importance as desired by the nuclear power industry*

Desirability	*Subjects*
Required	Nuclear power system safety analysis.
Highly desirable	Heat transfer. Fluid flow. Systems engineering. Radiation control. Radiation shielding. Reactor licensing. Fuel technology. Quality assurance.
Desirable	Fuel cycle analysis. Environmental science. Power system analysis. Radiochemistry. Reactor materials. Control theory. Equipment selection. Nuclear instrumentation Radiation effects. Reactor core design. Quality control.

Heretofore, the nuclear power industry has been to a certain extent in a long research and development phase. As such, the industry required engineers who were R&D-oriented and experts in reactor core design and analysis. However, the nuclear industry is now coming of age, and the primary need is for engineers to design and build nuclear power plants. The respondents in the nuclear power plant design and operations segment of the nuclear industry indicate that the engineers they wish to employ should have training in such areas as reactor power plant safety analysis, systems engineering, reactor licensing, quality assurance, etc. Because traditional nuclear engineering education programs of the past were geared to turn out reactor core design and analysis experts, this type of program will not meet this need. New programs geared to the current needs of the nuclear power industry are needed. To sum up, I feel that the nuclear industry today is saying that what it needs are engineers who are trained to cope with the real world of nuclear power plant design and operation, engineers who have a basic understanding of the ground rules of the game as established by the AEC and who have sufficient relevant technical education to dig in and actively participate.

REFERENCES

*Average over period from 1973 to 1975.
[a] Quality control engineer.
[b] Reactor licensing engineer.
c. Environmental specialist.
† Thirty-one companies responding, whose numbers of engineers employed (see totals above) represent approximately 20 percent of the entire nuclear industry (based on Reference 2 statistics).

[1] *Scientific and Technical Manpower Requirements of Selected Segments of the Atomic Field,* K. L. Voigt (ANS) and E. S. Pierce (AEC) USAEC, Aug. 19, 1970.
[2] *Nuclear Engineering and Radiation Protection Supply/Demand: Analysis for CONE Planning,* USAEC, Nov. 20, 1972.
[3] *Nuclear Engineering Enrollment and Degree Survey: Fall 1971,* WASH–1228 (72), USAEC, November 1972.
[4] *Proceedings of the Workshop on Nuclear Energy, the Environment and Engineering Education,* Ed., R. L. Murray, CONF-720975,
[5] *Nuclear News,* May 1973, Vol. 16, No. 7, p. 68.

EXEMPTION OF CERTAIN FORMS OF ZINC FROM DUTY—AMENDMENT

AMENDMENT NO. 1770

Mr. BENNETT. Mr. President, I submit an amendment for printing to H.R. 6191.

I ask unanimous consent to have printed in the RECORD information which has previously been made available in connection with the substance of my proposed amendment. The information with respect to the first part of my amendment involves the tax treatment of tuition and educational ex-

penses paid on behalf of members of the uniformed services which is contained in Senate Report 93–987, filed July 8, 1974.

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

TAX TREATMENT OF TUITION AND EDUCATIONAL EXPENSES PAID ON BEHALF OF MEMBERS OF THE UNIFORMED SERVICES

Present law (sec. 117 of the code) provides, subject to certain limitations and qualifications, that gross income of an individual does not include amounts received as a scholarship at an educational institution or as a fellowship grant. This provision, however, does not apply with respect to any amount paid or allowed on behalf of an individual if the amount represents compensation for past, present, or future employment services, or in certain other cases, such as where the studies or research are primarily for the benefit of the grantor. In these types of cases, the amounts are considered as compensation designed for services or designed to accomplish an objective of the grantor and are not excludable from gross income; and consequently, these amounts are subject to tax to the individual.

The Internal Revenue Service notified the Department of Defense in response to its request for a ruling that the tuition and other educational expenses paid to or on behalf of participants in the recently instituted Armed Forces Health Professions Scholarship Program are not excludable from the individual's gross income, and, therefore, are subject to tax and withholding. It was noted that under this scholarship program the student was required to serve a prescribed period of active duty with the Armed Forces in return for payment by the Government of certain educational expenses, such as tuition and fees, books, and other related expenses.

The Department of Defense has raised a question about the effect of this ruling on the students under the Armed Forces Health Professions Scholarship Program. In addition, although the ruling only specifically applies to this program, the Department of Defense has expressed a concern with respect to its other educational programs where there are requirements of a prescribed period of active military duty or some other service or obligation in return for the payments. The Department of Defense has submitted a legislative proposal dealing with the application of the "scholarship" exclusion provision with respect to the payments by the Government for the tuition and other educational expenses of a member of the uniformed services attending an educational institution.

The Committee believes that the Defense Department's proposal deserves detailed consideration. To permit the time for this consideration, the committee has decided to postpone the application of the effect of the ruling until January 1, 1975, not only with respect to the Armed Forces Health Professions Scholarship Program but also of other substantially similar educational programs of the uniformed services (as determined by the Secretary of the Treasury), pending a study by the staff of the effect of the application of the proposal to members of the uniformed services. Accordingly, the committee has provided that a member of a uniformed service who is receiving training under the Armed Forces Health Professions Scholarship Program (or any other program which is determined by the Secretary of the Treasury to have substantially similar objectives) from an education institution will not be subject to tax on any payment from the Government with respect to his tuition and certain other educational expenses, including contributed services, accommodations and books. (The committee intends that the phrase "substantially similar objectives" is to include any undergraduate or graduate programs paid for by appropriated funds.) This is applicable to whether the member is receiving the educational training while on active duty or in an off-duty or inactive status, and without regard to whether a period of active duty is required as a condition of receiving the educational payments.

The provision applies with respect to amounts received in calendar years 1973 and 1974.

It is estimated that this provision will reduce annual Federal individual income tax liability by less than $10 million at 1973 levels.

Mr. BENNETT. Mr. President, the second part of my amendment involves the taxation of forgiveness of indebtedness income with respect to educational loans/scholarship programs operated by Federal, State, and local governments. This provision would treat forgiven student loans, conditioned upon future employment, as scholarships excludable from gross income. I have added this proposal at the urging of Senator JOHN V. TUNNEY and others and I ask unanimous consent to have printed in the RECORD a statement prepared by him in support of this section of the proposed amendment, together with a copy of the views of the Treasury Department concerning this proposal.

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

STATEMENT OF SENATOR JOHN V. TUNNEY ON POSTPONING THE TAXATION OF THE FORGIVEN PORTION OF EDUCATIONAL LOANS

Mr. President: In a little-noticed action of June, 1973, the Internal Revenue Service decided that the cancelled portion of educational loans would henceforth and retroactively be considered taxable income. abruptly and without warning, the IRS has begun dispatching tax-due notices that have ranged as high as $1000 per year for up to a maximum of three years, payable within 30 days.

Of course, the thousands of students who contracted for national defense student loans, national direct student loans, Armed Forces Health Professions loans, state teaching and medical education loans and law enforcement educational loans with forgiveness provisions had no idea they might be hit with retroactive tax-due notices dating back 3 years.

Mr. President, I believe this IRS ruling is contrary to Congressional intent and subversive of the purpose of these loan programs. In no other instance does the Federal Government give with one hand, take away with the other. Even worse than the ruling itself is the application of the ruling retroactively and without notice.

To this very day, students and loan officials at thousands of colleges and universities are unaware of the tax liability the IRS has decided will be associated with the forgiven portion of educational loans. Since the IRS has made no effort to inform colleges and universities of the tax time bomb contained in these loans, the first a recent college graduate learns of this situation is the day the postman arrives with a bill for several year's back taxes. Adding insult to injury is the fact that the graduate is charged interest on the back taxes he or she did not even know was owed.

This is an example of Government at its absolute worst.

Thus far, the IRS has decided to enforce Revenue Ruling 73–256 in only a handful of jurisdictions. Congressman Ike Andrews has introduced legislation in the House to deny retroactivity to this ruling. As of today, Congressman Andrews' bill has 143 cosponsors.

The amendment that Senator Bennett has graciously sponsored at my request would prevent the enforcement of this Revenue Ruling until December 31, 1975. In the meantime, Congress will have a chance to develop and enact a permanent solution to the problem caused by this ruling.

In a letter to Chairman Long, the Treasury Department acknowledged that a substantial problem exists and Treasury endorsed the amendment being offered today by the Senator from Utah.

In light of the obvious need and support for action, I hope the Senate will adopt this amendment to H.R. 6191.

THE DEPARTMENT OF THE TREASURY,
Washington, D.C., July 31, 1974.

Hon. RUSSELL B. LONG,
Chairman, Committee on Finance, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: The problem of the taxation of educational loan scholarship and of similar work-related training and education programs operated by Federal, State and local governments, has long been of concern to the Treasury Department. We are presently preparing for submission to the Congress a proposal to amend the Internal Revenue Code which would in large part, we believe, resolve the present law statutory obstacles to resolution of the problem. We hope to submit this proposal in the near future.

However, until such a proposal is submitted and acted upon, we would support the enactment of legislation similar to that Senator Tunney intends to propose as an amendment to H.R. 8214, and which you forwarded to us by letter of July 17, 1974. The amendment, which is effective through December 31, 1975, would treat forgiven students loans, which are conditioned upon future employment, as scholarships excludable from gross income under section 117. Senator Tunney's amendment would provide time for Congress to give full and adequate consideration to the complex area of the tax treatment of scholarships and fellowships and provide clear guidelines for determining under what circumstances such payments are excludable from the gross income of recipients.

Sincerely yours,

FREDERIC W. HICKMAN.

CONSUMER PROTECTION—AGENCY FOR CONSUMER ADVOCACY—AMENDMENTS

AMENDMENTS NOS. 1771, 1772, 1773, AND 1774

(Ordered to be printed and to lie on the table.)

Mr. BEALL submitted four amendments intended to be proposed by him to the bill (S. 707) to establish a Council of Consumer Advisers in the Executive Office of the President, to establish an independent Consumer Protection Agency, and to authorize a program of grants, in order to protect and serve the interests of consumers, and for other purposes.

AMENDMENT NO. 1777

(Ordered to be printed and to lie on the table.)

Mr. BUCKLEY submitted an amendment intended to be proposed by him to the bill (S. 707), supra.

AMENDMENT OF THE RAIL PASSENGER SERVICE ACT OF 1970—AMENDMENT

AMENDMENT NO. 1775

(Ordered to be printed and to lie on the table.)

Mr. ABOUREZK submitted an amendment intended to be proposed by him to the bill (S. 3569) to amend the Rail Passenger Service Act of 1970, and for other purposes.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, AND RELATED AGENCIES APPROPRIATIONS, 1975—AMENDMENT

AMENDMENT NO. 1778

(Ordered to be printed and referred to the Committee on Appropriations, by order of the Senate of July 5, 1974.)

Mr. PROXMIRE (for himself, Mr. CHILES, Mr. HUDDLESTON, Mr. HOLLINGS, Mr. DOLE, Mr. BARTLETT, Mr. NUNN, and Mr. HANSEN), submitted an amendment, intended to be proposed by them, jointly, to the bill (H.R. 15572) making appropriations for the Department of Housing and Urban Development; for space, science, veterans, and certain other independent executive agencies, boards, commissions, corporations, and offices for the fiscal year ending June 30, 1975, and for other purposes.

ADDITIONAL COSPONSOR OF AN AMENDMENT

AMENDMENT NO. 1749

At the request of Mr. WILLIAMS, the Senator from California (Mr. CRANSTON) was added as a cosponsor of amendment No. 1749, intended to be proposed to the bill (S. 3394), the Foreign Assistance Act of 1974.

NOTICE OF HEARINGS ON THE AMENDMENTS TO THE RAILROAD RETIREMENT ACT OF 1937

Mr. HATHAWAY. Mr. President, on Thursday, September 5 and again on Tuesday, September 10 and Wednesday, September 11, the Labor and Public Welfare Subcommittee on Railroad Retirement will hold hearings on S. 3612, S. 2450, and S. 3522 to amend the Railroad Retirement Act of 1937. The hearings will begin at 9:30 a.m. in room 4230, Dirksen Office Building.

Persons interested in testifying or submitting statements should notify the subcommittee at 248 Russell Senate Office Building, telephone 225–2028.

ADDITIONAL STATEMENTS

THE SHAMEFUL EARNINGS LIMITATION ON SOCIAL SECURITY BENEFITS

Mr. GOLDWATER. Mr. President, for some time now I have been speaking out on the injustice of the earnings limitation of the Social Security Act which deprives older workers of their benefits if they continue working upon reaching the age of 65. I have introduced a bill, S. 3065, which would completely repeal this provision of the law for all persons aged 65 and older.

Yesterday, I read an article in the Sunday magazine of the New York Times which contains a penetrating analysis of how this restriction of the law, and other equally discriminatory technicalities, penalize older Americans in a way that no other group of citizens must suffer.

The article is appropriately headed:

If you're counting on Social Security for your retirement income one day, count again—Catch 65.

Mr. President, so that those of my colleagues and persons among the general public who may have missed this exposé of the shameful treatment of older citizens by the law may see it, I ask unanimous consent that the entire article, "Catch 65" by Mr. Robert C. Alberts, which appeared in the New York Times Magazine of August 4, 1974, shall be printed in the RECORD.

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

CATCH 65

(By Robert C. Alberts)

This is the story of one imaginary man—one who could represent a few million of us—who found that, contrary to tradition, America is not a land that always rewards the ambitious and industrious. Not after a certain age, anyway.

When Jonas Joanes retired, 30 members of the department turned out for a luncheon in his honor. (Dinners were reserved for vice presidents and those with 40 years' service.) His wife, Ellen, wearing a new blue dress and a corsage, sat at the head table. They gave Joanes a set of golf clubs and a broken-down ladderback chair. (Refinishing furniture was his hobby, and it is common knowledge that the aging jobless need hobbies.) A large cartoon bore the signatures of everybody in Purchasing except a junior clerk; Joanes would never know whether the man was absent or hostile.

He made a short speech that began with a line handed down from the last two retirement parties he had attended: "Reaching the age of 65" (pause) "is not so bad" (pause) "when you consider the alternative" (laughter). In a conversation afterwards, one of the men gave him some advice: "Don't tell people you're busier than you ever were. They'll think you weren't worth a damn when you were working." The head of Purchasing shot his cuffs and looked at his watch. It was 2:15. The signal was understood. Everyone returned to the office. Everyone but Joanes and his wife.

Joanes was not exactly planning to retire. Weeks before, he had lined up another job; respectable part-time work for the county hospital, 6 to 11 P.M., with responsibility for a bit of bookkeeping. It was not that he wanted to keep busy; he would have been quite happy not to be busy. But he was taking a sharp drop in income and he needed the money. He had come late to the company and his pension was not large. Payments on the mortgage would run another six years. The house needed a new roof. Its tax assessment had doubled in 1972. The loan for putting his youngest child through college was paid off, but the car had seven more payments and the cost of everything had gone up, including his share for keeping his mother-in-law in Whitehall Manor. With the company pension, about $40 a month from investments, and his Social Security, he and Ellen had figured they could get by without selling the house. Barely. All it would take was the part-time job and a cutback in personal luxuries, such as the weekly dinner at the neighborhood restaurant and the weekly calls to an out-of-state daughter and her children.

From the local Social Security people had come a letter inviting Joanes to call at the regional office. The letter was friendly. It began: "The information you gave us when you applied for a Social Security number shows that you will soon be 65 years of age." He was pleased that his Government had made the first move and had remembered something recorded 37 years earlier. In the past, others had written to congratulate him on his birthdays, but never two months in advance. As the letter suggested, he took with him Proof of Age (birth certificate), Proof of Military Service after September 7, 1939 (discharge as a staff sergeant in 1945), Proof of Earnings (latest forms W–2 and 1040), and Proof of Marriage (marriage license and an even more indisputable piece of evidence—Mrs. Joanes).

They were interviewed by a Mr. Smith, claims representative. Mr. Smith was young, perhaps 30, relaxed and obviously competent. For him, retirement was something one knew about, but did not take into daily reckoning. He flipped through documents and cards, quickly accepting proofs of age, military service, earnings and marriage. He explained Medicare protection and its cost, $20.10 every three months. He told Joanes his monthly cash benefit under Social Security would be $230. He explained that Joanes would get a Certificate of Social Insurance attesting to that amount. When Mrs. Joanes turned 65, he said, she would also have rights and responsibilities under Old Age and Survivors Insurance.

"Couldn't we call it something more cheerful?" Mrs. Joanes said. Mr. Smith smiled. She came straight to the point: How much would she get at 65? Mr. Smith explained: Her Medicare payments would be $20.10, the same as her husband's, and she would receive the same benefits. When she reached 65, she would get a Social Security check one-half the dollar amount of her husband's. On the other hand, she could elect to take her Social Security benefits at age 62 (Mrs. Joanes brightened), in which case she would receive only 80 per cent of the benefit she would have received at 65 (Mrs. Joanes frowned).

She said she had worked in a real-estate office for six years and so would naturally be entitled to benefits on her own right. She thought she would put in for her pension next year, when she would be 62. She produced her records.

"You would do better," Mr. Smith said after examining them, "to take your cash benefit on your husband's account, whether you do it at 62 or 65. It will be considerably larger, since you contributed to the program for only six years, and you are entitled to the highest benefit."

"Don't I get both?"

Mr. Smith smiled again. "No, Mrs. Joanes, that's not the way it works."

"Why doesn't it?"

Mr. Smith reached for a loose-leaf notebook labeled "SSA Program Circular, Public Information," turned to "Response to Program Criticism," and tapped it with his fingers. "There are many answers to your questions," he said, "but the main reason is that Congress didn't write the law that way."

"But I had money deducted from my pay check every month for Social Security, and I qualified."

"Yes, and you will be entitled to benefits under your husband's award."

"Wouldn't I have received that, the same amount, in any case? I mean, even if I hadn't worked and had those deductions?"

"Yes, that is true. It's rather complicated, Mrs. Joanes, but you must realize that benefits reflect the family situation. The amount of cash benefits is paid in terms of a family."

"But we were taxed as individuals, not as a family. My husband and I were each paying a Social Security tax for six years. Now we are to get one benefit as a family. It looks to me like individual when you pay, family when you collect."

Mr. Joanes touched his wife's hand.

She said: "I don't see why I can't get reduced benefits at 62 on my own account, and then transfer when I'm 65 to my husband's account and get my full share of his benefit. We both paid for it."

"You would be transferred to your husband's account, because it is larger, but you will always get a benefit that is actuarially reduced. The rule is, when a woman under 65 is eligible for cash benefits both in her own right and in her husband's, she cannot apply for just one of those benefits; when she has applied for one benefit—either one—she is deemed to have applied for both. This means that if a wife elects to take an old-age—excuse me—a Social Security cash bene-

fit of 80 per cent in her own right before age 65, then she cannot get a full benefit when she becomes eligible for her wife's benefit at age 65. Is that clear?"

"It's clear, and I consider it discrimination against women." She took a deep breath. "I must insist on having my money back. I am willing to forget about the interest it might have earned."

"I'm afraid the Social Security Act does not provide for that." Mr. Smith was patient; he had clearly been over this ground before.

"Well, I think the Government should be ashamed of itself to take money for something, and not deliver it, and then refuse to give back the money. It appears to me that millions of women in this country are working and having billions of dollars deducted from their wages for Social Security, and they will never get anything for their money."

"The family in which both the husband and wife work may indeed pay more in Social Security contributions than the family in which only one works, but it also has important advantages over the family with one earner."

"Such as?"

"If both the husband and wife work, both have retirement, disability and survivor's benefit protection based on their own earnings. That is not the case where only one spouse works."

"But both families do get the same amount, don't they?" she said. "The wife who works all her life and has to pay a Social Security tax really is no better off than the wife who has never worked outside the home and has never paid one cent towards Social Security. Does Gloria Steinem know about this?"

Mr. Smith sighed. "I imagine she does, Mrs. Joanes." He paused a moment to reflect, then continued in a somewhat lower voice. "Look. I have a sister. She's a Certified Public Accountant, self-employed, running her own business. Her husband is an architect, also self-employed. Each of them is paying 7.9 per cent self-employed contribution on earnings up to $13,200. That's $1,042 a year for her and it's $1,042 a year for him. It's $2,084 for both. You say 'Social Security' to my sister, and she climbs right up the wall. So I know how you feel."

He turned to Joanes. "I should have explained earlier that you don't need to retire completely to get your cash benefits."

Joanes looked puzzled. His confusion might have been explained by the fact that Mrs. Joanes was muttering, "Individual when you pay, family when you collect." "Is that good?" he asked.

"If you intend to supplement your cash benefit by earned income on a continuing basis, you may do so up to a certain amount without any reduction in your monthly checks."

"How much?"

"You may earn up to $200 a month, or $2,400 a year."

Joanes's puzzlement had turned to alarm. "Would you go over that again please, slowly? My wife is going to hold me personally responsible for whatever the law says, so I better get it right." When he saw that Mrs. Joanes laughed, Mr. Smith smiled.

"To put it another way, no cash benefits are payable if you continue to work and your earnings . . ."

"Well, I certainly do intend to continue to work. I'm not delighted at the idea, but Mrs. Joanes and I, we've both grown fond of eating."

". . . if your earnings exceed a certain amount. You may earn up to $2,400 a year, as I said, without being deprived of any cash benefits."

"I may earn up to $2,400 a year."

"That's gross earnings, before taxes. Now, for each dollar you earn above $2,400, your cash benefit will be reduced by 50 cents."

"By 50 cents."

"But if there are any months in which you do not earn $200, or do not perform substantial services as a self-employed person, you are entitled to the full cash benefit for that month, regardless of your total earnings for the year."

"Full cash benefits for that month." There was a pause. Joanes shook himself. "In other words, what you're telling me is, if I work at what you call substantial wages, I will lose my Social Security pension."

"I'm afraid to ask this," Mrs. Joanes said, "but if my husband loses his pension because he works, what happens to my pension?"

"Payment of the spouse's cash benefit is dependent on payment of a cash benefit to the wage earner."

"Does that mean I don't get my pension either?"

"If your husband earned more money than is permitted under the retirement earnings limitation, your cash benefit would be reduced or stopped."

"Next Monday morning at 9 o'clock," Mrs. Joanes said, "I am going to chain myself to the iron fence in front of the White House and hold up a sign exposing this injustice to women."

"I think this is outrageous," Joanes said. "I want to work. I need to work. I have a job that needs to be done and not everybody can do. What this does, it discourages me from working. It's a violation of something . . . of the . . ."

"Of the Puritan work ethic?" Mr. Smith suggested.

"Yes, that. And of ordinary common sense. Suppose I take this job. I can earn $200 a month, but after that, I begin to lose $230; as soon as I have earned $460 I lose it all. On top of that the Social Security $230 was tax-free, and I have to pay income tax on the money I earn."

"I don't know how much you expect to earn," said Mr. Smith, "but let me point out to you that in order to lose all of your Social Security cash benefit you would have to make more than $660 per month. That's a substantial income."

"Not so substantial anymore," said Joanes. "But that's not the point. I am expected to work at the going market wage for the first $200 each month. Then I'm supposed to take a big cut and continue to work at less than the going wage."

"Your wage remains the same in any case, Mr. Joanes. You have simply not retired. Social Security is not designed or financed as a pension system. It never was. It is insurance against a substantial loss of income due to retirement, death of spouse or disability."

"But I've just had a substantial loss of earnings due to retirement. I can't live on Social Security."

"Nevertheless, you must meet the retirement earnings test. You should notify us promptly if you go to work for wages of more than $200 a month and if you expect your yearly earnings to exceed $2,400. If you do not notify us, you are subject to a possible penalty of at least one month's benefit. You will be required to make a declaration of estimated earned income each year until you are 72. When you reach 72, there is no longer any restriction on the amount you may earn."

"I can hardly wait," Mrs. Joanes said.

"Why 72?" Joanes asked. "Why not 82, or 97, or 65? And why, if it's wrong for me to earn money and get my Social Security pension when I'm 65, why does it become all right when I'm 72?"

"That's the way the act was written," Mr. Smith said. "At first, the earning restrictions did not end at all, not at any age. Then the age was set at 75, and later it was lowered to 72. Some people believe the age will be lowered again some day."

"When was it lowered to 72?"

"In 1955, I believe it was."

Mrs. Joanes looked at her husband. "They'll lower it again the week you turn 72."

"So, for the next six years, if I work at this job," Joanes said, "I get no Social Security pension. Is the amount I receive at 72 larger because of the six years when I don't get anything?"

"If, after 65, you receive no cash benefits, then the benefit you will receive at 72 will be increased by one-twelfth of 1 per cent per month, for a possible increase of 1 per cent for each year you worked after 65."

"So I will get," (Joanes scratched some figures), $13.80 a month more in return for losing my pension for six years. $166 a year for whatever years are left. Not enough."

"That increase may also be considered a partial compensation for the continued payment of the Social Security contribution."

"Did I hear you say . . . I thought I heard you say 'continued payment of the Social Security contribution.'"

"The contribution on earnings after 65 does continue at the usual rate."

"Do you mean to tell me I have to keep on paying the Social Security tax for six more years, until I'm 72, for a pension I'm not getting? You've got to be kidding."

"The contribution on earnings does not end at 72. It continues as long as there is an earned income, regardless of age."

Joanes made some more calculations. "I go to work and earn $2,400. I pay a Social Security tax of, say, $140 on it. I earn another $2,400. I pay another $140 in tax, and my Social Security pension is reduced by $1,200. So the additional $2,400 in income brings me only $1,060. That's a tax rate of nearly 60 per cent. And on top of that I have to pay a Federal income tax and a State income tax on what I earn."

"Your figures are approximately correct, Mr. Smith said. "The tax rate on your example is 55.8 per cent. I should point out that the earnings limitation applies only to earned income—wages, salary and net income from self-employment. If you have a private pension or other nonearned income, they do not count as earnings for Social Security purposes."

"What other kind of income?"

"Interest on savings accounts. Income from annuities. Gain from sale of capital assets, gifts or inheritances. Rental income from property you own. Investment income in the form of dividends on stocks, bonds, and so forth."

"Those don't count."

"Not unless you happen to be a real-estate dealer or a dealer in securities, in which case special rules apply."

"I could receive $1,000 a month and dividends and interest and still get my Social Security pension?"

"Yes."

"Could I get $5,000 a month?"

"There is no limitation on the amount of unearned income in calculating Social Security cash benefits."

"Only on wages."

Mr. Smith leafed through "SSA Program, Public Information." "Some people favor a retirement income test, as well as an earnings test, under which a beneficiary would lose all or part of his cash benefit if he receives substantial payment from his savings, investments, pension and so forth."

"I'm not in favor of either. I don't think it should be any business of the Social Security office how much I earn or how much I get from investments, any more than it is of the insurance company that pays my company pension. But if you're going to have any limitation at all, why should it be on wages alone? Why do you penalize people who work for wages and favor the well-to-do or the wealthy, or the children of the wealthy, who are in free with their rents and interest, dividends and capital gains and oil royalties?"

Mr. Smith read aloud from his notebook. "'If the benefits were cued to the total amount of income a person has, it would no longer be a retirement program; it would be a welfare program. Changing the retire-

ment test to an income test could seriously discourage individual thrift.' "

Mrs. Joanes snorted. Mr. Smith continued: " 'Why should the Social Security contributions paid by workers and employers be increased, in order to pay benefits to people not retired and who in many cases are earning as much as they ever did?' " He turned a page. " 'Many elderly people do, in fact, face financial difficulty. However, elimination of the retirement earnings test is not the way to deal with the financial problems faced by the elderly. This would result in paying benefits to a small minority of beneficiaries who are already working and earning substantial amounts. The vast majority of aged beneficiaries do not work. Almost all of them either do not work or cannot work or cannot find jobs. The way to help these people is through general Social Security program improvements which are applicable to all Social Security beneficiaries.' "

"I think somebody up there doesn't like those bad citizens who are working hard and earning substantial amounts," Mrs. Joanes murmured to her husband. Mr. Smith turned several pages and read another passage. "Criticism of the test is generated mainly by a relatively small minority of beneficiaries who are affected by the test—many of whom are earning as much as they ever did.' "

"How small is a 'small minority'?" Joanes asked.

"The Commissioner estimates that about 1.5 million elderly persons are affected by the retirement earnings test. Senator Goldwater, who opposes the test, believes it is as many as 2.5 million."

"This is a small minority?" Joanes said.

"I told you we should have voted for Goldwater," Mrs. Jones said.

"Frankly, I don't think anyone knows how many people are adversely affected, in the sense that they are actually losing benefits because they work, or are not doing work they otherwise would be doing, or how many are doing how much work they're not reporting.

"It's important to understand, however, that the great majority of people get more out of Social Security than they put in."

"Except those who stay healthy after age 65, continue to work at substantial wages, keep on paying the Social Security tax, and don't reach the age of 106."

"Possibly. Those who benefit most are the special groups that need it most, such as disabled workers and their dependents, the handicapped, those brought into the program under a minimum benefit or a weighted benefit formula and widows with children under 18—under 22 if they're in college.

"There has been a continuing effort to give the program social adequacy and to have it make a meaningful contribution to the support of those in need. For example, the Supplementary Security Income program—S.S.I.—that went into effect this year. It has replaced old-age assistance—O.A.A.—the welfare program for older persons formerly administered by the states. It guarantees a minimum level of income, $146 a month for an individual, or $219 for a couple, for all elderly people who pass income and resource tests."

"Whether or not they have made contributions and qualified for Social Security benefits?" Joanes asked.

"Yes."

" 'Social adequacy' is fine," he said, 'but I wish you wouldn't do it with the money I paid in for my Social Security pension. If Congress wants to make this a public assistance program and relieve the states of their welfare burden, shouldn't they do it with tax money appropriated for that purpose, instead of money deducted from payrolls for Social Security benefits?"

At this point, Mr. Smith glanced at his watch. "I'm afraid we've been taking a lot of your time," Joanes said.

"Not at all. It's important that you both understand the rights and responsibilities of the Social Security program. And as the Commissioner often says, we are always interested to hear the views of the public and the people we serve."

Joanes stood up. He cocked his chin. He spoke not so much to Mr. Smith as to the world. "Well, tell the Commissioner, if he's interested, that I think the Government is singling out people between 65 and 72 to impose on them the heaviest tax rate in the nation—to penalize them with a tax that no other group of citizens pays. I think those people should be encouraged to work and generate taxable income instead of rigging the system to keep them from working.

"I think it's impossible for you to justify double taxation on a working husband and wife, when they generally get no more for their extra burden than families with one earner. I think the discrimination against women in this matter is shameful, and I'm amazed that they submit to it.

"I think it's atrocious to make workers over 65 continue to pay a Social Security 'contribution' so as to provide them later with a pension they've already paid for and aren't getting. If a private company tried a rip-off like that, Congress and three department of the Federal Government would be screaming bloody murder and they would have it in court on Monday morning."

"You've been very obliging," Mrs. Joanes said. "Thank you." They shook hands and left.

After some deep thought and much writing of figures, Joanes decided to give up his job at the county hospital and accept his Social Security payments. He expanded his cellar workshop and began a modest part-time business in repairing, refinishing and occasionally selling antique and semi-antique furniture. He did not advertise, he wrote no bills or receipts, and he conducted his dealings in cash.

CARL VINSON'S OBSERVATIONS ON NATIONAL SECURITY

Mr. TALMADGE. Mr. President, the Honorable Carl Vinson, former chairman of the Armed Services Committee of the House of Representatives, was recently interviewed by Air Force Magazine, and the interview was published in the magazine's August issue.

Mr. Vinson served in the House of Representatives 50 years, and was chairman of the House Armed Services Committee 14 years, and chairman of the old Naval Affairs Committee for 16 years. As chairman of these two very important standing committees of Congress, Mr. Vinson played a leading role in developing a defense system that has insured our Nation's security and well-being in times of war and peace.

Although Mr. Vinson has retired from Congress and makes his home at Milledgeville, Ga., we value very highly his observation and counsel on matters of national security. I read his interview with a great deal of interest, and bring it to the attention of the Senate.

I ask unanimous consent that the interview, along with a personal profile of Mr. Vinson by Mr. Stockstill be printed in the RECORD.

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

[From the Air Force magazine, August 1974]

THE VIEW FROM MILLEDGEVILL, GA.

(By Louis R. Stockstill)

"Intelligence, and reflection, and judgment rest in old men, and if there had been none of them, no states could exist at all."

The words are those of Cicero, and we find them marvelously appropriate to introduce the following interview with Carl Vinson, the eldest elder statesman extant in the field of national security. Readers of this magazine will remember the interviewer, Lou Stockstill, best for his article "The Forgotten Americans of the Vietnam War," in our October 1969 issue, which told for the first time of the shameful treatment of American POWs in Southeast Asia and set off a series of reverberations that eventually resulted in the return of those who survived. In his former capacity as editor and congressional correspondent of the Armed Forces Journal. *Stockstill came to know Carl Vinson well, as a news source and as a friend.*

We thought it appropriate that Stockstill go to Milledgeville, Ga., to see how the first and longtime Chairman of the House Armed Services Committee now views the kinds of problems he had been so adept at solving in past years.—The Editors

Q. Mr. Chairman, after more than fifty years in the House of Representatives, you have now been in retirement for ten years. Still, I imagine that in your leisure time, you continue to reflect on many of the current issues of national defense.

A. Now, Lou, you know that an old man, out of public office for ten years, should be seen very little, if at all, and heard even less.

Q. In your case, Mr. Vinson, I doubt that ever will be true. Many of our present leaders and members of our armed forces would consider themselves fortunate if they could benefit from your wisdom and know some of your thoughts about the trends and issues that affect our military posture.

A. Well, naturally, I continue to be very interested in matters affecting our armed forces and the security of the United States. But you have to remember that I no longer have any close, personal knowledge of most of these matters. I try to keep informed about what's going on. I read four daily newspapers, I read the New York Times' weekly news round-up, and I watch the major national news programs on TV every night. But that's about the extent of my knowledge. If you keep that in mind, I'll try to answer your questions. Now, what is your first question?

Q. One of the big questions remaining from the Vietnam War has to do with men who evaded the draft and refused to serve, or who deserted military service and fled to another country. How do you feel about amnesty for these men?

A. I strongly oppose any general amnesty. We should never encourage the idea that military service is something that can be shunned at the whim of the individual. When a man evades the draft or deserts his uniform, it means another young man has to take his place and perhaps fight, or be wounded, or even killed. And it would be unfair to these other young men to allow those who shirked their responsibility to go scot free.

Q. Do you favor some provisional amnesty that would give them, so to speak, a second chance? Recently a former Secretary of the Army told a congressional committee that these men all had one thing in common—they were all young and they all made a mistake.

A. I heard that testimony, too. Perhaps they were young and made a mistake, but from what I've seen of those being interviewed on TV, few acknowledge or even know they made a mistake. Their attitude is not one to encourage widespread support for amnesty.

I think every case will have to be considered on its merits, and if the man owes a debt to society, he must pay it. Unless we deal firmly with this problem, we will only encourage disrespect for our armed forces and for the millions of young men who have served their country honorably.

Q. This might be an appropriate place to discuss the efforts that are being made to

man the services with an all-volunteer force. Do you believe this program will be successful?

A. No, I do not. From what I gather to be the case even if we get all of the men we need, they won't all be of the caliber we need.

The profession of arms is an honorable profession, and money alone won't fill the ranks. You can't buy patriotism, and you can't buy loyalty. And from what I've been reading lately about the thousands of dollars in bonuses that are being offered for reenlistment and to keep medical officers and other specialists, it seems to me that the costs are getting entirely out of hand.

But even if we can afford the dollar costs, we can't afford the risk of filling the ranks of the armed forces with men who are not fully qualified, men who are not high school graduates, or who are below average in intelligence.

Sooner or later I think we'll have to go back to the draft. And I hope we don't wait until its too late. I think Congress should reinstate the draft right now.

Q. The Secretary of Defense has stated that the maximum attributable cost of the volunteer force during Fiscal Year 1975 will be about $3.7 billion; the total military manpower price tag is almost $32 billion, however—or more than one-third of the entire Defense Department budget for the coming fiscal year. What effect do you think these growing manpower costs are having on other Defense Department programs?

A. They are bound to have a profound effect. Weapons costs never stop going up, and if you have to set aside billions of dollars for your payroll, then obviously, in a tight-money situation, you'll have less to spend on weapons and other programs.

And, of course, we are facing another tight-money situation. After every war, our defense expenditures have always been tightened up. The same pattern is shaping up again. The actual dollar outlays may be greater, but what we can buy with the money is a lot less.

Q. Do you find this alarming?

A Yes, I do. Russia is our major potential adversary, and the Soviet Union's weapons have become more and more sophisticated and she is constantly improving her arsenal. We cannot afford to let Russia overtake us. We have to improve our bomber force, and we must keep our missile superiority, and we must improve our submarine force and constantly modernize and strengthen our Navy so that we'll continue to be second to none.

Q. Do you think the Strategic Arms Limitation effort and the present policy of détente will enable us to reduce our Defense expenditures?

A. Well, let me say this. We must strive to use every means at our command to create a more peaceful world. But our leaders can only go to the conference table with confidence as long as we are as strong as or stronger than any potential adversary. Any reductions we might make must be made only when we are absolutely sure that we are not lessening our safeguards.

Q. Mr. Chairman, there has been some recent talk in Washington about a possible move within the Defense Department to reorganize the armed forces and perhaps change some of the present roles and missions. would you encourage a new look at the present structure of the services?

A. I don't know of any particular need to look at it, but I don't know all of the background. I do know that the present organization and present roles and missions were hammered out in the Eisenhower Administration, and they are well defined and well understood. There's no harm in reviewing the structure from time to time, of course, but changes should not be made unless they offer strong, justifiable improvements.

If anything needs to be reviewed today, I think it might be the ratio of fighting men to the ratio of support forces. If we need to revitalize the services, we should probably tighten up the support structure.

When we created the Air Force, for example, we created it so we would have a superior force of pilots capable of performing all essential air missions. I think we may have gotten too far away from that concept, and that the Air Force could possibly strengthen its rated-officer structure and pare back in some of the areas that are not directly related to its primary combat missions.

And the same thing holds true for the other services, as well.

Q. With respect to Air Force pilots, you probably are aware there have been some drastic changes in the methods of determining eligibility for flight pay, and that this matter is still under study and revision in the Congress. What is your reaction to this? [*The new flight pay bill was signed into law on May 31 and became effective June 1.*

—The Editors]

A. Unquestionably, we have to pay pilots a premium. It costs millions to train them, and once they're trained, we have to make every effort to keep them in uniform. I'm not familiar with the changes or proposed changes in flight pay, but I would say this:

If changes are made, they must be designed to increase the attractions of a military career in flying and to improve the pilot retention rate. Any change that won't enhance these two goals won't be worth making.

And, from my experience, I would say that that principle applies across the board to most armed forces manpower needs. It applies particularly in areas of highly specialized training where the government foots the training costs.

Q. Mr. Chairman, I know you have been concerned about the effect of the recent energy crisis on our military preparedness, specifically as it related to the petroleum reserves set aside for defense use. Could you comment on this and on any related concerns you have about future energy needs as they apply to the armed forces?

A. This is a subject I'm glad to talk about. The fate of these special petroleum reserves has worried me a great deal the last few months.

The Administration wanted to start pumping this oil. They wanted to pump out more than we took out during all of WW II—as much as 200,000 barrels a day, compared with 64,000 barrels a day that we used during the war.

Of course, it's up to Congress to decide this issue. But, personally, I opposed it and will continue to oppose it. And I hope and trust that the Congress will insist on keeping this oil right where it is—in the ground.

These reserves were set aside for defense needs in wartime. If we allow this oil to be used for every kind of emergency, we run a grave risk of eventually having no backup supply in some future time of national danger.

Petroleum shortages, in a situation like the crisis we just weathered, may hamper us and hold us back and cut out Sunday driving, but unless they threaten our national survival, we must hold onto our defense reserves.

It's an old saying, but I'll repeat it, anyway. You can't eat your cake and have it. If we draw on these reserves now, they won't be there when we really need them.

Q. Do you foresee any steps we should be taking to improve the long-range energy requirements of the armed forces?

A. Well, one thing everyone learned from the recent crisis is that we can no longer afford to depend on foreign nations to fulfill our energy needs. We have to move ahead rapidly in achieving maximum independence. We must make every effort to increase all of our energy resources and output.

Personally, I think we should launch a new, all-out effort to capitalize on the pioneering success we had in harnessing the atom. We all know what the Manhattan Project achieved. And I think that a similar effort could produce atomic power for all of our naval vessels and that we could still produce an atomic-powered aircraft engine.

The nation that put the first man on the moon certainly has the ability to solve the problem of repackaging the atom.

One way that we could go about it would be to set up a program that would assure the utilization of all of the magnificent brainpower that is now being drained out of the space program. These scientists and engineers already have demonstrated that they can do the impossible. If we gave them whatever additional experts they might require and reorganized them into a task force charged with finding new answers to our energy needs, I believe they might amaze us, all over again.

But no matter what form the effort takes, we shouldn't delay a minute in getting on top of this problem. Every potential means of improving our energy resources must be thoroughly explored and exploited, not only for the benefit of the military but for the benefit of every citizen of the nation.

Q. Two final questions, Mr. Chairman: First, how do you view the performance of the House Committee on Armed Services since your retirement?

A. The Committee has done an outstanding job. The membership has changed substantially since I left, but I think that the late Mendel Rivers made a great record as Chairman, and I think Eddie Hébert has demonstrated that he may be the finest Chairman the Committee has ever had.

You know, Eddie was always one of the hardest working, most knowledgeable, and most thorough Chairmen who ever served under me. He proved himself long ago when he first headed the Investigating Subcommittee, and he continues to demonstrate superior qualities of leadership.

It has pleased me to see the Committee continue its long-standing policy of nonpartisanship. When it comes to the defense of our country, no issue must ever be decided in a partisan atmosphere.

The ranking Republicans on the Committee, Bill Bray and Les Arends, and the senior Democrats, Mel Price and O. C. Fisher have always been stalwart believers in this philosophy, and I know they have given Chairman Hébert strong support in maintaining this essential method of examining our defense requirements.

Some of the other members who started out as freshmen congressmen when I was Chairman, who impressed me at the time, and who continue to impress me with the caliber of their endeavors, are still there—Charley Bennett, Sam Stratton, Otis Pike, Bob Wilson, and Dick Ichord. They are all strong men, and as long as the Committee has leaders like them, it will continue to make a fine record.

Some of the outstanding members, like Les Arends, O. C. Fisher and Charley Gubser are retiring at the end of this Congress, but I have faith that their replacements will try to serve the interests of their country, with the same honesty and integrity that these men and the long line of their predecessors have always exhibited.

The Committee has a proud heritage. It is respected and admired. If those who now serve on the Committee, or who join it in the future, want to take pride in their service, they will continue to uphold and build on the Committee's reputation for hard work and no nonsense.

Q. Do you have any advice for the newer members of the Committee?

A. If I were in a position to advise them, the most important message I could pass along would be this: Never allow geographic concerns, or narrow constituent concerns, or

private or political or vested interests, or any such interests to influence your vote on issues of national security. Your main concern, always, must be the welfare of the United States of America.

Ten minutes later the phone rang. It was Mr. Vinson with a terse command for me...

"GET ON OUT HERE"

(By Lou Stockstill)

The 300-acre Vinson home, River Ridge Farm, sits astride an unnumbered state highway four miles south of Milledgeville, the old, pre-Civil War capital of Georgia.

The rolling, well-maintained road is bordered with a heavy carpet of red clover, towering pines, and green pastures. As you leave the outskirts of Milledgeville, a signpost identifies the road as Vinson Highway.

But when you reach the farm, there's nothing to indicate that it belongs to one of Georgia's most illustrious sons. A thick privet hedge marches along the road in front of the half-moon driveway curving up to the house. Tall magnolia, nandina, dogwood, and other trees and shrubs enfold and dwarf the spacious white frame residence so that it appears deceptively small and inconspicuous. Most travelers would pass it by without paying it much attention—a fact that suits the man who lives there.

He has always walked apart from the common herd, and guarded his privacy with zeal. Retirement has not changed him. Unlike many former colleagues who have retired or been defeated but continue to haunt the halls of Congress, Carl Vinson has never been back inside the US Capitol since he stepped down as Chairman of the House Committee on Armed Services ten years ago.

Of course, friends from "Washington City" come to Milledgeville. Recent visitors have included Mel Laird and Bryce Harlow, before they left the White House as senior advisers to the President; House Armed Services Committee Chairman F. Edward Hébert; the Secretary of the Navy; the Chief of Naval Operations; former Sen. Margaret Chase Smith; and Rep. and Mrs. Bob Sikes.

He welcomes these visitors and the chance to hear first-hand news about the Congress and official Washington. But in the quiet days when there are no visitors, he keeps busy on the farm and with his office in town and his correspondence, and he is content.

For my first interview with Mr. Vinson, I was late—not by the clock, but by his own personal timetable, which has built-in pitfalls even for the wary.

Before I left Washington, I had talked with him on the telephone. He had reserved a room for me at the Holiday Inn, about two miles on the other side of Milledgeville from the farm. And he had told me to telephone him when I arrived.

From previous experience, I knew this did not mean thirty minutes or an hour after my arrival, but the instant I checked in. So I quickly placed the call.

"All right, Lou," he said, "now you go through town and stop and see Till and then come on out to the farm."

"Till" is a former assistant of Mr. Vinson's who also is retired. He and his family live in Mr. Vinson's former townhouse on Montgomery Street, where Mr. Vinson grew up, just around the corner from Georgia College. It's about a ten-minute drive from the Holiday Inn, and I was there in less than fifteen minutes.

Till and I chatted for another ten minutes, and then the telephone rang. We both smiled in the knowledge of what it foreboded. And we were not wrong. It was Mr. Vinson.

"Where is Lou?" he wanted to know. "Right here," Till said. "Well, tell him to get on out here," Mr. Vinson commanded, "I'm waiting for him."

Those who know Mr. Vinson best are familiar with his idiosyncracies and find them amusingly endearing. I would be treated to others over the next three days. When a man has served in the House of Representatives for more than half a century (longer than anyone in our history) and chaired a major congressional committee for thirty years (also a record), it is difficult not to become a little imperious.

I got on out.

We spent the afternoon reminiscing and talking about current activities of old friends, what they're up to and what the government is up to. And then we drove back into Milledgeville for an early dinner.

Mr. Vinson has never driven a car, has never learned to drive. And he tends to be suspicious of the competence of those who do sit behind the wheel.

As we headed back into Milledgeville, I waited for my first instructions. They were not long in coming.

"Now, Lou," he said, "you're driving too fast. You'd better slow down or you'll get a citation."

I was doing thirty-five in a forty-mph zone, so I slowed down.

During dinner I had no need to outline my planned schedule for the interview that had brought me to Milledgeville. Mr. Vinson, as I had anticipated, already had thought out an agenda:

"Now, we'll go back to the farm after dinner, and watch the evening newscasts, and then we can talk until time to go to bed. And in the morning you can come back out and I'll try to answer some of your questions. And that's the routine we'll follow."

And so it was. We spent mornings on the interview. But in the evening, we watched the TV news programs. And then, until 10:00 or 10:30 each night, we discussed the people and events in the news and then rambled through a great many other topics.

The conversation frequently ranged back in time. Mr. Vinson talked about his family. His grandfather helped survey the state in its infancy. An uncle served in the Georgia legislature before the Civil War. He is particularly proud of two present-day members of the family: a nephew, Army Maj. Gen. Wilbur Vinson, who commands the Southern European Task Force, headquartered in Italy; and a great nephew, Sam Nunn, who represents Georgia in the United States Senate.

Mr. Vinson talked about some of his own campaigns for the Congress.

He recalled the events involved in his first race for the U.S. House of Representatives, sixty years ago. His memory at any age would be remarkable, but at ninety years and six months, it is little short of phenomenal.

Remembering that first campaign in 1914, he talked about a speech he made in August "at noon" on a "wet, gray day." He recalled the first words he spoke and the effect they had on his audience. And he recited the names of all of the counties he carried to win the race, as well as those he lost.

As he talked about his early days in Washington City, he remembered vivid and specific details about the numerous rooming houses, boarding houses, and hotels where he lived as a bachelor (their names, locations, the amount of his rent, and the names of others who lived there). He still remembers the exact price he paid for the modest frame house he bought in Chevy Chase after his marriage in the depression years.

He recalled the automobile trips he and Mrs. Vinson made to Georgia in those years (with "Mary" at the wheel). "There were only two small paved stretches of road the entire distance, and one of them was paved with brick. The trip took four days each way."

Sometimes the memories crowded in thick and fast. They were well larded with humorous anecdotes.

On his first visit to the White House after John F. Kennedy became President: "He told me to sit down and motioned to a rocker. I said, 'Mr. President, I know the Executive and the Legislative are coequal branches of government, but in the old days when I came to see the President I always stood in front of the desk. It's easier to end an interview if only one person is seated.' And President Kennedy laughed and told me, 'Well, in that case you sit and I'll stand.'"

In another discussion, I mentioned to Mr. Vinson that I had never seen him angry. "Well," he said, "anger is an emotion no man can afford."

He remembered a House colleague who had been elevated to the chairmanship of another committee and who came to ask advice about how to keep the committee members in line. "I told him to get a copy of the House Armed Services Committee rules and just follow them to a 'T', and he wouldn't have any trouble."

But before long, Mr. Vinson said, the colleague was back, bemoaning the fact that his committee members had all but wrested his powers right out of his hands. "Your rules didn't help a bit," he complained.

Mr. Vinson told him, "It wasn't my rules that did it. The trouble is, you got all of your members mad at you. I never let more than four or five members get mad at me at any one time."

During the evenings I spent with Mr. Vinson, we both laughed a great deal. He has always had a marvelous sense of humor.

Sometimes as we talked and laughed, from the comfort of the two big, overstuffed rocking chairs on his enclosed back porch, it was difficult for me to remember that I was sitting with a man who was a powerful influence in the nation when I was still a schoolboy; a man who has personally known nine Presidents of the United States; who is the only living member of the historic Aircraft Board, appointed by President Calvin Coolidge, that blueprinted the future of American commercial and military aviation.

I have known Carl Vinson for twenty-four years. Most of the time, I would find myself thinking of him as a contemporary. And I would momentarily forget that this is a man who also knew Billy Mitchell, who argued with Herbert Hoover, who battled with Dwight Eisenhower, and who served as mentor to such fledging congressmen as Lyndon Johnson and "Scoop" Jackson—a man who was the architect of the two-ocean navy and who played a major role in the development of almost every aspect of America's present-day military might.

But then I would remember. And I would be grateful that AIR FORCE Magazine had given me this opportunity to once again spend some time with a great American who, only incidentally, is an old friend.

STATEMENT OF SENATOR JESSE HELMS BEFORE SENATE RULES COMMITTEE

Mr. HELMS. Mr. President, today I appeared before the Rules Committee to comment on the adequacy of the present Senate rules on impeachment trials. Inasmuch as I am not a lawyer I confess that I was somewhat hesitant in making the decision to offer those comments. On the other hand, there was the reality that the proposals of some to amend the rules anticipate the possibility that the Senate may shortly be faced with the necessity of conducting a trial in which I, as a nonlawyer, would appear in the role of a judge.

I am not alone, of course, in being a nonlawyer in the Senate; in fact, not even all of the distinguished members of the Rules Committee, which will report

any changes to the floor, are members of the legal profession. Needless to say, I hope that my comments are relevant.

Each one of us will take an oath that in all things pertaining to such a trial we will do impartial justice, faithful to both the Constitution and the law. If we depart from the high standards of the present rules, history is bound to question whether impartial justice was done in this awesome responsibility which may confront us.

I hope that the rejection of the en bloc changes will foreclose any further consideration of the proposals contained in that draft. Those proposals represented a dangerous politicalization of the trial procedure, opening the door to the manipulation of evidence, and the alteration of the charges against the respondent while the trial is in progress. It would be foolish to ignore the probability that a significant segment of the American people would feel justified in concluding that such a trial was a mere political show trial conducted for the purpose of a purge. Such a trauma would be extremely divisive and threaten the fabric of the body politic.

Indeed, the proposed changes would fly in the face of our oath to do impartial justice, according to law. Mr. President, the Senator from North Carolina has deep feelings that the Senate should not violate that oath, and I, for one, shall not consent to its doing so.

The changes which were proposed would have made it impossible to conduct fair trials in the future. You will note that I said "trials" in the plural, even though the general assumption is that we are preparing for a single trial. But surely the rules are not to be changed ad hoc, to suit the particular case at hand. That would be a very negation of impartial justice. And yet, if we change the rules now in the midst of an emotional confrontation, it will be very clear that politics is ruling, instead of justice.

The point is this: Any amendment in an impeachment proceeding should be able to get a fair trial in the U.S. Senate. It is almost equally important that it should appear to the public to be a fair trial. The Senate must be particularly scrupulous about removing all political considerations from its judgment.

I wish to say at this point that I intend to remove all political considerations from my mind if the President is impeached by the House of Representatives. From a purely political and philosophical standpoint, Mr. President, I am frank to say that the President has often failed to provide a quality of political leadership to match his undeserved image as a political conservative, moreover, a distressing number of his promises have fallen unfilled into a chasm of default.

It is a matter of record that I have been critical of the President's performance in both foreign and domestic affairs. I do not wish to catalog here the concessions by his administration to nations avowedly hostile to the principles and best interests of the United States, resulting in the alienation of our allies and friends. Frankly, Mr. President, I have been dismayed that the United States has not regained a position of strength and influence in this world.

Nor has there been consistent leadership, in my judgment, in bringing our fiscal policies under control, in reducing Federal spending; or in minimizing Federal control over the policies of the States and the lives of our citizens. In all candor, I have been discouraged, as have many others in the Senate, by the President's failure—indeed, his refusal—to appoint people to countless positions in the Federal bureaucracy who would have executed the policies promised to the American people.

The record will show that I have not shrunk from voting against the nominations of some of the President's highest officers, including Secretaries of State and Labor. I have seen him, or certainly his agents, default on what I considered to be clear and important assurances to members of this body and the House of Representatives.

In short, if impeachment and trial were intended to be conducted on the basis of disappointment with political or philosophical grounds, the President would have little to expect from this Senator from North Carolina. But I reiterate, Mr. President, that this is the very point: I reject the argument of political necessity. I have known the President personally for over 20 years. I like him personally, I am devoted to his family. Yet he seems to be, in many ways, a tragic figure who has allowed himself to be buffeted by hostile winds. But the point remains, Mr. President, the President deserves a fair trial—on the evidence, evidence without any political consideration at all. He deserves no more and no less than any other citizen of the United States under our laws.

That is why I am deeply disturbed by the trend of thinking which was exhibited in the draft rule changes which were circulated to the Senators. And even though the draft resolution has apparently been rejected by this subcommittee, I hope that Senators will further resist any changes whatsoever which adopt in whole or in part the direction of that rejected proposal. Accordingly, I will address myself to some of those key points at this time.

I might say that the current Senate rules of procedure for impeachment trials have been in effect for 106 years. They were adopted by the Senate in preparation for the impeachment trial of President Andrew Johnson in 1868. These rules of procedure, when adopted, reflected previously existing precedents. They have been only slightly modified since their adoption. Six impeachment trials have been conducted under them, and numerous historical precedents have developed during such trials to supplemented them.

I. ORDINARY RULES SET ASIDE FOR A LESSER STANDARD

The changes which were proposed would have substantially altered historical precedent in favor of the prosecution. For example, in the impeachment trial of President Andrew Johnson, it was held that ordinary rules of evidence apply and their strictness should not be relaxed. This holding serves as a reaffirmation of the American principle that a person, any person, should be tried only on relevant, competent fact, and not on innuendo, hearsay, and implication. Under the proposals which were offered there would have been a substantial relaxation in the evidence rules. I urge that the Senate not consider any changes which would relax the ordinary rules of evidence.

But the concepts put forth in the draft resolution adopted an equity court standard, or an administrative law standard, as the basis for the admission of evidence. Under this standard, the Senate can allow virtually anything into evidence; in essence, the Senate need only decide that such evidence will further what the proponents of this change view to be the "interests of justice." In other words, the admissibility of evidence would be determined by each Senator based upon his personal determination of what constitutes the "interests of justice," rather than by the standards which have governed the admissibility of evidence in trials at law throughout our history.

II. SENATE AMENDMENT OF ARTICLES OF IMPEACHMENT

Mr. President, I would also like to point out that other changes which were proposed adopted the loose standards of procedure that are allowed in purely civil proceedings. Let me quote from one rule which was proposed, relating to the amendment of pleadings and the admission of evidence on issues not raised in the pleadings, as well as subsequent alteration of the pleadings to conform to the evidence. The proposal was this:

> If evidence is objected to at the trial on the grounds that it is not within the issues made by the pleadings, the Court (Senate) may allow the pleadings to be amended, and shall do so freely when the presentation of the merits of the action will be served thereby.

The proposed rule change I have just quoted is based on concepts and language to be found in the Federal Rules of Civil Procedure. In plain language it would allow the articles of impeachment drawn by the House to be amended by 51 Senators in the midst of the trial. Thus, if evidence is not admissible, it is only necessary to change the indictment so that the said evidence will be admissible. This is not only a travesty on impartial justice; it is probably unconstitutional.

III. ROLE OF CHIEF JUSTICE CURTAILED AND POLITICAL LEADERSHIP SUBSTITUTED

Mr. President, let us look at another one of the proposals. Under the changes, the traditional role of the Chief Justice of the United States will be substantially curtailed. He will be denied the right to vote in order to break a tie vote of the Senators on procedural or evidentiary matters. Historically, the Chief Justice has been allowed to vote in such cases. Furthermore, the Chief Justice may make rulings from the chair regarding these questions. His decisions carry moral weight, but they can be overridden by the majority of the Senate.

Two times in 1868, attempts were made

by Senator Sumner of Massachusetts to prohibit the Chief Justice from voting on any question during the impeachment trial. In both cases, Sumner's motions to this effect were rejected. On at least two occasions, therefore, Chief Justice Case cast votes to break ties. At the conclusion of the trial, the Chief Justice was called upon to perform the most critical task of all, the phrasing of the final question.

But what is important is that the Chief Justice is a nonpolitical figure. The proposed rules would have made another significant change which must be taken together with the stripping of the Chief Justice's functions. Under this proposal, the Senate majority and minority leaders would be designated as chief judges, with the assistant majority and minority leaders designated as deputy judges. The establishment of such positions is unprecedented. Under the proposed rule changes, these newly created chief judges and their deputies would have functions that are many and varied, including the determination of the "order of trial, and other relevant matters." In my view, this is an improper usurpation of the role and functions of the Chief Justice of the United States as contained in the present rules of procedure.

Surely it is no derogation of the character and ability of the majority and minority leadership to point out that by the very nature of their offices, they are political leaders. Indeed, they hold their offices by virtue of the political judgment of their peers. The distinctions between majority and minority are on the basis of party distinctions. Thus no matter how scrupulous and how fair their decisions, their acts would carry the coloration of political decisions. The powers proposed are based upon the analogy of legislative activity not upon judicial impartiality. It is in fact the very essence of partisanship, in the very best sense, that these men embody. Therefore, instead of having a nonpolitical figure, the Chief Justice of the United States, chosen ex officio because he is the highest symbol of impartial justice in the land, we would have the political leadership of the Senate in the decisionmaking role. And the results would be very unfortunate in winning acceptance from the American people.

IV. FISHING EXPEDITIONS AND AMENDMENT OF PLEADINGS

Let me give an example of what might happen, since the designation of chief judges and deputy chief judges ties right in with another proposed change, a change also lifted from the Federal Rules of Civil Procedure. I will quote what was proposed:

> With the approval of the Court upon recommendation of the Chief Judges and the Deputy Chief Judges, either of the parties (the managers, or prosecutors, from the House of Representatives and the President) may obtain discovery (of information) by any method that is authorized by the rules governing the procedure in suits of a civil nature in courts of the United States . . .

Furthermore, it is provided in these proposals that—

> It is not grounds for objection that the information sought may not be admitted at trial, if the discovery sought appears reasonably calculated to lead to the discovery of admissible evidence.

The breadth of this provision is such that it will allow vast fishing expeditions by the prosecution in order to find evidence that they hope will benefit their case.

Under these loose provisions, taken right from the Federal Rules of Civil Procedure, the prosecution may discover irrelevant information, put this irrelevant information into evidence at the trial, and then amend the articles of impeachment to conform to the otherwise irrelevant evidence.

Mr. President, where will it end? How can the President be expected to prepare a defense when he has no way of knowing what the charges against him will be from one day to the next? This is contrary to historical precedent, which requires that the evidence be limited to specific issues raised by the pleadings, that is, the articles of impeachment, and the respondent's answer.

Such proceedings, under political auspices, even though of the highest character and austerity, will never bring about the reconciliation that our Nation needs today. No matter which way the decision goes, the bitter feeling will remain that politics, not justice, decided the result.

V. LESSER BURDEN OF PROOF BASED UPON CIVIL PROCEEDINGS

In the proposed rule changes, the definitions of "conviction" would have been strikingly different. The proposal reads as follows:

> Conviction means a finding by two-thirds of the judges present that any article is sustained by clear and convincing evidence.

Now the present rules do not contain any standard regarding the burden of proof that must be carried by the managers or prosecutors from the House of Representatives in order to justify a conviction. Each Senator will have to set up his own standard. But I believe that every Senator has the moral obligation to use the highest standard in a case which involves the highest office in the land. As I indicated before, I am not a lawyer. Most Americans are not lawyers either, and they may not understand the distinctions which constitute a kindergarten primer to such distinguished members of the bar as we have in the Senate.

But my understanding is as follows: Burden of proof is, in essence, the standard by which a person who alleges a proposition must establish its truth. If that person fails to establish the truth of his proposition in accordance with the requirements of the applicable standard, his case fails.

In American law there are three different types of burdens of proof. In other words, there are three different standards of proof. They are entirely separate and unrelated to one another. Each standard is applied in a particular type of trial, and no other.

The first and most lenient standard is known as "preponderance of the evidence." Under this standard, the party asserting allegations need only tip the mythical scales of justice slightly in his favor in order to prevail in the trial. This standard applies in most civil law suits.

The second, and somewhat more strict standard is known as "clear and convincing proof." Under this standard the party making allegations must tip the scales substantially in his favor in order to prevail in the trial. This standard applies only in a very limited range of civil cases. Examples include an action to set aside a deceased person's will, or to modify a written transaction.

The third standard is known as "'beyond a reasonable doubt." Under this standard the party making the allegations must tip the scales so completely to one side, in his favor, that the triers of fact—the jury—can determine to a moral certainty that the matters alleged are true, or the party cannot prevail. This standard applies in all criminal trials.

Our precedents have always treated an impeachment trial as though it were a criminal proceeding. Jefferson, in his manual, considers it as such, and cites many precedents in Anglo-Saxon law. For example, Jefferson cites the following:

> This trial, though it varies in external ceremony, yet differs not in essentials from criminal prosecutions before inferior courts. The same rules of evidence, the same legal notions of crimes and punishments prevailed; for impeachments are not framed to alter the law, but to carry it into more effectual execution against two powerful delinquents.

Let us look at that proposal carefully, Mr. President. First of all we are dealing with a proceeding which by precedent, is analogous to a criminal proceeding. For the respondent, the issue is one of transcending value. In such a case, the consequences of the decision are so grave that the prosecutor must be held to the highest burden of proof in establishing the truth of the matters alleged. If a mistake is made, it should be made on the side of the defendant. Society has long ago agreed that it is far better for a guilty man to go free than for an innocent man to be judged guilty.

Yet the standard of "clear and convincing proof" is far less strict. In civil cases, a lawsuit is essentially a search for probabilities. In the view of society, a mistaken judgment for the plaintiff in a civil case is no worse than a mistaken judgment for the defendant. In a criminal proceeding—and an impeachment trial is analogous to a criminal proceeding—the consequences of a mistake would be so grave that we cannot in all conscience adopt a lesser standard than "beyond a reasonable doubt."

Mr. President, I seek for the President of the United States that which I would, with equal persistence, solicit for every American—a fair trial, a trial as fair as human frailties will permit. I hope—indeed, I pray—that my colleagues in the Senate will unite in setting for themselves the higher standard. I shall urge them to use as their guideline the standard of proof of beyond a reasonable doubt.

The Constitution, article III, section 2, recognizes that an impeachment trial is a criminal trial when it states that—

The trial of crimes, except in cases of impeachment, shall be by jury.

As such, the burden of proof used in a criminal trial is the standard that must be used. Thus, the standard "beyond a reasonable doubt" is the proper standard.

VI. MAXIMUM SUMMARY JUDGMENT WITHOUT MITIGATING CIRCUMSTANCES

Finally, Mr. President, let me point to just one more proposal, which was made in the draft resolution. The Secretary of the Senate would be required to "forthwith prepare, sign, and enter the maximum judgment authorized by the Constitution of the United States, without awaiting any direction by the Senate, upon conviction of the respondent on any count."

Only when the Senate otherwise orders it will this procedure be abated pending the Senate's final determination of the judgment.

In other words, the Senate does not, by the very judgment procedures it sets up, give the respondent the presumption of a judgment which may be less than the maximum required by the Constitution. In essence, this raises the presumption of removal from office in the very procedures themselves, without giving the Senate the opportunity to make this decision itself. Mitigating circumstances cannot be taken into account. Rather, the Senate by its vote for conviction automatically requires the strongest penalty the Constitution allows.

Under procedures now in use, "if the person accused in such articles of impeachment shall be convicted upon any of said articles by the votes of two-thirds of the Members present, the Senate shall proceed to pronounce judgment." Here the Senate must determine what judgment it shall pronounce. It must determine whether its judgment will be "removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the United States," or whether it will be a lesser judgment, which the Senate, in its discretion, may decide upon.

Mr. President, what we have here is a prejudgment, in part, of the outcome, before the trial has even begun. It is a judgment that there can be no mitigating circumstances. It is also a circumstance that will be taken into account by many Senators, and it will doubtless affect the outcome of their decisions. For many of them will never vote to convict, if such a conviction means a maximum summary judgment.

Mr. President, if we are going to have a political trial, then so be it: let it be a blot upon American justice. It should be sobering that the only precedent we have for the impeachment of the President is a trial which, by the standards of universal contemporary judgment, was a politically motivated power struggle of the most sordid kind.

PRESENT RULES SHOULD NOT BE CHANGED

The present rules were devised by the enemies of President Andrew Johnson as the minimum required by both precedent and a decent facade of justice. They represented the outer limits beyond which even those men felt they could not go. But today we are being asked to go further, a circumstance which greatly beclouds the prospects of a fair trial. And in the end, they were fair enough to prevent the conviction of Andrew Johnson by one vote.

Any other President deserves the same. Let any conviction that may be forthcoming be based upon the traditional American standards of criminal justice. Those standards are presently embodied in the Senate rules and precedents for an impeachment trial. Let us not subvert those rules one by one, and distort the outcome of history. If justice is to be impartial, and the Constitution and the laws upheld, the rules must not be changed.

IT IS FEASIBLE TO CONVERT WASTE MATERIALS INTO FUEL AND FOOD SOURCES

Mr. PROXMIRE. Mr. President, on May 22, 1974, a representative of Mobil Oil Corp. testified at hearings before the Subcommittee on Priorities and Economy in Government, which I chair. The hearings were called to investigate the process that the Army Natick Laboratory has developed for converting waste materials into glucose. Glucose is a basic substance that can be used to produce ethanol, a potential energy source, other chemicals and protein which can be fed to animals.

After Mobil received my invitation to testify before the subcommittee, it sent a team of four researchers to observe the work underway at Natick. The research team collected information that was used in Mobil's prepared statement.

MOBIL FINDS NATICK PROCESS PROMISING

In his statement, D.C. Clewell, senior vice president of Mobil Oil Corp., after thanking the subcommittee for calling his firm's attention to the work being done at Natick Laboratory, said that the work seemed promising and he strongly recommended that it be continued.

Although Mobil believes that this kind of research should be sponsored by the Government until the commercial application is well established, the Mobil spokesman endorsed the efforts now underway and encouraged the Federal Government to continue them.

MOBIL AD PRAISES THE NATICK PROCESS

In the past week, Mobil has been running advertisements in the Washington Post, the Washington Star-News, and other newspapers across the Nation. The ad is entitled, "Garbage Is Not a Smelly Word" and it tells the story of the Natick Laboratory's important discovery and the process that they are developing.

Mobil points out in their ad that the products that result from the Natick process can be used as an industrial solvent, as a chemical "building block" for making many useful products, and as an additive to gasoline in blends of from 5 to 10 percent ethanol which could stretch future gasoline supplies.

In fact, several countries are already using ethanol as automobile gasoline additives, notably Brazil.

NATICK PROCESS MERITS GREATER GOVERNMENT SUPPORT

I am delighted that the Mobil Oil Corp. has come forward to publicly support the efforts at the Army's Natick laboratory. I wish I could say the same thing about the Federal Government.

It is true that the Army has been supporting the work at the Natick Lab up to now. But its support has been only minimal, paying mainly for the salaries of the few Government employees working on the conversion process. Recently, some equipment was purchased for a prepilot plant.

Much more is needed if the full potential of this important process to be realized.

The National Science Foundation has informed me that the Natick process is feasible and that more research is necessary to refine the economic estimates and to improve the process.

I am now awaiting the results of feasibility studies by the Federal Energy Office and the Environmental Protection Agency, whom I also invited to testify at the May hearings.

I ask unanimous consent to print in the RECORD the Mobil Oil Corp. ad from the Washington Post, July 25, 1974.

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

GARBAGE IS NOT A SMELLY WORD

Today's tale begins with a rotted cartridge belt in New Guinea. A team of U.S. Army Scientists scraped a sample of fungus off the belt and sent it back to the Army Laboratory in Natick, Mass.

The object: to learn more about how jungle rot attacks equipment and clothing.

The research people at Natick were fascinated by the fungus. It was a greedy strain that rapidly reduced large amounts of cotton to small amounts of glucose. A thought came: Would this be a way to get rid of old rags, waste paper, garbage, and other kinds of solid organic waste?

They nurtured the fungus. Greedier mutants were produced and studied. One mutant is a real glutton; it may be the key to a new process that will help dispose of municipal trash by converting a large part of it into glucose.

Glucose is a form of sugar. It can be made into molasses to feed farm animals. It can be consumed by other micro-organisms to make protein for animal or human consumption. It also can be fermented into ethyl alcohol.

You can do lots of things with alcohol. It's an industrial solvent. It's a chemical "building block" for making many useful products.

You also might run an automobile on a blend of gasoline and 5 to 10% alcohol. That could stretch our future gasoline supplies.

Which is why a Mobil research team, including a microbiologist, visited the Natick lab. The team reported: "It's long-range. They need time to develop a commercial process. But it's promising."

Meanwhile, another government research group—at a Bureau of Mines lab near Pittsburgh—has developed a way to change garbage directly into oil, without going through the glucose stage. They plan to build a pilot plant this year to test their new process.

Other developments are even more advanced. In St. Louis, the Union Electric Company consumes 300 tons of trash a day. First it separates the tin cans, bottles, and other materials that can be recycled. Then it burns the high-energy trash (garbage, plastics, paper, wood) to generate electricity.

Connecticut plans to build ten regional plants to do the same on a statewide basis.

Trash has some advantages over oil, natural gas, and coal. It's renewable. We don't have to buy it from foreign countries. And we have to dispose of it anyway.

All of a sudden, garbage is beginning to

look more like a national resource than a public nuisance. It's no longer a smelly word.

SERMON ON FAITH, MORALITY, AND POLITICS BY SENATOR McGOVERN

Mr. HATFIELD. Mr. President, the senior Senator from South Dakota (Mr. McGOVERN) recently delivered a sermon concerning faith, morality, and politics. The Senator stated:

Our deepest problems are within us—not as an entire people—but as individual persons.

Further, regarding our present national difficulties, he made this observation about Watergate:

We must learn from it the larger lessons of moral life—that government, too, must be guided by faith—that we must have a fundamental stirring of our moral and spiritual values.

The Senator's sermon is an illuminating analysis of how Christian faith is related to political action, and is a timely comment on the events of our day. I ask unanimous consent that his sermon, delivered at the First Methodist Church of Wagner, S. Dak., on July 28, 1974, be printed in the RECORD.

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

This is a comfortable setting for me. As most of you know, I have been a seminarian and student pastor, and I have also been a teacher. And both of those callings have stayed with me. Some observers think my speeches sound too much like lectures, and others think they sound like sermons.

Whether those qualities are a strength or a weakness, they are personal traditions we have in common. I hope we also share the conviction that such traditions have an important place in our public life—that a public servant must teach and learn from the people in constant dialogue—and that a public official must witness to moral principle as he works for particular policies.

A few years ago I read a radio sermon delivered by the Reverend Joel Nederhood of "The Back to God Hour," broadcast from Chicago. The sermon was about the faith of our politicians. Dr. Nederhood contended that Americans have adopted the dangerous custom of separating their morality from their evaluation of their leaders.

He said:

"To suggest that one's faith might influence a person in his discharge of public office, apparently, is akin to suggesting that the man is guilty of dishonorable conflict of interest. Thus, while candidates for public office often claim some kind of membership in a religious body, they ordinarily disavow any connection between their faith and their views of public policy."

I believe this is wrong for a Nation whose Founders were so deeply motivated by religious conviction.

We all stand for the constitutional principle of separation of church and state. But we should all stand against the distortion of this principle into the practice of separating faith from politics.

For the bible teaches that government is to serve man, not that men are the servants of government.

When the new testament speaks of "honoring those in authority," for instance, it points out that power is ordained by God for the purpose of doing good for the people.

In this light, I have come to understand the responsibility of political office, and the opportunities for service which it holds.

But we must also recognize a central fact: All that we seek in our society will not come solely from government.

The greatest challenges of our age defy purely political answers.

I remember the civil rights march of 1963, which was followed by the historic passage of the Civil Rights Act a year later. Many Americans hope that this single act would set us on a rapid course toward the extinction of racial prejudice. But the real crisis was still ahead of us—and it is still unresolved. In the last decade, we have learned that discrimination is rooted in attitudes, and frustrations, and fears that cannot be dispelled by law, but in our hearts. There is much that can and must be done by government; but much more must be done by each of us in our own lives.

Our deepest problems are within us—not as an entire people—but as individual persons. So Christians have a responsibility to speak to the questions of the spirit which ultimately determine the state of the material world. Most Americans yearn for meaning and value in life. This is a pre-eminent task for those who are in the church—but it cannot be separated from what happens outside the church.

Some Christians believe that we are condemned to live with man's inhumanity to man—with poverty, war, and injustice—and that we cannot end these evils because they are inevitable.

But I have not found that view in the Bible.

Changed men can change society, and the words of scripture clearly assign to us the ministry and the mission of change.

While we know that the Kingdom of God will not come from a politicians' platform, we also know if someone is hungry, we should give him food; if he is thirsty, we should give him drink; if he is a stranger, we should take him in; if he is naked, we should clothe him; if he is sick, we should care for him; and if he is in prison, we should visit him. "For inasmuch as you have done it unto the least of these my brethren, you have done it unto me."

That is what Scripture says. None of us can be content until all of us are made whole.

This is also the lesson in the lives of the great evangelists.

Jonathan Edwards is remembered for his role in the "Great Awakening" that swept colonial America. But few realize that he was so dedicated to the struggle against suffering and disease that he offered himself to test a smallpox vaccine. And in this act of charity and love and sacrifice, he died.

John Wesley set up clinics to bring medical care to the deprived citizens of London.

In the 1800's, one of the great evangelists, William Wilberforce, was a leader in the abolitionist movement, fighting for human freedom.

The most notable advances of the 18th and 19th centuries—the fight for decent labor conditions and against slavery, and the efforts for prison reform—seemed to flow from the evangelical tides in society which preceeded and accompanied them. Breakthroughs occurred in overcoming inhumanity and injustice because individuals had become infused with a compassion for others—and, even more than that, because the conscience of the nation had been touched and enlivened.

Today, the conscience of our nation must be touched anew.

Arnold Toynbee has written that all the great civilizations of history have fallen, not to conquering armies from without, but to a deterioration of spirit from within.

Toynbee asserts that America "now stands for what Rome stood for." I believe that is so in many ways. America, too, is a country of enormous wealth. Our people, like the ancient Romans, seem to live more and more for materialistic satisfaction. Standards of morality and precious values are in disarray as they were then.

This is the real meaning of the Watergate scandal. It is a lie that our politics is as bad as some men made it in 1972. It is a libel that all our leaders have been lawbreakers. Yet the moral blindness which brought us Watergate has also brought a host of other evils, the common works of a callous neglect.

Therefore, as we sit in judgment now upon others attempting to fairly decide the truth about individual innocence or guilt, in crime and coverup, we must also sit in judgment upon ourselves, attempting to truly see our country as it is. In this sense, Watergate is not just the tragedy of some men, but the trial of a whole society. We must learn from it the larger lessons of moral life—that Government, too, must be guided by faith—that we must have a fundamental stirring of our moral and spiritual values.

Such an awakening can free us from a relentless devotion to material affluences with too much for some citizens and too little for others. It can free us from a blind trust in armed might. It can free us from a dogmatic faith in salvation through technology.

Such an awakening can stir our compassion for others, restore the commitment of our hearts to right what is wrong among us, and revive the values that alone can guide our lives and give us happiness.

We must look into our souls to find the way out of the crisis of our society. As was so often true for the people of God in Biblical days, we must heed the words of the prophets.

The New Testament tells us, "Be not conformed to the world, but be you transformed by the renewing of your minds."

Some Christians have misused this passage as a pretext for isolation from the existence around us.

But the point is that our thinking, our perspectives, and our actions should not be molded by the world's view, and its tides of opinion; rather, they are to be rooted in God's vision. And we must carry the good news of that vision into the world.

The political process tends to reflect and channel spiritual trends. There are encouraging signs in our land that we are undergoing a new "awakening." The sophisticated "God is dead" talk now seems as irrelevant as a passing fad—which it what it was. Instead, the "Jesus movement" and other manifestations of spiritual hunger summon millions back to belief.

Within the institutional church and outside of any traditional religious framework, we witness a spiritual quest of increasing intensity. Even those who are uncertain about where this search should end are certain of the need to seek the deeper truth. Others wander through an inner wilderness to find their faith.

This is the meaning of true leadership. It is not expresed in power, fame, and honor, but in the washing of dusty feet.

We know that "he who saves his life shall lose it."

America was founded as part of a spiritual pilgrimage. It was born in a noble vision of human existence. The first settlers named their land New England because they hoped to found a new order. Our forebearers inscribed the great seal of the United States with the words, "a new order for the ages." And on that seal, a pyramid, which stands for material wealth, supports a symbol which stands for spiritual strength.

In 1630, John Winthrop preached a sermon on the deck of the *Arabella* to the first puritans. He said:

"We shall be as a city upon a hill, the eyes of all people upon us; so that if we shall deal falsely with our God in this work we have

undertaken and so cause him to withdraw his present help from us; we shall be made a story and a by-word through the world."

I believe we can still deal truly, and righteously, with the great gifts that have been ours since the time the puritans reached these shores. But this will come only after a struggle that touches all our hearts, and is resolved there.

The prophet gives us God's promise:

"If my people which are called by my name, shall humble themselves, and pray, and seek my face, and turn from their wicked ways, then will I hear from heaven, and will forgive their sins, and will heal their land."

So what then do we do? What is your responsibility, and what is mine? Micah asked and answered the same question in a verse I have remembered since my childhood, and turned back to ever since:

"What doth the Lord require of Thee, but to do justly, and to love mercy and to walk humbly with thy God."

THE NATURE OF INFLATION

Mr. TALMADGE. Mr. President, I think all of us here in the Senate and in the Congress realize that the state of the economy is much more than a political issue. It has degenerated to the point that it is a very real threat to the happiness and prosperity of the overwhelming majority of Americans. The present ravages of inflation portend ills for the future of the country.

Much has been made in the past year and a half over the nature of national security. As a matter of fact, this phrase has been used so much as to become a household word. I submit that our economic problems are threatening this national security as never before and as few other problems can.

Many voices have risen to explain the causes and effects of inflation. Many more have risen to fix the blame. Not so many have risen with solutions.

One of the first steps to solving any problem is to acquire an understanding of it, and I recently read the text of an address by Sidney Homer, of Salomon Brothers in New York, which explains the nature of inflation in America in very clear and insightful terms. Mr. Homer has had a wealth of experience in finance and economics, and he presents his points from a solid historical perspective. I ask unanimous consent that his remarks of June 10, 1974, be printed in the RECORD.

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

MYTHS AND FACTS ABOUT INFLATION

(By Sidney Homer)

When I was a student in college, we were all taught that peacetime inflation was unthinkable in our great United States, or for that matter in any other first class enlightened industrial state except perhaps France. Peacetime inflation was then to be found chiefly in banana republics with their pesos, escudos and other queer sounding currencies and all they needed to save them from the disgrace of inflation, we were told, was to obtain the monetary advice of any one of our distinguished economists and follow it. We thought of ourselves as exporters of economic wisdom.

The fact is, in 1923, when I started, in Wall Street there had been no peacetime inflations in the United States since the days of George Washington. This shows up on a chart which traces an index of American wholesale commodity prices over a long stretch of history—from 1800 to 1973. This is a good history of inflation if we consider inflation to be a decline in the purchasing power of the dollar—a reduction of the quantity of things a dollar will buy. An index of the cost of living would follow a very similar pattern but with a small additional annual upward bias.

The chart shows that before 1950 the purchasing power of our dollar fluctuated widely both up and down in a sort of wide bank without any pronounced long-term trend. Each war brought a great inflation, the War of 1812, the Civil War, World War I and World War II stand out unmistakably on the chart, but after each war except World War II prices declined again. The chart shows that our price level in 1929 was no higher than it had been in 1815.

We were proud of our currency in the 1920s and we had every right to be proud. Soon, in the Great Depression, prices plunged to distressingly low levels and our government devoted itself to bringing them back up. The tools employed in the 1930s for this ostensibly worthy purposes were, however, dangerous tools that set dangerous precedents from which we are now suffering.

The inflation of World War II (together with the immediate postwar years of decontrol) was not excessive, considering the vast scope of the war. It was no longer than the earlier wartime inflations. However, from 1950 on, the chart shows an entirely new configuration—dangerous and ominous. The usual postwar retreat of commodity prices just did not take place—instead they edged up further, were flat for a time, then in 1965 they accelerated and after the end of the Vietnam War they soared. Thus, our inflation is unprecedented in our economic history for times of peace. Much the same can be said today of the present British peacetime inflation and the German peacetime inflation. What has happened to our stockpile of astute economists that used to lecture small South American countries on how to behave themselves fiscally? Indeed, a few of them are now telling us to emulate South American methods even though these often require a military dictatorship.

Today I should like to attempt to challenge four myths about inflation that tend to obscure the basic problem and mislead our leaders and our people. There is no more valuable weapon in the political battle against such a problem as inflation than an informed electorate.

INFLATION IS ALWAYS WITH US

The first myth is that inflation has always been with us. Ever since the early 1920s, when I entered the business world. I have heard constant alarming references to inflation. There was none then. In the 1920s, commodity prices were flat or declining most of the time, but politicians of both parties hurled accusations of inflationary policy at each other and financial journalists joined in. The word inflation was used in many ambiguous and contradictory ways. Unfortunately it has several different definitions; I use it here only to mean a decrease in the purchasing power of our money regardless of the causes. Throughout the 1930s when prices plunged the same talk of inflation went on. There probably hasn't been a week without inflationary alarms or warnings in the papers at least since 1923.

It was a classic case of Wolf-Wolf. The public had so often been told that inflation was a permanent way of life with us—as in our history it often was not—that they became bored with the subject, took it for granted, assumed that inflation had always occurred and probably always would be with us. In those long years of price stability in the 1950s and early 1960s inflation was in the newspapers almost daily although the rate at the time was often zero to 1%.

Inflation is too big a word to be used so lightly. We are now suffering the consequences. The real wolf is with us and we don't always grasp the difference between the sham and the real. Therefore, our political stamina to deal with the present real emergency is dissipated.

Once more, has inflation always been with us? Here are some figures: in the 72 years of this century so far, the price average has not risen at all during 29 years, has risen only nominally during 11 years, and has risen significantly during only 32 years or less than half. During the twenty-eight years since World War II, prices have risen significantly during only fourteen years or just half. My point is not that inflation has not been severe—alas it surely has—but that it has not been continuous—far from it. It was not a year in, year out, shopworn old problem. Our present inflation is the first big inflation in peacetime in our long history and could be a national disaster. Now for the first time the real wolf is here and we are disarmed by years and years of false alarms.

THE MONEY MANAGERS

My second myth is that inflation is a mysterious mathematical technical function of money and banking which economists know all about and which can be controlled by the money managers if they only try. This optical illusion is the fault of the economists and money managers who often talk as though they or one of their fellows could in fact control the whole economy if they were at the monetary helm.

Since competent and knowledgable money managers have in fact been usually at the helm steering our monetary policy, why this inflation? I will suggest an answer: because the pilot or pilots at the helm were not and are not allowed to steer clear of danger. Standing behind these pilots, these money managers and these fiscal officials, is an all powerful captain and in a democracy that all powerful captain is public opinion. Public opinion years ago used to insist on a hard stable currency. As a result of the depression and of the new affluence following World War II, public priorities have shifted. First priority today is "no recession," "no unemployment." Only second comes the call for less inflation. So our skillful pilots have not been allowed to steer clear of the rocks that they have clearly seen ahead. Their master, and rightly so, is public opinion. Their deficiency, if any, is a failure to educate and lead public opinion. Instead many learned economists have told the public either that inflation is inevitable or that a little inflation can do no harm. They forget that tolerating a little inflation guarantees a bigger and bigger inflation and so on until public opinion changes.

As we know, this inflation is worldwide. The public everywhere demands more from their governments than it is willing to pay for. We cannot blame our politicians or English politicians or even French politicians for an imbalance demanded by public opinion throughout the world. We can only try to change public opinion, or wait until events reverse popular priorities.

There is much talk in economic and political circles of regulating not only the inflation rate but indeed the overall performance of the entire economy by the judicious use of a nice combination of monetary and fiscal policy. And indeed these tools exist if only public opinion would permit their effective use. Back in 1920, after the great inflation of World War I, when prices were rising even faster than today, the Fed virtually shut off all new money for over a year. This forced a gigantic liquidation of our banking system, brought prices and wages down by a third in a short time, created a tough, brief but sharp depression and stopped the inflation dead. And it stayed dead for twenty years. Thus, it can be done. But, of course, the side effects of the policy of restraint in 1920 were unemployment and bankruptcies

which are now unacceptable. In two years after 1920 economic recovery was underway leading into the boom of the 1920s; a period when there were many financial abuses but no inflation in the sense of a rise in commodity prices.

Similarly fiscal policy could be used to maintain purchasing power and control inflation by raising taxes or cutting expenses. Both of these tools and others are available to end this period of runaway inflation. But they cannot be used effectively, public opinion will not permit deflationary policies. One can ask how severe will the pain of inflation have to become to persuade public opinion that inflation fighting deserves top priority. It is futile to blame our money manager pilots if they are not allowed to steer in the only safe direction. So much for my second myth, that inflation is the fault of and controlled by our bureaucrats.

Even today politicians of both parties, with their ears to the ground, are suggesting tax cuts and enlarged expenditures. Hardly any political group is calling for strong measures against inflation.

INFLATION IS GOOD FOR STOCKS

My third myth is that inflation is automatically food for common stocks, that somehow a cross section of equities automatically serves as a hedge against inflation. Of course, today it is easy for me to dispute this correlation; bitter experience in recent years has proved that this great inflation of 1965–74 has simply not been good for stocks but very bad. Indeed ten years ago I published a systematic comparison year by year since 1900 of inflation and stock prices. It proved conclusively that both deflation and inflation had almost always been bad for stocks. Almost all good stock markets in this century have occurred in years of relative stability in commodity prices. There was almost no such thing as a good stock year with a high rate of inflation. When I first made this analysis, it was greeted with some surprise and disbelief but not today.

How then did this myth gain such credence that it was almost automatically assumed by journalists, stockbrokers, bankers, economists and just about everybody. At first blush the proposition looks logical. If the purchasing power of money declines, the nominal price of property should rise and since stocks represent ownership of property it was argued they, too, should rise. This may well be true over a long period of time, but on a year to year basis or over periods as long as five years, stock prices in general simply have not responded favorably to inflation. Specific classes of stocks have indeed been helped by inflation and will be, but the greater number have been hurt.

I can speculate on a few reasons why the stock averages have often declined and rarely advanced with a high level of peacetime inflation. In the first place, the high corporate earnings that often come with inflation are in large part the result of misleading accounting; inventory profits are often enormous but inventories must be replaced by high cost inventories. If I buy at a dollar, sell at $1.50 and buy back at $2, my books show a profit of 50¢, but I have in fact lost 50¢. Again depreciation is based on old low cost plant and, therefore, is nowhere nearly enough in times of inflation to replace obsolete plants with new. Again, inflation invites governmental interference in the economy in unwelcome ways and raises the specter of controls. taxes or a money crunch ahead. Again inflation forces a huge credit expansion just to keep the level of production even and this invites bankruptcies. Finally, the inflation forces bond yields up so high as to make it difficult or impossible for equities to compete.

Nevertheless, for almost three decades now tens of thousands of mutual fund salesmen have been warning the public of inflation and telling them that equities are an effective hedge. And many economists and bankers have joined the chorus. I am optimistic enough to think that someday somehow we will solve our inflation problem because we must to survive as a free country. If so, well selected equities will pay off very well indeed at today's depressed prices. But as anatomic, year in and year out, hedges against inflation, equities have been less than effective ever since this inflation started in 1966. So much for recent history I do not mean to imply that stock prices must always decline with inflation; indeed after years of falling share prices and rising earnings, there must be many excellent values in today's market.

INFLATION ONLY HURTS ANNUITANTS

Finally there is the myth that inflation only hurts annuitants or bondholders. It does indeed erode the income of annuitants and bondholders and if this were all the evil it did to the rest of us, we might be content to weep for our annuitant friends in much the same way that the walrus in the poem wept for the oysters (while he was devouring them). But inflation does damage or potential damage in a score of other ways and hurts almost everybody. Let me give you a sad catalogue of hardships that threaten if any inflation is allowed to go on unchecked.

In the first place and obviously it erodes the value of all dollar payments that are not automatically indexed to inflation—earnings, dividends, rents, capital gains, cash, stock prices, bond prices, etc. etc.,—not only bonds and annuities.

Second. Inflation brings sky high interest rates which often make it impossible to finance valuable public or private capital projects. As a result, credit is diverted to outright speculation or to high profit speculative projects which offer hope of very large rewards. Home ownership and legitimate enterprise are discouraged.

Third. Inflation breeds scarcities. We have seen the start of this process already. Most scarcities around the world this year were the result not of a failure of supplies to rise normally—they did—but the result of a sudden burst of inflation bred demand. Everybody almost everywhere has more money to spend, but production cannot keep up with the inflation induced extra demand.

Fourth. Inflation brought price and wage controls here and abroad and threatend rationing. If inflation continues or accelerates, it is apt in time to bring new controls coupled with some form of rationing, in spite of our bad recent experience. Controls without some form of allocation or rationing cannot possibly work and the allocation process is a frightful hardship but usually goes with scarcities.

Fifth. Next, if inflation continues, and brings scarcities and talk of many more scarcities, we can expect consumer hoarding and hoarding by business which, of course, will compound the scarcities. This is already occurring.

Sixth. In such an environment producers of many sorts will hold the whip hand over the consuming community as a whole. Just as the Arabs were able in a few days to double or triple the price of their oil by a form of economic blackmail, so a host of other producers groups can and will extort blood money from the community. We can only heard the beginning of this sort of economic aggression which of course, is possible only in a period of inflation.

Seventh. The next step would be acute scarcities and quantum price increases—the threat of hyper-inflation.

Eighth. The inflation has already strained our credit structure. Inflation must be financed and requires spiraling amounts of credit. As our inflationary boom goes on and on, it is requiring a huge volume of new credit just to finance increased costs even though there is no real growth in our physical production. This means widespread liquidity problems for our businessmen and our institutions with the danger of important bankruptcies; the old pattern of boom and bust.

Ninth. With scarcities, hoarding and speculation there would be a decline in real production which would mean a big drop in the standard of living in this country in spite of rising nominal incomes. This has already begun.

Tenth. All of this, if continued unabated, would lead to internal unrest, strikes against the public interest, power showdowns by economic groups and defiance of government.

Eleventh. If this dismal succession of events goes on unchecked, it is only a matter of time before there are real attacks on our democratic process itself.

I have great confidence that in the United States we will never suffer through the length and breath of this evil schedule. It is well, however, to look these possibilities in the face before we talk, as many are today, about trying to live with inflation.

In sum then I have attempted to refute four popular myths about inflation which have misled not only the general public but many economists, businessmen and politicians as well. These myths are:

1. We have always had inflation.
2. Inflation can readily be controlled by monetary and fiscal policy.
3. Inflation is good for stocks.
4. Inflation hurts only annuitants and bondholders.

Years ago a number of economists in the United States and elsewhere suggested that a little inflation would be a good thing—we could live they said with a 3 percent inflation. I don't doubt it, provided the inflation rate could be held there. How do we do that? The rate of inflation is either rising or falling, rarely stable, as the chart shows. In an inflationary era, any rate that is tolerated by our economic managers will soon be exceeded. As soon as we accepted 3 percent, we got 5 percent. As soon as we tolerated 5 percent, we got 8 percent. As soon as we tolerated 8 percent, we got 12 percent. Of course, the line up is not straight; there have been and will be temporary declines in the rate of inflation, and there always have been and will be official assurances that the new high rates are temporary. Perhaps, as predicted, our present peak rate will come down later this year, but if so that will be no excuse for complacency. If 12 percent is tolerated now, in a year or two, perhaps it will rise again, say to 20 percent and so on. At some point common sense or natural cyclical forces will intervene and collapse the boom but much damage will have been done.

Finally I should mention one other big brake on earlier booms and inflations which has recently been eliminated. I refer to the floating of the United States dollar and the collapse of the Bretton Woods monetary system. My comments on the subject will be limited to pointing out that in the past the old gold standard, and to a considerable extent the subsequent dollar-exchange standard, did exert discipline on member nations—not always but often—did frequently put brakes on booms and inflations, did at times override proud sovereignties and force member governments, including our own, to adopt restrictive economic policies and raise taxes. This is a key reason why we had no large peacetime inflations. The urgent need to maintain the parity and convertibility of one's own currency virtually forebade large spiraling inflations.

This very discipline was the reason why these old international payments systems deserved the name of system. Alas, I fear that this discipline itself became anathema to a number of growth minded officials in Washington and elsewhere. In time, they found ways to circumvent the discipline so that our dollar became overvalued and the

entire system, based as it was on a reliably stable dollar, collapsed. Now we hear sighs of relief—this negative discipline is gone. We float freely and some are clearly glad of it. But with this old system of defended fixed rates went one of the great traditional brakes on inflation.

It will I fear be exceedingly hard, in this dynamic and disorganized world, for the experts to devise a new monetary system with effective sanctions which can exert force over sovereign boundaries. And yet a system without effective sanctions will be worse than no system at all because it will create complacency. When the day ever comes when worldwide spiraling inflation is no longer acceptable politically (and it will come), a major step to end it will be the creation of a new effective international monetary system with sanctions: carrots and sticks.

IS THE COUNTRY GOING TO POT?

At this point some of you, I fear, will classify me with that old troglodyte of Galsworthy's "Forsyte Saga," Soames Forsyte, whose opinion of current events in his 19th Century was: "The Country's Going to Pot." This is an over-simplified extrapolation which I am not prepared to accept. Certainly, if we assume that the people of the United States can learn no lessons from bitter experience and that the political priorities and economic policies which have led us to our present troubles will be continued unchanged over the years ahead, then we can expect more of my schedule of calamities.

Those who believe in democracy must believe that hard lessons are learned, albeit belatedly. Another year or two of continued spiraling inflation with its side effects will certainly bring more hard lessons similar to or worse than the energy shortage. These hardships will in time create an effective popular demand to end the inflation. With popular backing, the task should not be too difficult. I must assume that at some point either our political priorities will in this way turn against inflation or natural forces will bring deflation.

The answer is to be found, not in standard economic analysis, but in a study of political and social trends.

JUDGE ALEXANDER SIMPSON, JR., ON CONSTITUTIONAL PRINCIPLES OF FAIRNESS IN IMPEACHMENT TRIALS

Mr. GOLDWATER. Mr. President, the Senate Subcommittee on Standing Rules of the Senate and the full Commitee on Rules and Administration are currently undertaking a review of the important question of rules which should be applicable in the case of a possible impeachment trial in the Senate. In connection with this inquiry, those committees and indeed all of my colleagues might find it interesting to consider some conclusions bearing on this subject which are reached in the first book-length exploration of Federal impeachments.

The author of this short book is Alexander Simpson, Jr., a justice of the Supreme Court of Pennsylvania, whose book was published in 1916. It is well researched, documented with considerable footnotes, and generally free of any blatant advocacy.

Without meaning to register my agreement with each and every conclusion of Judge Simpson's treatise, I do believe his book is marked by a sufficiently high characteristic of scholarship so that his findings bear study by the Senate. For example, Dr. Simpson states that on the basis of the resolutions and debates of the Constitutional Convention, the English practice of impeachment, and the precedents in the Senate, the Senate, when sitting for the trial of an impeachment, "has the attributes of and proceeds like a court." From this fact that an impeachment trial "is in its nature a judicial one," Dr. Simpson concludes that it necessarily follows that the constitutional rights and privileges of the defendant are protected in impeachment trials to the same extent that those rights or privileges are guaranteed at the trial of ordinary offenses.

Judge Simpson finds support for his view in the writings of Supreme Court Justice Story, who in his famous "Commentaries on the Constitution of the United States," asserts:

The doctrine, indeed, would be truly alarming that the common law did not regulate, interpret, and control the powers and duties of the court of impeachment. What, otherwise, would become of the rules of evidence, the legal notions of crimes, and the application of principles of public or municipal jurisprudence to the charges against the accused? It would be a most extraordinary anomaly, that while every citizen of every state, originally composing the Union, would be entitled to the common law, as his birthright, and at once his protector and guide; as a citizen of the Union, or an officer of the Union, he would be subjected to no law, to no principles, to no rules of evidence. . . . If the common law has no existence, as to the Union, as a rule or guide, the whole proceedings are completely at the arbitrary pleasure of the government and its functionaries in all its departments.

Also, Dr. Simpson turns for support to the constitutional provisions which again and again refer to impeachment in terms of criminal law: "to try," "convicted," "pardons for offenses * * * except impeachment," "conviction of treason," "the trial of all crimes, except * * * impeachment," "the party convicted." Quoting U.S. Constitution, article I, section 3, clauses 6–7; article II, section 2, clause 1; article II, section 4; article III, section 2, clause 3.

Mr. President, in order that I may share the pertinent portions of this interesting book with those of my colleagues who may not already have seen it. I ask unanimous consent that pages 665 to 676 of "Federal Impeachments," by Alexander Simpson, Jr., as reprinted in 64 University of Pennsylvania Law Review, be printed in the RECORD.

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

EXCERPTS FROM FEDERAL IMPEACHMENTS

The Committee of Style and Arrangement made its report on September 12, 1787, which, so far as the present matter is concerned, provided as follows:

"Art. I, Sec. 2. (d) The House of Representatives shall choose their speaker and other officers; and they shall have the sole power of impeachment.[66]

* * * * *

"Art. I, Sec. 3. (e) The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath. When the President of the United States is tried, the Chief Justice shall preside: And no person shall be convicted without the concurrence of two-thirds of the members present.

"(f) Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States; But the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law."[67]

* * * * *

"Art. II, Sec. 2. The President . . . shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.[68]

* * * * *

"Art. II, Sec. 4. The President, Vice-President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of treason, bribery, or other high crimes and misdemeanors.[69]

"Art. III, Sec. 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 judges both of the supreme and inferior courts, shall hold their offices during good behavior. . . .[70]

"Art. III, Sec. 2. . . . The trial of all crimes except in cases of impeachment, shall be by jury; and such trial shall be held in the state where said crimes shall have been committed.[71]

"Art. III, Sec. 3. Treason against the United States, shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort."[72]

On September 14, 1787, when that report was under consideration Mr. Rutledge and Mr. Gouveneur Morris moved "that persons impeached be suspended from their office until they be tried and acquitted." Mr. Madison said the President was made too dependent already on the Legislature, by power of one branch to try him in consequence of an impeachment by the other. "This intermediate suspension," he said, will put him in the power of one branch only. They can at any moment, in order to make way for the functions of another who will be more favorable to their views, vote a temporary removal of the existing magistrate." Mr. King concurred in the opposition to the amendment and the question to agree was lost."[73]

On the next day, September 15, 1787, the Constitution as amended was agreed to by the Convention, and ordered to be engrossed, all the states voting in favor thereof,[74] and in its engrossed form it was approved two days later.[75] The only changes from the foregoing were the addition of the words "or affirmation", after the word "oath" in Art. I, Sec. 3, and the exclusion of the word "only" from Art. III, Sec. 3.

The foregoing extracts from the resolutions and debates of the Federal Convention cover, it is believed, all that is reported therein relating strictly to impeachments, and all that have any bearing on the subject in the Constitution as originally adopted. The following, from among the amendments to the Constitution, have, however, a bearing upon the matters hereinafter to be considered:

5th Amendment. ". . . nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb, nor shall he be compelled in any criminal case to be a witness against himself."

6th Amendment. "In all criminal prosecutions the accused shall enjoy the right . . . to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defence."

10th Amendment. "The powers not delegated to the United States by the Constitu-

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Footnotes at end of article.

tion, nor prohibited by it to the States are reserved to the States respectively, or to the people."

Under those constitutional provisions we come to the first great question which faces us.

IN WHAT CAPACITY DOES THE SENATE SIT UPON THE TRIAL OF AN IMPEACHMENT?

It would hardly seem that this could be an open question, or worthy of much debate if it were, yet it has been considered and acted upon in two of the impeachments in this country.

When Judge Chase was impeached the Senate appointed a committee to propose and report rules for the conduct of the trial. In the Memoirs of John Quincy Adams, it is said.[1]

"But the words in open Court, and this Court were in the reported rules, and Mr. Giles moved to strike them out on the ground that the Senate, sitting for the trial of an impeachment is not a Court. . . . His motive for this antipathy to the term Court is, that the Senate . . . may be absolved from all the rules and principles which restrain and bind down courts of justice to the practice of justice."

That motion was adopted. The motive thus attributed to Senator Giles is not that given by himself. His averred reason was this:

"Impeachment is nothing more than an enquiry, by the two Houses of Congress, whether the office of any public man might not be better filled by another.[2] . . . Impeachment was not a criminal prosecution; it was no prosecution at all. . . . A trial and removal of a judge upon impeachment need not imply any criminality or corruption in him."[3]

The matter again came up during the impeachment of President Johnson. It is said in Hinds' Precedents of the House of Representatives:[4]

"In 1868, after mature consideration, the Senate decided that it sat for impeachment trials as the Senate and not as a court. . . . An anxiety lest the Chief Justice might have a vote seems to have led the Senate to drop the words 'High Court of Impeachment' from its rules."

The rules as originally drafted for that trial were entitled, "Rules of Procedure and Practice in the Senate when Sitting as a Hight Court of Impeachment," and in several places in the body thereof the Senate is called a court. Senator Conkling, though he had in fact helped draft those rules, moved to amend by striking out the word "court," saying, inter alia:

"Why leave it there? If it is a court we do not destroy that character by omitting these superfluities from our rules. If it is not a court we do not clothe it with the ermine or the attributes of a court by putting in the rules that it is so."[5]

And recognizing the fact that, in all prior impeachment trials, it had been called the "high court of impeachment" he argued that those words "had been used rather by the Secretary in recording the proceedings than by the Senate itself."[6] Senator Edmunds dissented from this view, and called attention to the fact that on one occasion in the Blount Impeachment, the Senate by formal resolution had called itself a "court of impeachment."[7]

Senator Conkling's motion was adopted by a vote of sixteen to thirteen,[8] but it is not possible to state how many of the sixteen so voted because they thought the words were superfluous, as Senator Conkling argued, how many so voted because they agreed with Senator Morton, also a member of the committee which adopted and reported the rules with those words omitted, because their retention might "lead to consequences that we do not desire, and to difficulties",[9] or how many so voted because they did not consider that the Senate would be sitting as a court.

Notwithstanding the foregoing, when the committee, of which Senators Edmunds, Conkling, and Morton were members, came to amend the rules, they left in Rule XXIV the words "all process shall be served by the Sergeant-at-arms of the Senate, unless otherwise ordered by the *court*,[10] and these words appear in that rule to this day, as a mute admission that, call it what you will, the Senate is a "court" when sitting for the trial of an impeachment.

Senator Edmunds might have gone much further than he did, and probably would have done so had he had time to look into the matter, for while it is true as stated by Senator Conkling that the words "High Court of Impeachment" were frequently the act of the secretary in recording the proceedings, yet those words, or the word "court" appeal constantly elsewhere in the proceedings. Even in so condensed a report as the "Extracts from the Journal of the United States Senate in All Cases of Impeachment Presented by the House of Representatives, 1798–1906,"[11] similar words quite constantly appear.

Thus we find that Senator Tracy for the Senate Committee on the Impeachment of Judge Pickering, twice called it a "court of Impeachment,"[12] and in the summons to the respondent, approved and issued by the Senate, it is four times called.[13] So too in the impeachment of Judge Peck, Senator Tazewell called the Senate a "Court of Impeachment" once and a "court" twice.[14] Senator Webster called it a "court"[15] and Senator Foot called it a "High Court of Impeachment."[16] So too in the impeachment of Judge Humphreys, Manager Bingham called the Senate a "court,"[17] and Senator Foster twice called it "this high court of impeachment."[18]

So, too, the name would not down even in the arguments made during the impeachment of President Johnson, any more than it would in the rules, for we find Senator Howard, for the Special Committee of the Senate calling it a "High Court of Impeachment"[19], Senator Davis,[20] and Senator Cameron[21] calling it a Court of Impeachment"; Senator Sumner, notwithstanding his argument to the contrary, calling it a court"[22]; and Senator Stewart calling it a "court for the trial of the impeachment."[23]

In the impeachment of William W. Belknap, when party feeling was not running high, the Senate is ten times called a court or high court of impeachment,[24] including therein the formal replication filed by the House,[25] and the formal rejoinder filed by it,[26] and in a resolution of Manager Lord,[26a] and in another offered by Senator Edmunds.[27]

So also from "Proceedings in the Senate of the United States in the Matter of the Impeachment of Charles Swayne,"[28] we find that the Senate is called a "court" or a "high court of impeachment" twenty-one times[29] and a "court" sixty-four times.[30] Included among those who so spoke of it are Senators Bacon,[31] Bailey,[32] Fairbanks,[33] Foraker,[34] Hopkins,[35] Pettus,[36] and Spooner[37]; and Managers Clayton,[38] DeArmand,[39] Olmsted,[40] Palmer,[41] Perkins,[42] and Powers.[43]

And finally in the report of "The proceedings of the Senate and the House of Representatives on the Trial of the Impeachment of Robert W. Archbald" we find that the Senate is called a "court," or "high court of impeachment," at least one hundred and six times. Among those who so designated it are Senators Bacon,[44], Bailey,[45] Clark of Wyoming,[46] Cummins,[47] Gallinger,[48] Lodge,[49] Poindexter,[50] Smith of Georgia,[51] Smoot,[52] Sutherland,[53] and Works,[54] and Managers Clayton,[55] Sterling,[56] and Webb.[57]

It thus seems clear that neither the attempted formal exclusion from the rules, nor a fear of "consequences," can remove from the legal mind the legal concept that the Senate is sitting as a court, whether or not it is called by that name. That concept is the necessary consequence of our inheritance of impeachments from England, and of the constitutional provisions above quoted. In England the House of Lords in trying impeachment cases has always been called the "High Court of Impeachment,"[58] and it is difficult to understand why, when we were inheriting the system, we did not inherit in its essence the thing for which that title stood.[59]

If we turn to the constitutional provisions we find that they all bear out the idea that the proceeding is in its nature a judicial one:

"The Senate shall have the sole power to *try* all impeachments.

"When the President of the United States is *tried* the Chief Justice shall preside, and no person shall be *convicted* without the concurrence of two-thirds of the members present.

"Judgment in cases of impeachment shall not extend further than to removal from office. . . .

"The President shall have power to grant reprieves and pardons for *offenses* against the United States, except in cases of impeachment.

"The President . . . shall be removed from office on impeachment for, the *conviction* of, treason. . . .

"The *trial* of all crimes, except in cases of impeachment, shall be by jury. . . ."

"Trial," "conviction," "judgment," and their kindred terms, are all appropriate to judicial proceedings, and are not appropriate to anything else.

In this same connection much has been made at times of the constitutional requirement of a new oath to be taken by the Senators prior to an impeachment trial. Exactly what weight should be given to that requirement is not clear; but it may safely be concluded therefrom and from analogy to other judicial proceedings, that it was intended thereby to give greater solemnity to the trial, to impress upon the Senators their duty in the particular case, to show that the Senate is then sitting in a different capacity than ordinary, and that it occupies an entirely different situation than the House, which is prosecuting. It has been claimed by some that this requirement shows that the Senate is then sitting as a court, but it does not seem necessary to enter further into that controversy.

So, too, the precedents in the Senate are all in accord with the conclusion now asserted. In the Blount Impeachment the respondent was arrested and required to give bond,[60] a course constantly pursued under the English practice,[61] a practice with which the King's Bench, in Lord Danby's case, decided they could not interfere, so long as the parliament which impeached the respondent had not been dissolved.[62]

In the Swayne Impeachment the Senate by a vote of forty-five to twenty-eight decided that the respondent's voluntary statements, made before a Committee of the House of Representatives, could not be used against him on the trial of the impeachment because of the Fifth Amendment above quoted, and of Section 859 of the Revised Statutes, which provides:

"No testimony given by a witness before either House, or before a committee of either House of Congress, shall be used in evidence in any *criminal proceeding against him in any court*, except in a prosecution for perjury in giving such testimony."[63]

So, also, the House of Representatives in the proceedings against George F. Seward, looking to his impeachment, ruled that he could not be attached for contempt in declining to be sworn, and to produce documentary evidence, because only of the above quoted provision of the Fifth Amendment to the Constitution that no person "shall be

Footnotes at end of article.

compelled in any criminal case to be a witness against himself." [64]

So, too, all the commentators on the Constitution, when speaking of the Senate in trying impeachments, speak of it as a "court." The references quoted in this article show that to be so, as to the writers quoted, and as to the others an examination of the citations will prove it.

In antagonism to the views above expressed it has sometimes been argued that inasmuch as Art. III, Sec. 1 says that "The judicial powers 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" that that is a constitutional assertion that the Senate in trying impeachments does not sit as a court. Perhaps it would be better to say that it shows that the Senate, when trying impeachments, is not part of the general "judicial powers of the United States," but is rather part of the political powers thereof, and in that aspect it bears upon the question, hereinafter to be considered, of the character of the offences cognizable in impeachments. But whether or not that be so, it is clear from the location of the section quoted, as well as from its context, that it refers to the ordinary or usual "judicial powers of the United States," and does not refer to impeachment trials, any more than it does to courts-martial, though both were and are well-known methods for the trial of certain offences.

It may be said that the similarity of the proceedings to those in a court, may account for the frequent use of that word in the various impeachment trials; but if that be so it concedes all that is valuable in the claim now made, for it is of no moment whether the body which tries the impeachment is called a senate or a court, if it has the attributes of and proceeds like a court. In the one event, as in the other, the constitutional rights and privileges of the respondent are protected, and that is all he has any right to ask. Happily in this country, though it was not infrequently otherwise before the House of Lords, no respondent has even been openly deprived of any of those rights or privileges, not even President Johnson, though partisan feeling reached its highest point at that time.

The Senate, then, being a court, or proceeding as if it were, certain necessary consequences follow, which usually have been recognized and accorded:

1st. The respondent is entitled "to be informed of the nature and cause of the accusation" against him.[65]

2nd. He is entitled "to have the assistance of counsel for his defence." [66]

3rd. He is entitled "to be confronted with the witnesses against him." [67]

4th. He is entitled "to have compulsory process for obtaining witnesses in his favor." [68]

5th. He cannot "be compelled . . . to be a witness against himself." [69]

And to those constitutional privileges are to be added the following which experience has demonstrated to be necessary for the just trial of causes.

6th. The rules of evidence applicable to courts are adhered to in these trials. It has been many times so held.[70]

7th. A reasonable doubt of the respondent's guilt must result in his acquittal. This also has been many times decided, in addition to that which is herein elsewhere said upon this point.[71]

8th. The Senate must find an intent to do wrong. It is, of course, admitted that a party will be presumed to intend the natural and necessary results of his voluntary acts, but that is a presumption only, and is not always inferable from the act done.[72] So ancient is this principle, and so universal is its application, that it has long since ripened into the maxim, *Actus non facit reum mens sit rea*, and has come to be regarded as one of the "fundamental legal principles" of our system of jurisprudence.[73] True, in many cases, the circumstances surrounding the performance of an act may be sufficient from which to infer the intent; but, nevertheless, in every criminal proceeding, the intent must be averred and proved to the satisfaction of both the trier of the law and the trier of the facts.

9th. And finally, recurring again to the Constitution, if once acquitted in impeachment proceedings he cannot "be subject for the same offence to be twice put in jeopardy." [74]

FOOTNOTES

[66] 2 Farrand, 501.
[67] 2 Farrand, 592.
[68] *Ibid* 599.
[69] *Ibid* 600.
[70] *Ibid.*
[71] *Ibid* 601.
[72] *Ibid.*
[73] *Ibid* 612–613.
[74] 2 Farrand 633.
[75] *Ibid* 643–644–647.
[1] Vol. 1, p. 324.
[2] Vol. 1, 321.
[3] *Ibid.* 322.
[4] Vol. 3, par. 2057 (1907).
[5] 3 Hinds' Precedents 381.
[6] 3 Hinds' Precedents 379.
[7] *Ibid.* 381.
[8] *Ibid.* 379.
[9] *Ibid.* 379.
[10] *Ibid* 440.
[11] 62nd Congress, 2nd Session, Document No. 876.
[12] Journal, *etc.*, 19, 25.
[13] *Ibid*, 23, 24.
[14] *Ibid* 62, 134, 141.
[15] *Ibid* 129.
[16] *Ibid* 132.
[17] *Ibid* 153.
[18] *Ibid* 151.
[19] *Ibid* 162.
[20] *Ibid* 195.
[21] *Ibid* 300.
[22] *Ibid* 236.
[23] *Ibid* 288.
[24] *Ibid* 340, 342, 344, 347, 379, 380, 385.
[25] *Ibid* 342.
[26] *Ibid* 347.
[26a] *Ibid* 379.
[27] *Ibid* 380.
[28] 58th Congress, 3rd Session, Document No. 694.
[29] Proceedings, *etc.*, 54, 55, 56, 126, 151, 193, 236, 281, 289, 322, 323, 334, 371, 477, 607.
[30] *Ibid* 11, 16, 17, 18, 19, 21, 24, 25, 51, 57, 60, 66, 67, 82, 91, 106, 114, 128, 178, 180, 188, 189, 192, 193, 195, 197, 200, 266, 281, 334, 442, 482, 640.
[31] *Ibid*, 16, 17, 151, 322.
[32] *Ibid* 24, 51, 91, 188, 192, 193, 195, 197
[33] *Ibid* 54, 236, 289, 323, 477.
[34] *Ibid* 114, 334.
[35] *Ibid* 197.
[36] *Ibid* 188.
[37] *Ibid* 128, 193, 482.
[38] *Ibid* 281.
[39] *Ibid* 266.
[40] *Ibid* 180.
[41] *Ibid* 62, 66, 67, 82.
[42] *Ibid* 106.
[43] *Ibid* 300, 442, 640.
[44] Proceedings on the Impeachment of Judge Archbald, 20, 42, 60, 72, 73, 94, 95, 128, 175, 249, 291, 324, 388, 875, 1105, 1220.
[45] *Ibid* 17, 19.
[46] *Ibid* 18, 27, 38, 94, 95, 96, 128, 175, 231, 1048.
[47] *Ibid* 33.
[48] *Ibid* 34, 290, 291, 807, 1048, 1146, 1219.
[49] *Ibid* 30, 31, 60, 72.
[50] *Ibid* 157.
[51] *Ibid* 291.
[52] *Ibid* 874.
[53] *Ibid* 15.
[54] *Ibid* 15, 16, 17, 20.
[55] *Ibid* 37, 60, 63, 64, 65, 68, 72, 85, 88, 93, 94, 96, 100, 110, 129, 130, 153, 154, 272, 291.
[56] *Ibid* 150, 263, 722. 1386.
[57] *Ibid* 135.
[58] 4 Blackstone's Commentaries 258.
[59] See 6 Am. Law. Reg. (n. s.) 258–259.
[60] 3 Hinds' Precedents, Sec. 2296.
[61] 6 Howell's State Trials 871.
[62] Woodeson's Lectures 616, 617.
[63] Swane Impeachment Proceedings, 187–199.
[64] Hinds' Precedents, Sec. 1699.
[65] Sixth Amendment to the Constitution.
[66] *Ibid.*
[67] *Ibid.*
[68] *Ibid.*
[69] Fifth Amendment to the Constitution.
[70] 3 Hinds' Precedents 537–643; Woodeson's Lectures, 611, 612.
[71] Nebraska v. Hastings, 37 Neb. 96 (1893); Alabama v. Tally 102 Ala. 25 (1893); Alabama v. Robinson, 111 Ala. 482 (1895); 15 Am. & Eng. Ency. of Law (2nd Ed.) 1070; Watson on the Constitution (1910) Vol. 1, p. 214; Impeachment of Judge Barnard, pp. 2070, 2071.
[72] Bishop's Criminal Law, Sec. 252.
[73] Brown's Legal Maxims (8th American Ed.) 306–326.
[74] Fifth Amendment to the Constitution.

CONGRESSMAN GLENN ANDERSON AND THE FUTURE OF MASS TRANSIT

Mr. BENTSEN. Mr. President, I am very pleased to place in the RECORD today the text of remarks by Congressman GLENN ANDERSON of California on the subject of mass transit legislation. Congressman ANDERSON has been one of the most effective spokesmen for transit in the House, and I believe his views merit the attention of all legislators.

Just a few days ago, the House of Representatives rejected the Williams-Minish bill to provide operating subsidies for mass transit. Although I believe that measure was far from ideal in its distribution of funds, it did provide interim, emergency funds for transit at a time of great national need.

Now, as Congressman ANDERSON suggests, we need a transit development program, a long-range program that will meet, not just the needs of a few major cities which do not now have a major transit program in operation. That was the thrust of my bill, S. 3601, which Congressman ANDERSON mentions in his remarks to the Institute for Rapid Transit. My bill was carefully drawn so that major cities such as Los Angeles and Houston, which are only beginning to develop major transit plans, can have a piece of the action, at the same time we protect those cities which have made major investments in transit on their own.

The defeat of the Williams-Minish bill lends new urgency to the search for comprehensive transit legislation this year. Although Congress will be busy on the very solemn work of impeachment in the coming weeks, I do not believe we should shirk our responsibility to working toward major transit legislation.

I ask unanimous consent to print the text of Congressman ANDERSON'S remarks in the RECORD.

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

REMARKS OF CONGRESSMAN GLENN M. ANDERSON

It's great to have you here in Los Angeles—an area characterized by some of our detractors as 77 suburbs in search of a city. And because of our sprawl, we are famous for our great number of automobiles, and for our freeway system. As a result, Los Angeles is known throughout the world as an automobile-oriented society.

Just as other cities are famous for certain things, we, too, are characterized.

Take Texas; everybody knows that oil flows from the ground virtually everywhere.

Chicago; the "windy city."

Think of Atlanta, and beautiful southern belles and white-columned mansions spring to mind.

New York, and you think of the skyscrapers needed to accomodate the millions of people squeezed into such a tiny area.

THE KINGS OF THE ROAD

But, here, in Los Angeles—we are the freeway society—the "kings of the road."

And, as a result, people have said for years that Mass Transit will "never work," and they list the reasons:

First, we are too big an area—too spread out;

Second, not enough people in any one place—no density;

Third, anyway, everybody practically lives in their cars—you can't get them out of their cars to go next door, much less to go to work.

And for years this belief has held sway, and even the Federal Department of Transportation has been caught up in part of that thinking. Secretary Brinegar, a local follow, a good friend, and a constituent, epitomizes the thinking that buses alone can solve our transportation problems, discounting the feasibility of a mix, including a fixed-guideway system.

I continue to have hope. I hope that the Department of Transportation will, sooner or later, help us in the development of not only an expanded bus system and innovative methods—such as jitney service—but also involving a fixed-guideway system. I believe that day-by-day they are becoming more aware of our situation, and the very pressing need to provide an attractive, efficient, and pleasant alternative to the automobile.

THE REAL FACTS ABOUT LOS ANGELES

In case any of you might still harbor some doubts about our ability to sustain a rapid transit system, allow me a moment or two to give you some facts about Los Angeles . . . facts, that are relevant to rapid transit:

First, contrary to popular belief, everyone does not own a car. Not everyone is capable of using our system of highways. In fact, over 17 percent of the households in Los Angeles County do not own a car. To repeat, 17 out of 100 households in our area do not have a car.

How does this compare with other cities?

According to a study published by the respected research team of Barton-Aschman Associates of Chicago, automobile ownership is lower in Los Angeles than in Chicago, Detroit, St. Louis, Dallas, Cleveland, Baltimore, etc. and etc. In Detroit, for example, about 15 percent of the households are carless;

Houston, about 12 percent;

Dallas, 11 percent;

In the highly urbanized Northeast New Jersey area, about 14 percent of the households are without a car.

Of the largest 33 metropolitan areas in the country, 26 have a higher percentage of the population which own cars than Los Angeles.

Certainly, the number of those who must depend on rapid transit for mobility should be considered when talking about an area's need for public transportation. So, when we consider the number of people and the percentage who do not own cars as a factor in determining the feasibility of rapid transit, Los Angeles must rate at the top.

THE DENSITY FACTOR

Secondly, the Department of Transportation seems to give a great deal of credence to the "density factor" when considering mass transit. Within the last several weeks, a high official with D.O.T. was out here stating that Los Angeles should not consider a fixed-guideway system because, when it comes to density—people per square mile—we are too sparsely populated. In fact, he says we are 21st in the nation in population per square mile.

I do not know where he got that figure, but it certainly is not accurate, at least as far as the U.S. Census Bureau is concerned. Because, according to the Census Bureau, only New York and Philadelphia are more heavily populated in their relatively compact urban areas.

The Assistant Secretary, who says our density is too low, must have been considering the uninhabited Los Angeles National Forest, and the almost barren Antelope Valley areas, when he threw out that ridiculous figure.

But, as far as the Census Bureau is concerned, we rate third in the nation in population density—an important factor in the consideration of the feasibility of mass transit in an area.

So, hopefully, these two factors—lack of mobility for a large portion of the people, and population per square mile—lay to rest any doubts that Los Angeles needs a greatly improved and expanded transit network, including a fixed-guideway system, and Los Angeles could sustain one—especially when you couple these factors with our air pollution problem and our energy crisis.

But, what about the people? Will those auto-loving Angelenos give up their cars for rapid transit?

On June 4th, the people of California and the people of Los Angeles gave a resounding "yes" to that question when they adopted the proposals to permit the use of state gasoline taxes for public transit. For the first time, Californians backed away from the concept of more and more highways—and only highways—and said "yes" to diverting a part of these funds to the construction of fixed-guideway systems.

And so, I think the groundwork has been laid—the need is there—the justification is clear that Los Angeles wants and needs a rapid transit system involving a combination of improved and expanded bus service, and a fixed-guideway network.

THE ROLE OF THE FEDERAL GOVERNMENT

Now, what role will the Federal government play in helping cities such as Los Angeles—and certainly Detroit, Denver, Buffalo and Atlanta—in developing a rapid transit system?

And, secondly, what role will the Federal government play in helping those cities which have an established system—such as New York, Chicago, Boston, San Francisco, and others—continue to operate and improve their existing systems?

Money is certainly primary, and the Congress is placing a very high priority on mass transportation when it comes to funding levels. Instead of a 1 billion dollar a year program—as in the past—we are talking about tripling, or even better, the funds available for rapid transit. As you probably know, Senator Lloyd Bentsen of Texas—the Chairman of the Senate Transportation Subcommittee—has introduced a bill to provide 17.5 billion dollars over a 5-year period for mass transit, and 70 percent of that money—12 and one-quarter billion dollars—would be funneled into the nation's 32 largest cities—cities where the problems are most critical.

THE PUBLIC WORKS COMMITTEE PROPOSAL

And in the House of Representatives, in the Public Works Committee, of which I am a member, we are discussing a proposal, which, I believe—as do many of my colleagues—should be funded at a 21 billion dollar to 25 billion dollar level, spread over a 6-year period. And, under that measure, perhaps as much as 60 percent of the money would be allocated to the 9 cities which either have a rail system, or have UMTA grants for a rail system. The vast majority of the remainder of the funds would be channeled into the cities with a population of 50,000 or more—allocated on a population basis.

After you get the money, for what purposes could you use the funds? Most everyone is in agreement that helping to fund operating costs is a legitimate function of the Federal government. And both the Bentsen proposal, and the Public Works bill, would permit the use of these Federal dollars for operating transit systems—with a 50–50 match on the state and local level. And, of course, construction and purchase grants would be continued . . . with the Federal government contributing up to 80 percent of those costs under the Bentsen proposal, and 75 percent under the Public Works measure.

Finally, after funding levels are decided, and after the purposes to be funded are worked out, we must decide on who gets what. We must balance the needs of those who need money to continue operating and those who need the money to construct a system. Obviously, we must have both, and we must assure that both are properly funded.

And, to me—and permit me a provincial view—the bill that comes before the House of Representatives must encourage the development of new systems; it must be geared toward helping those cities, which do not have viable, effective transit networks, to construct those networks.

WE NEED A TRANSIT DEVELOPMENT PROGRAM

Both politically and philosophically, that bill must be a Transit Development bill, rather than a Transit Bailout bill.

I'm certainly not saying that the 6 cities which presently have rail networks should be neglected; far from it—since 1964, when UMTA was created, they have received over 70 percent of the grants because they had systems—and were working to upgrade and improve those systems.

And our future transit policy should continue to properly fund those going concerns, those systems which have a proven record of performance.

But, we must, also allow other cities to construct transit systems where they can be justified and where the people have made commitments of local funding.

PARTNERSHIPS AND CO-OPERATION

Certainly, this is the key: partnership and cooperation among the cities in seeking proper funding for both construction and operation. While operating funds are desperately needed in the established systems, construction grants are equally needed in the other large metropolitan areas. And, those of us from Los Angeles should recognize the New York situation—just as New York must recognize our problems.

We must work together to insure that both are properly funded. The officials and operators in Boston, Chicago, New York and Cleveland must work with the transit operators and public officials of Los Angeles, Denver, Miami, and Detroit to insure that both—and all—are accorded equity in the allocation of Federal dollars.

We need each other, and we must work for our own benefit as well as for each other's benefit. Otherwise, we may get bogged down and fail to get a law—a law desperately needed in mass transit financing.

I firmly believe that the transit policy which we are currently considering must recognize that sustaining a system and creating a system are equally important, and should be equally funded.

The future of our cities depends on the imagination and the creativity of the tran-

sit manufacturers, the efficiency and the service of the operators, and the funding and allocation of dollars by the Federal government.

I am confident that—with your help and support—all of us can solve our transit problems and thereby help curb our appetite for energy, and reduce pollution.

These are our goals, and this is my commitment.

EDITORIAL ON SEA POWER

Mr. THURMOND. Mr. President, an editorial entitled, "Superior Sea Power Essential" appeared in the July 25 issue of the Aiken Standard newspaper, Aiken, S.C. In this article Editor Samuel A. Cothran has correctly assessed the dangers inherent in a decline in U.S. Naval strength. He has noted the Soviet challenge to the role of the U.S. Navy and urges our Nation to meet this development.

Mr. President, I ask unanimous consent this editorial be printed in the RECORD at the conclusion of my remarks.

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

SUPERIOR SEA POWER ESSENTIAL

The U.S. missile cruiser Chicago and two destroyers recently cleared the Malacca Strait for a show-the-flag cruise in the Indian Ocean. They were accompanied by an oiler because the U.S. Navy has no fuel stations in that part of the world. This tiny task force, sailing through an ocean where the Soviet navy at any time is deploying a dozen or more ships, could well symbolize the thinly stretched resources of the U.S. Navy.

So it is that Adm. R. Zumwalt Jr., stepping down as chief of naval operations at the end of last month, declared that the United States has surrendered its once-undisputed supremacy at sea to the Soviet Union. "The consequences of conceding the world ocean to others are simply too serious to be allowed to continue," he said. "Our countrymen have never before turned away from their responsibilities, nor do I expect them to do so now."

Adm. Zumwalt's countrymen on the whole are probably as alarmed as he is about the growing imbalance between our naval strength and that of the Russians, but their voice is not being heard by the architects of defense budgets. The spirit of detente and wishful thinking has led many members of Congress to dismiss as irrelevant the indisputable evidence that the Soviet Union has decided to challenge the role which the U.S. Navy has filled since World War II as the guarantor of freedom of the seas.

We have taken comfort in the fact that our attack carriers and their jet squadrons represent mobility and firepower that the Soviet navy cannot match. We have been told that the 911 naval vessels built by the Russians in the last decade—while our own Navy shipbuilding program produced only 163—including mostly minor combatants. However, Navy Secretary J. William Middendorf recently pointed out that these "minor" vessels include patrol craft equipped with missiles that can sink ships many times their size. In fact, the Russians now can deploy twice as many anti-ship missile launchers as there are ships in the U.S. Navy.

The Soviet shipbuilding program which became visible in the 1960s has produced a naval force in the 1970s which eliminates any guesswork about Kremlin intentions. Sea power clearly is a basic element of Soviet foreign policy. The size and capability of the U.S. Navy will be of paramount importance in what could develop as a contest for control of the seas.

Adm. Zumwalt has warned that the Soviet navy already has the capability to deter or even thwart U.S. movements in some sea areas. Its power is still growing, as our own Navy faces manpower reductions curtailed operating schedules and inadequately funded programs for new ships and weapons. The Cruiser Chicago will indeed be showing the U.S. flag this summer in the Indian Ocean, but the country that flag represents is doing an inadequate job of backing it up.

THE GENOCIDE CONVENTION

Mr. PROXMIRE. Mr. President, for centuries the foreign policies of the nations of the world have been characterized by a narrow Machievellian amoralism. Self-interest has been pursued incessently, with only a few scattered attempts toward higher ethical standards in world relations. This strict adherance to national interests—at all moral costs—has been responsible for much of the conflict and destruction that has stained the history of mankind.

This amoralism reached its gruesome peak in World War II, when the Nazis attempted to "purify" their own population and thrust their dominance across Europe. Millions of helpless civilians were packed into gas chambers and ovens, and hundreds of thousands of soldiers died to halt the slaughter. We paid a very high price to reassert the right of every man to his existence.

The International Convention on the Prevention and Punishment of the Crime of Genocide, a product of world-wide revulsion against the Nazi horrors, is a landmark attempt to develop an ethical basis for relations between nations regarding their respect for the fundamental rights of all men. U.S. ratification of the convention, as Arthur J. Goldberg told a Senate Foreign Relations subcommittee in 1971, "can make a practical contribution to the long and difficult process of buliding a structure of international law based on principles of human dignity." For too many years we have neglected to make this contribution; the genocide convention demands prompt reconsideration and ratification.

NO-KNOCK REPEAL

Mr. PERCY. Mr. President, on July 11, 1974, the Senate adopted by a 64 to 31 vote an amendment to the Drug Enforcement Administration Authorization Act which would repeal the Federal and District of Columbia no-knock statutes. This amendment received wide bipartisan support and its advocates ranged all across the ideological spectrum.

The action taken by the Senate has prompted some members of the House of Representatives to move in a similar direction. The House version of the Drug Enforcement Administration Authorization Act, H.R. 14213, has been amended in the House Interstate and Foreign Commerce Committee to repeal the Federal no-knock statute.

But the House bill, as amended, does not contain a repeal of the District of Columbia no-knock statute, which in many ways is more dangerous than the Federal law. No-knock entries by District of Columbia police officers need not be supported by a special no-knock search warrant as under the Federal law. Furthermore, the District of Columbia no-knock provisions apply to all searches by District of Columbia law enforcement officials and are not limited, as in the Federal statute, to violations of narcotics laws, the penalty for which is more than 1 year.

Mr. President, I commend my colleagues in the House for their prompt action in adding language to H.R. 14213 repealing the Federal no-knock law. At the same time I urge them to further amend this bill so as to repeal the District of Columbia statute. The announced, regretful but imminent, resignation of Police Commissioner Wilson makes this matter all the more urgent. He has wisely, on the basis of his own judgment, not seen fit to use this authority for several years.

Senators ERVIN and NELSON have placed a number of editorials commenting favorably on the Senate's action in repealing the no-knock statutes in the CONGRESSIONAL RECORD. In order to complete the record, I now ask unanimous consent that certain other editorials on this question be printed at the conclusion of these remarks.

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

[Worcester, Mass. Telegram]

KNOCKING OUT NO-KNOCK

In 1970, Congress granted "no-knock" authority to District of Columbia policemen, allowing them to enter dwellings, with a special warrant, without knocking and identifying themselves. Later that year, as part of the Drug Abuse Prevention Act, the same right was extended to federal narcotics agents across the country.

The legislation was intended to give additional impetus to law enforcement in an era of sky-rocketing crime. It brought the element of surprise into the arrest process by giving suspects no chance to escape or destroy evidence.

At the time the proposal was debated, its opponents argued that Americans should be secure in their home and that no-knock would open the door to abuses. An amendment by Sen. Sam Ervin to delete the provision from the anti-drug act was defeated by the Senate.

Four years have passed since, and the impact of no-knock has proven questionable at best. While some police authorities argue that the surprise entry helped arrest and conviction, the police chief of the District of Columbia said his department could live without no-knock. And the lawyer for the district police stated that no-knock investigation increases the possibilities of injury both for law enforcement officers and occupants of homes entered.

Moreover, several unfortunate incidents have occurred where teams of narcotics agents descended upon private homes by mistake, ransacked apartments and mistreated innocent people. The Gigotto case in Collinsville, Ill. was one outstanding example.

Because the risk to individual rights seems to outweight the potential benefit law enforcement may gain from no-knock, the Senate reversed itself on the issue the other day, voting 63 to 31 to end it. If we still accept that old American idiom that "a man's home is his castle," the House should do likewise.

[From the Chicago Daily News, July 13, 1974]

TIME TO KNOCK OUT "NO-KNOCK"

The U.S. Senate has voted 64 to 31 to repeal the "no-knock" provision of the federal drug laws. This was a statesmanlike step to right an old wrong, and we urge the House to follow suit.

To an otherwise important and constructive measure aimed at coping with the nations drug-control problem, Congress in 1970 appended a section that raised an ominous threat to a constitutional liberty. It provided that federal agents could break into a building on a narcotics raid without warning if they believed a knock on the door might result in destruction of the narcotics or injury to the raiders.

The peril was spotted at the time by many skeptical congressmen—as it had been spotted by the founding fathers in their concern over "unreasonable search and seizure." Sen. Sam Ervin said that the no-knock permission would "make it possible for law enforcement officers to break into a home like burglars."

And as Illinois Sen. Charles Percy remarked, that is how it turned out. Percy cited the break-in last year by agents in Collinsville, who ransacked two homes only to discover later that they had the wrong addresses and had terrorized innocent families.

Even the requirement that such a knockless raid must be made on the authority of a court warrant has failed to prevent numerous Gestapo-like incidents of the Collinsville type. Meanwhile, the nation has had Watergate, with its own demonstrations of the always latent instinct toward police state tactics.

It is gratifying that more than two-thirds of the senators present for the roll call saw the logic of repealing the no-knock privilege. We hope the House will be equally emphatic in removing this threat to the sanctity and privacy of the home.

[From the Chicago Sun-Times, July 17, 1974]

REPEAL NO-KNOCK

By a gratifying and compelling vote of 64 to 31, the Senate last week approved a measure to repeal the "no-knock" provision of the Comprehensive Drug Abuse and Prevention Act of 1970. Given the demonstrated and potential abuses of no-knock, the need for similar action in the House is clear.

The 1970 law permits federal drug agents to break into a home without warning if they believe a knock on the door might result in a destruction of evidence or injury to raiders. The law has been repeatedly abused, most spectacularly perhaps in the 1973 raid in Downstate Collinsville, where officers broke into the homes of two innocent families in a search for drugs.

The constitutionality of no-knock has been challenged by at least three former Supreme Court justices, and its effectiveness has been questioned by several law-enforcement officials, including State's Atty. Bernard Carey. Police officials in the District of Columbia, who have not used no-knock since 1971. have pointed out the danger to policemen of sudden, unannounced raids.

People like Sen. Charles H. Percy (R-Ill.), who originally supported no-knock, have now perceived its faults. We trust the House will perceive them, also.

CONSUMER PROTECTION—AGENCY FOR CONSUMER ADVOCACY

Mr. ALLEN. Mr. President, I ask unanimous consent that there be printed in the RECORD an exchange of correspondence between me and the U.S. Department of Agriculture with reference to S. 707 setting forth the views of the Department of Agriculture and citing the hundreds of proceedings of the Department in 1972 which were subject to court review.

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

JANUARY 14, 1974

Hon. EARL BUTZ,
Secretary, Department of Agriculture, Washington, D.C.

DEAR MR. SECRETARY: I serve on a subcommittee of the Government Operations Committee which is considering bills to create an independent Consumer Protection Agency, and am a sponsor of one of these bills. Most observers are of the opinion that such a bill will come up for a vote in both Chambers of Congress early this year.

The principal purpose of a CPA would be to advocate the interests of consumers before other administrative agencies, including the Department of Agriculture, and before the courts.

In letters to Senator Ribicoff, dated July 20, 1973, Mr. J. Phil Campbell, the Under Secretary of Agriculture, indicated his view that, as I understand it, the CPA would be redundant insofar as consumer interests in areas under USDA authority are concerned.

I have been concerned about the effect a CPA, as proposed in the more far-reaching proposals such as S. 707, would have on the ability of the existing administrative agencies to carry out their statutory duties. I have been particularly concerned over provisions such as those in S. 707 to grant the nonregulatory CPA the right to challenge in court the final decisions of regulatory agencies—including their decisions not to act when the CPA requests them to do so. My bill, S. 1160, prohibits the CPA from attempting to "unfinalize" such final decisions in the courts.

My attention has now been called to the enclosed letter from the Secretary of the Treasury concerning the adverse effect such CPA appeal powers would have on the Treasury Department's programs. It seems to me such concerns are even more applicable to the more extensive programs of your Department.

I wonder, Mr. Secretary, if you would share your views with me on what effect, if any, a CPA with such court appeal rights as contained in S. 707 would have on the ability of the USDA to carry out the various programs for which your Department has responsibility, and which, if any, USDA responsibilities should be exempted from such a power.

Would you please supply me with your views at your earliest convenience, as I expect this matter to come before the subcommittee and committee soon after the reconvening of the Congress next week. A copy of S. 707 and S. 1160 are also enclosed for your review.

Sincerely,

JAMES B. ALLEN.

DEPARTMENT OF AGRICULTURE,
Washington, D.C., July 29, 1974.

Hon. JAMES B. ALLEN,
U.S. Senate,
Washington, D.C.

DEAR SENATOR ALLEN: This is in reply to your letter of January 14, 1974, requesting our views on certain aspects of S. 707, a bill to establish independent Consumer Protection Agency to protect and serve the interests of consumers, and for other purposes. Specifically, you asked for our comments regarding the effect on this Department's ability to carry out its programs of granting the proposed Consumer Protection Agency (CPA) if one is created, a right to seek court review of our final decisions.

Section 8 of S. 707, as reported by both the Senate Committee on Commerce and the Senate Committee on Government Operations, would grant the Administrator of the CPA the right to appear in Federal courts to secure judicial review of, or to intervene as of right or otherwise participate in civil proceedings involving the review or enforcement of, a Federal agency action which he determines substantially affects the interests of consumers, wherever he intervened or participated in the administrative activity out of which the court proceeding has arisen. Where he did not so intervene or participate in the agency activity, the Administrator could still initiate or participate in judicial proceedings involving review of such activity unless the court determines that his participation would adversely affect the interests of justice. Also, where the Administrator did not intervene or participate at the agency level, he would be required to file a petition with the agency for rehearing or reconsideration before seeking judicial review.

At this time it is difficult to predict what effect establishment of a CPA with authority (as described above) to appeal our final decisions will have on our ability to carry out our programs. Of course, a great deal depends on the extent to which the Administrator of the CPA determines that our decisions and actions substantially affect consumer interests, intervenes in such actions, and appeals determinations with which he disagrees. In view of the number and scope of our activities, it is fair to say that the impact of a CPA could be substantial. Obviously, whenever the number of persons who may appeal our final decisions is expanded, there could be an increase in the number of appeals with a concomitant increase in the time before implementation of those decisions. There is a delay inherent in any appeal of an agency decision, including appeals which might be sought by the CPA. That delay could be increased if the CPA did not intervene or participate at the agency level, since S. 707 requires that the CPA seek agency reconsideration in such instances before taking an appeal.

Many of the actions taken by this Department, must, of necessity, be implemented within a short period of time and many are of an emergency nature. Under our marketing agreements and orders relating to milk and fruits and vegetables frequent changes in the rules and regulations must be made to accommodate changes in the marketing situation. Emergency action is often necessary under our plant and animal quarantine laws to prevent the spread of a dangerous plant or animal disease. Two examples are the outbreaks of Venezuelan equine encephalomyelitis (VEE) and exotic Newcastle disease, both of which necessitated quarantines of certain areas of the country under emergency conditions. Under our meat and poultry products inspection programs, detention and condemnation of products which are unfit for human consumption or otherwise adulterated are necessary to protect consumers of meat and poultry products.

Many final agency actions taken by this Department can be appealed to a court or subjected to judicial review by one means or another. Because of the scope of the activities of a Department this size, such actions would run into the thousands each year. For example, the Forest Service, which is just one of many agencies of the Department, relies heavily on professionals in the field to administer the National Forest System. The Rangers and Forest Supervisors make thousands of land use decisions and rulings each year, ranging from granting permits to occupy and use National Forest lands to awards of timber sales and road construction contracts. Any such action can be considered a final agency action, and could thus be subject to judicial review. Our experience in the past has shown that a wide range of agency decisions has been subjected to judicial review.

To give you some idea of the final actions of this Department which could be appealed

to the courts for review, we have listed in the enclosure hereto those final agency actions in calendar year 1972 which were taken in formalized proceedings or which were subject to court review by specific statutory provision or both. This listing is not meant to be exhaustive since it does not include some actions taken in informal proceedings or activities or the many final rulemaking actions of this Department, most of which would be subject to judicial review.

The Director of the Office of Management and Budget has written to Senator Sam Ervin, Chairman of the Senate Committee on Government Operations, requesting two strengthening amendments to the judicial review provisions of S. 707. One would require that in those instances where the Administrator of the CPA did not intervene or participate in the Federal agency proceeding or activity, the Administrator would have an affirmative duty to show that permitting him to obtain judicial review would further the interests of justice. The other would provide that, when the CPA petitions a Federal agency for rehearing, the Federal agency would be given "a reasonable time" to respond instead of the 60-day limit provided in the bill. We urge your support of these amendments.

Sincerely,

J. PHIL CAMPBELL,
Under Secretary.

Enclosures.

ENCLOSURE

Final actions of the Department of Agriculture in 1972 which were taken in formalized proceedings or which were subject to court review by specific statutory provision or both:

1. Sixty-five (65) marketing quota review determinations under the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1361–1368), as follows: 1 with regard to rice, 10 peanuts, and 54 tobacco.

2. Fourteen (14) decisions by the Judicial Officer on petitions of handlers alleging illegality of provisions or obligations of Federal milk marketing orders pursuant to section 8c(15)(A) of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 608c(15)(A)).

3. 119 cease-and-desist orders under the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*).

4. Thirty (30) reparation orders under the Packers and Stockyards Act.

5. Twenty-three (23) orders in disciplinary proceedings under the Perishable Agricultural Commodities Act, as amended (7 U.S.C. 499a *et seq.*).

6. 313 reparation orders under the Perishable Agricultural Commodities Act.

7. Thirteen (13) orders in disciplinary proceedings under the Commodity Exchange Act, as amended (7 U.S.C. 1 *et seq.*).

8. Fifteen (15) decisions of the USDA Board of Contract Appeals with regard to disputes under contracts relating to boiler, road, fire tower and dam construction, tree planting, purchase of equipment, river drainage, and Commodity Credit Corporation price support purchases.

9. Twenty (20) decisions of the USDA Board of Forest Appeals and the Secretary of Agriculture pursuant to Appeal Regulations concerning Forest Service contracts or activities.

10. 267 denials of claims for indemnity under the Federal Crop Insurance Act (7 U.S.C. 1501 *et seq.*).

11. Five (5) denials of requests for information under the Freedom of Information Act.

12. One (1) revocation of a license to inspect grain under the United States Grain Standards Act (7 U.S.C. 71 *et seq.*).

13. Four (4) denials of inspection service under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*).

14. Ten (10) final actions in proceedings for suspension or revocation of accreditation of veterinarians under various Animal Quarantine laws and regulations and rules of practice (9 CFR Parts 161 and 162).

15. 444 disqualifications of retail stores under the Food Stamp Act of 1964, as amended (7 U.S.C. 2011 *et seq.*).

CONTINUED SOVIET OCCUPATION OF CZECHOSLOVAKIA

Mr. THURMOND. Mr. President, August 21 of this year will mark the sixth anniversary of the notorious Soviet invasion of Czechoslovakia. The free world has come to remember this date as the "Soviet Day of Shame." It was on August 21, 1968, that a vast array of Soviet-led armies invaded and occupied the small homeland of freedom-loving Czechs and Slovaks.

It is appropriate at this time to point out that these armies still occupy Czechoslovakia, and the Soviets are continuing with their imposition of a repressive, dictatorial regime on the people of this land.

On August 19, 1970, Senate Resolution 450 was introduced to emphasize congressional condemnation of the continued occupation of Czechoslovakia by the armies of the Soviet Union and its satellites. This resolution stated explicitly that—

The continued occupation of Czechoslovakia by the Soviet Union is another crime against the rights of the free people of a small country to determine their own destiny and aspirations.

Today this situation still exists. Freedoms of opinion, expression, religion, and assembly, revived during the Prague Spring of 1968, were abolished following the Soviet-led invasion of August 1968. Arbitrary arrests and detentions are practiced throughout Czechoslovakia, and some of those arrested have been handed over to the Soviet NKVD and exiled to Siberia.

Mr. President, it is incumbent upon every citizen of our own great land to remember this state of affairs in Czechoslovakia and to recognize the significance of August 21.

Mr. President, I ask unanimous consent that the text of a recent statement of the Czechoslovak National Council of America be printed in the RECORD.

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

FREEDOM IS INDIVISIBLE

On this sad occasion of the sixth anniversary of the brutal Soviet-led invasion and occupation of peaceful and freedom-loving Czechoslovakia, we American citizens of Czech, Slovak and Subcarpatho-Ruthenian descent, again remind the entire world of this Soviet violation of key principles of international law incorporated into the Charter of the United Nations:

The brutal Soviet aggression and occupation:

(1) violated the sovereignty of a member state of the United Nations (Article 2, Section 1);

(2) was carried out in violation of Article 2, Section 4, which prohibits the use of military force in the relations between individual members of the United Nations;

(3) violated the principle of self-determination of people (Article 1, Section 2);

(4) was in conflict with Article 2, Section 7, which prohibits outside intervention in matters essentially within the domestic jurisdiction of any state;

(5) was in conflict with a number of resolutions of the General Assembly of the United Nations, particularly with Resolution 2131 (XXI) adopted at the meeting of December 21, 1965, upon the Soviet Union's own motion, prohibiting any intervention in the domestic affairs of any state and guaranteeing its independence and sovereignty.

The continued Soviet occupation of Czechoslovakia is another crime against the right of a small country to determine its own destiny and aspirations. The invasion was an intervention by the forces of reactionary communism to prevent the Czechs and Slovaks from establishing their own social order that did not endanger anyone and sought to contribute to the building of bridges across the discords of a divided world and to lend aid to a better understanding and cooperation among all nations on the basis of true progress and humanity.

The people of Czechoslovakia have not resigned themselves to these aggressive plans of Moscow. The day of August 21, is being commemorated in Czechoslovakia as a *Day of Soviet Shame* in a mighty and disciplined resistance against Soviet pressure. We are joining our friends in Czechoslovakia in asking the entire civilized world to support the people of Czechoslovakia in their effort to achieve "the withdrawal of Soviet troops from Czechoslovakia."

August 21, 1974

CZECHOSLOVAK NATIONAL COUNCIL OF AMERICA,
Chicago, Ill.

THE MILLION DOLLAR PAYOFF—LIBELOUS BOOK BY DOUGLAS CADDY

Mr. MONTOYA. Mr. President, the recent publication of "The Million Dollar Payoff," by Douglas Caddy has aroused my deep concern.

In the preface to his book Mr. Caddy stated that—

Justice demands that corrective action also be taken to curtail illegal contributions given the Democratic Party from tax-exempt union treasuries, whose revenues are derived from the union dues of its members.

This statement is libelous and I am sure that Mr. Caddy knows that it is libelous. It is an outrageous accusation, made with no basis in fact. Mr. Caddy knows, as Members of this body know, that money used by the political action organizations of labor unions is money collected from individuals on a voluntary basis, is a result of perfectly normal and legal fundraising efforts, and is money kept in separate and clearly identified records. It is never money taken from union dues, as Mr. Caddy states.

Mr. President, we have all seen, in our lifetimes, the danger of allowing "the big lie" to be repeated and repeated until it becomes accepted as truth. I refuse to let that happen in this case, and I hope I have the support of every Member of this body.

Working men and women have the legal right, as do all Americans, to voluntarily contribute to political organizations and political campaigns. In many cases workers have chosen to make their contributions through an organization operating as an arm of their unions, and have used that political arm to support candidates who have a record of working for legislation to solve the working

person's problems or to support programs to benefit all Americans.

Mr. Caddy, in his libelous book, has attempted to tar such innocent men and women with the ugly brush of illegal and unethical action. He implies that the illegal contributions of corporations—contributions taken from profits and given in a hidden and clandestine way—are similiar to the contributions of working people given in an open and recorded way.

Illegal contributions, from whatever source, are never to be condoned. The key to understanding the difference is that those whose money is used in an illegal contribution from corporate funds do not know their money has been given away. Those who voluntarily give their money openly to help in a political organization—whether it is through a labor union or a professional association like AMA—do know where their money is going.

Mr. Caddy's book is using the big-lie technique to attack the right of workingmen and women to participate freely and openly in the American political system. I am shocked and dismayed that this kind of book has ever been put into print.

In this year of aroused public interest in the propriety of all political funding and campaign contributions, this scurrilous book attempts to mislead readers in a manner which must bring shame even to Mr. Caddy. He is a lawyer who should know the dangers of making false accusations and should understand the divisive and ugly results of confusing legal and voluntary political gifts with illegal and involuntary political payoffs.

Any threat to truth becomes a threat to the body politic. This book is such a threat, and I do not hesitate to denounce it.

The New Mexican, published in Santa Fe, N. Mex., has recently published a response to Mr. Caddy's cruel attack, in a guest column written by Mary Sue Buchly, New Mexico State AFL–CIO COPE director.

Mr. President, I ask unanimous consent that Miss Buchly's article be published in the RECORD following my remarks. I strongly urge my colleagues to read this statement and to take this opportunity to be alerted to the danger of placing any credence in Mr. Caddy's effort.

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

[From the Santa Fe New Mexican]

OFFICIAL OF AFL–CIO DEFENDS POLITICAL CONTRIBUTIONS

(A response to a charge that the AFL–CIO's COPE (Committee on Political Education) flagrantly violates the law is presented in this guest column for vacationing Fred Buckles by Mary Sue Buchly, New Mexico State AFL–CIO COPE director.)

(By Mary Sue Buchly)

ALBUQUERQUE.—Political contributions and their effects have been high priority among the general public and media for two years.

A recent publication authorized by Douglas Caddy, who also doubled in brass as defense counsel for the Watergate Seven, has made broad statements relative to political contribtuions by COPE.

There is basically no argument with Caddy's arithmetic; however, a serious error emerges in his book, "The Million Dollar Payoff."

Caddy erroneously states COPE "flagrantly violates the law." He says union members' dues are used to further and advance the AFL–CIO position in the political arena.

All funds used by COPE, which are used for political contributions, are voluntary and furthermore are never withheld from wages in any form.

All COPE's funds can be legally identified. COPE's source is always from fundraising programs and voluntary contributions on a local, state and national level contributed by working people.

The reader should evaluate and make a comparison of COPE contributions versus corporate industrial contributions. It is a matter of public record that the milk industries' contributions to President Nixon caused an increase in the cost of milk and dairy products to every citizen with the only consideration being greater unfair profits for a chosen few.

The petroleum industry, whose multi-million dollar political war chest was used in behalf of President Nixon, produced a questionable gasoline shortage but unquestionably high increase in corporate profits at the expense of every car owner for the benefit of a "few corporate heads."

The American Medical Association for decades has totaled multi-million dollar political contributions to kill legislation that would improve the general public's health care.

They opposed Medicare for 20 years and today are opposing a fair and equitable health plan that would benefit the entire American population to maintain high profits.

The list is long of vested interests who have used the political contribution route to create anti-public consumer legislation and to kill any legislative efforts that would protect and improve the American's lot in life.

COPE, through its voluntary contributions from 16 million American wage earners and consumers, is one of the few national organizations structured to support people-oriented laws.

COPE does not limit itself in supporting "labor laws nationally or statewide." We have an honorable record in supporting such legislation as minimum wage which is a fair day's pay for a fair day of work for all Americans.

Labor has supported job safety to protect workers so that unnecessary permanent injury would not put them on the disabled welfare rolls. A good and comprehensive health care plan that could bring decent and basic health care to the public is always adamantly supported in Congress by the AFL–CIO. This labor concern is not restrictive but general.

Labor champions workmen's compensation legislation that will assist a family wage earner when he is injured on the job which allows his family to maintain some semblance of a decent living during his recuperative period.

The political contributions by selfish, vested interests come from profits created by the public and used directly against their best interests. COPE funds are not derived from corporate profits. They are derived from the working man who cares about his fellow American.

Therefore, it can be easily identified that big business funds which are used for political contributions are surplus-profits that are paid for by the average citizen. Their own money is used to create legislation that is negative to the public's best interest.

It is not to say that labor does not believe in profit motivation. It is not to say that labor is opposed to the free enterprise system.

But we feel it should be universally objectionable to use excess profits to the detriment of the general public in the form of public contributions that will foster price gouging and enabling legislation that will minimize public services which could be beneficial for all.

ADMINISTRATION PROPOSALS FOR AID TO INDOCHINA

Mr. HATFIELD. Mr. President, on July 24, 1974, Mr. Fred Branfman, co-director of the Indochina Resource Center, testified before the Senate Foreign Relations Committee concerning the fiscal year 1975 administration proposals for aid to Indochina. His statement contains a wealth of penetrating insights and revealing statistical data about our continuing involvement in Indochina, including the covert ways in which our aid still serves to fuel the unended war there. Because of the relevance of this material to the Congress consideration of the administration's fiscal year 1975 request for aid to Indochina, I ask unanimous consent that it be printed in the RECORD.

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

STATEMENT OF FREDRIC R. BRANFMAN, CO-DIRECTOR, THE INDOCHINA RESOURCE CENTER BEFORE THE SENATE FOREIGN RELATIONS COMMITTEE

PRESIDENTIAL COVERT WAR AND U.S. AID TO INDOCHINA, JULY 24, 1974

An update and introduction to the Indochina Resource Center/Narmic analyses of the FY 1975 administration aid proposals for Indochina.

Fredric Branfman is co-director of the Indochina Resource Center, located at 1322 18th St. N.W., Washington, D.C. 20036. Its telephone number is (202) 785–3111.

The Indochina Resource Center is a church-sponsored private research group which regularly monitors dozens of official documents, newspapers and magazines, and receives personal correspondence from individuals on the scene in Indochina.

Mr. Branfman's testimony is based on this ongoing research, as well as 4½ years experience in Indochina over the past 7 years. His most recent visit was a post-ceasefire trip to South Vietnam, Cambodia, and Thailand from April through August, 1973. He also visited North Vietnam in November, 1972, and spent four years based in Laos as an educational adviser and writer from 1967–1971.

Mr. Branfman has written widely on Indochina. *Voices From the Plain of Jars*, published by Harper and Row, is a moving description of American bombing in Laos; "The Presidential War in Laos: 1964–1970", in *Laos: War and Revolution*, a Harper and Row publication, describes U.S. involvement in Laos during that period; his articles have also appeared in *Harper's*, the *New York Times*, *Washington Post*, *Washington Monthly*, *Newsday*, the *Progressive*, *Ramparts*, and dozens of other newspapers and magazines around the country. He has also frequently given testimony to Congressional committees, including the U.S. Senate Refugee and Government Operations Subcommittees, and the House Foreign Affairs Committee.

Presidential covert war and U.S. aid to Indochina

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INTRODUCTION: A SOLUTION TO OUR INDOCHINA INVOLVEMENT EXISTS

The pages which follow document our belief that present Administration policy in Indochina is leading to major new military confrontations there. We demonstrate that present U.S. policy is bringing untold misery to the people of Vietnam, unacceptable costs to the people of this country, and cannot lead to peace.

Before turning to this analysis of present policy, however, we wish to stress that there *is* an alternative that would be acceptable to most Americans: observation of the Paris Agreement.

It is often said that the Paris Agreement is a mere scrap of paper, since both sides are violating it.

To call it a mere scrap of paper, however, is to deny that our involvement in Indochina can ever be ended. The great importance of the Paris Agreement is that it does provide an honorable way, indeed the only way, that the war in Indochina can be ended.

For 10 long years the US fought in Vietnam with no real public hope that the war would stop. The battles went on and on, with no political solution in sight.

Now finally, after a million deaths, there is finally a *political solution* to a war which cannot be won on the battlefield, a formal peace agreement signed by all parties directly concerned.

This Agreement, moreover, offers a way that we can end our involvement without it being said that we reneged on our "commitments", were defeated, or "bugged out". It provides for a relatively orderly political process by which the Vietnamese people will be free to choose their own leaders, free of outside political interference. It is clear, moreover, that such a political process will see the emergence for the foreseeable future of some kind of coalition mechanism that will prevent any side from claiming absolute victory or defeat.

To downgrade the importance of the Paris Agreement, this political solution, is to say that there can be no political solution to the fighting. It is to accept the notion that the war will continue indefinitely. To minimize the Paris Agreement in any way, therefore, is in effect to encourage war.

To stress the importance of the Paris Agreement, however, is to be for peace. By insisting that both sides adhere to it, by ensuring that our side is doing everything possible to at least test the other side's offer to negotiate, is not only desirable. It is absolutely necessary if our Indochina involvement is ever to end.

Such a policy, as we can see in Laos so far, can work. There is no reason why there cannot be a Laos-like solution to the Indochina war, if Congress ensures that our aid is not being used in a way that blocks implementation of the Paris Agreement.

The Paris Agreement is, quite simply, a realistic hope for peace in Vietnam—the only one that now exists. And it is a hope for peace which can be realized, if we want it to.

I. COVERT WAR: A CHALLENGE TO CONGRESS FOR THE 1970'S

One of the dominant, if least understood facts of this latter half of the 20th century is that we have entered an era characterized by a new form of war-making, a phenomenon we shall call *Presidential covert war*.

By this we mean that the Executive officials of today's superpowers have opted away from conventional or nuclear war and *for* war by proxy—"low-profile" war in which they rely on intensive use of technology and relatively few American personnel to wage clandestine war abroad.

One of the basic facts of our lives as Americans is that our Executive branch today can and does wage war abroad without the knowledge or consent of the American people.

There are many examples of such Presidential covert war in recent times, from U.S. Executive intervention in Ethiopia to the Congo to the Philippines to Iran. The most dramatic example of such covert war-making today, however, is Indochina.

During the 1960's, Indochina became the symbol of *direct* U.S. Military involvement in the Third World. Responding to a clear mandate from the American people, Congress has moved to end our *direct* combat involvement in Indochina. By doing so, it has clearly signaled the end of an era, bringing hope to most Americans that Congress will never allow massive U.S. combat involvement in another Third World country.

Today, in the mid-1970's, however, Indochina has now become the symbol of *indirect*, covert U.S. involvement in the Third World. Such covert war, we believe, is objectionable both for moral and practical reasons, and leads to increasing pressures for *direct* U.S. intervention.

The time when this country could afford the luxury of supporting "low-profile" wars abroad has clearly passed. Such factors as the coming crunch on energy and other key resources, the exponential increase in the costs of both modern weaponry and a volunteer army, rampant inflation and rising labor costs, have reduced American options.

Last year, for example, we could not both wage covert war in Indochina and feed the most needy in other parts of the world. The Administration wound up sending increased "Food For Peace" shipments to fund war in Indochina, up from $208.8 to $502.6 million; but only $77 million was made available to the Sahel, where tens of thousands of human beings literally starved to death.

We would suggest, therefore, that Congress terminating the Executive's unilateral ability to wage covert war is as urgent a task for the 70's, as was Congress finally coming to grips with U.S. direct combat abroad during the 60's.

Congressional suspension or reduction of proposed Administration expenditures in Indochina, then, will do far more than simply signal an end to our otherwise unending involvement there. It will also mean that the people of the United States will finally be freed of the burden of supporting worldwide covert war, the people of the Third World finally free to pursue their own destinies.

II. CONGRESS IS BEING ASKED TO FUND WAR IN INDOCHINA

Indochina remains the largest war in the world today.

The latest reports, for example, indicate that 350,000 soldiers on both sides in Vietnam have been killed or wounded since the ceasefire. (UPI dispatch, June 11, 1974). This is more than ten times the official casualities reported during and after the October Mid-East War. In addition there were 85,000 *civilians* killed and wounded, and 818,000 new refugees in the first post-ceasefire year, according to the U.S. Senate Subcommittee on Refugees; and hundreds of thousands more have been killed, wounded or made homeless in Cambodia since the ceasefire.

In all, Indochina may well have had more war victims created in the last 18 months than the rest of the world combined.

Given this raging war, Administration aid requests for Indochina are clearly intended to fund war, not produce peace. This fact is made clear by the tremendous priority the Administration puts on Indochina compared to other countries, as well as a close analysis of its actual requested expenditures.

The Indochina Resource Center and NARMIC, a project of the American Friends Service Committee, have recently submitted Administration requests to the first such close analysis in the history of the war. Two studies we have produced, which we would like to submit for the record, emphasize the following points:

(1) The Administration is proposing to spend $3.7 billion for Indochina, more than for the rest of the world combined (see Table 1). This will provide Thieu and Lon Nol governments with 90% of their total resources, including all of their war material.

(2) Food For Peace to Indochina in FY 74 totalled 49% of worldwide shipments, meaning that 0.8% of the world's population received nearly half the world's U.S. supplied food (see Table 2). Although some 100,000 persons are estimated to have starved to death in Sahel, for example, Sahel received only 15% or 1/7 of what Indochina received—because Food For Peace was indirectly used to finance war last year.

(3) U.S. aid in Indochina is not leading to stability, but only demands for more money. In FY 74, for example, the Administration began with a request for $827.8 million to South Vietnam and Cambodia in economic aid (IPR[1] plus Food For Peace). By the end of FY 74 it had allocated $1.52 billion, an *increase* of 27%. This year it is demanding $1.181 billion, an increase of 40% over last year's request (see Tables 3 & 4).

(4) An admitted 88% of this year's aid proposal is non-humanitarian, non-developmental in nature: i.e., 88% is for war. In reality, moreover, only 2% is truly humanitarian. Requested *military* aid to the three Administration-supported governments is also *up* this year, moreover. In Fiscal Year 1974, $1.468 billion was allocated; the Administration is now requesting $2.05 billion, an increase of 40%. Most significantly, the Administration is requesting $852 million for "procurement" for South Vietnam, a sum more than *double* the $359 million programmed for Fiscal Year 1974. This makes it clear that the Administration is vastly increasing Thieu's material, in violation of the "one for one" clause of the Paris Agreement and a congressional mandate to reduce our military spending in Indochina. (See Tables 4 & 5).

(5) The Administration has blatantly violated a congressional mandate to reduce aid to Indochina in Fiscal Year 1975. Any Congressional attempts to cut aid in FY 75, therefore, must be massive. Last year, "Indochina Postwar Reconstruction" aid was cut

[1] IPR—"Indochina Postwar Reconstruction", formerly known as "economic aid".

from a requested $632 million to an allocation of $450 million. By unilaterally increasing Food For Peace shipments from a requested $208 million to an estimated allocation of $502.6 million, however, the Administration has not only restored cuts in economic aid, it has exceeded its original FY 74 request in a blatant violation of congressional will. (See Table 3).

Indeed, Food For Peace to Indochina last year ($502.6 million) turned out to be more than normal economic aid (IPR funds totalling $450 million). In addition, the Executive possesses a wide variety of other loopholes—including the Food and Forage Act, huge amounts of War Reserve material built up especially for Indochina and over which Congress has little control, ceilingless "excess defense article" and "purchase of local currency" categories and an uncontrolled CIA budget.[2]

(6) The Administration's proposed aid to Indochina can only lead to an escalated war, while preventing a political settlement.

By channeling lavish military aid to the GVN and Lon Nol, the Administration is not leaving the other side any *political* incentives to negotiate. The U.S. supported GVN has outlawed the PRG for example, thus leaving it no choice but surrender or pushing back militarily in order to force the GVN to seek a political settlement. If Administration FY 75 aid requests are passed, the only result will be an escalating war which is directly leading to major new military confrontations in Indochina. Such confrontations, moreover, could see the Administration attempt to renew American bombing and/or send in U.S. ground troops.

Only Congress can bring about a very real potential solution: by reducing or suspending aid to Thieu and Lon Nol, Congress could make it in the Administration's interest to bring about a negotiated settlement in South Vietnam and Cambodia, as it has done in Laos.

III. COVERT WAR: THE ADMINISTRATION METHODOLOGY

The fact that the Administration is requesting such massive funding for war in Indochina is not the essence of its covert warring in Indochina, however. On the contrary. It is the Administration's direct involvement in the internal affairs of Indochina—through control of billions in aid and thousands of U.S. personnel—that characterizes Presidential war.

This direct U.S. involvement is of necessity disguised or "covert". Congress and the American people have made it clear they no longer wish the U.S. to be involved; such direct American involvement is precluded by the Paris Agreement; and world opinion has turned against further American intervention.

As a result, the Administration goes out of its way to hide its involvement. All documents indicating Presidential branch involvement are classified. American military personnel are disguised as civilians, and are instructed to avoid non-U.S. mission contact as much as possible. Administration spokesmen are instructed to emphatically deny all reports of U.S. involvement. Leaks are greatly reduced due to the few reporters and smaller numbers of American personnel involved in such a covert war.

Deliberate attempts are made to deceive Congress.

At its simplest level, this attempt involves an Orwellian change in nomenclature. A war budget is presented as "Indochina Postwar Reconstruction"; this year's fiscal year 1975 budget now calls the former "Commodity Import Program," widely known as a short-term, war-related, budgetary device to keep the GVN alive, "Food and Nutrition" and "Industrial Production"; food commodities designed to free funds for local war budgets are called "Food For Peace"; money designed to resettle refugees in unfarmable land to expand territorial control of the GVN is called "humanitarian" aid.

Numerous direct attempts are made, moreover, deliberately to deprive Congress of requested information. On April 2, 1974, for example, Senator Kennedy revealed that the U.S. Ambassador in Saigon, Mr. Graham Martin, had interfered with attempts by the Congressional investigatory service, the General Accounting Office. Kennedy reported that:

"The Senate should also be aware of Ambassador Martin's unwarranted interference in field investigation of U.S. foreign aid expenditures by investigators of the GAO. Not only has the Ambassador intervened at the highest levels of the GAO to curb their inquiries, but he has repeatedly made every effort to restrict the investigators' access and use of information in the Embassy files. And he has even attempted to censor the transfer of GAO information from Saigon to Washington."

On the same day, of course, Kennedy also revealed the well-known cable of Ambassador Martin counselling that "it would be the height of folly to permit Kennedy . . . an honest and detailed answer" to questions presented to the State Department.

A GAO request to investigate U.S. funding of political prisoners in South Vietnam met with similar treatment by the State Department. "The State Department has told the General Accounting Office that it will not be possible for the GAO to make a proposed investigation of political prisoners in South Vietnam and other nations . . ." the Washington Star-News reported on February 9, 1974.

Major attempts are also made to hide Executive involvement from the American press.

American installations are declared off-limits to American reporters. American personnel are instructed to either avoid or lie to American journalists about their real functions. American reporters are not given transportation to "sensitive" areas where American military or paramilitary advisers are operating.

In South Vietnam, for example, Ambassador Graham Martin has restricted press access to American officials. On January 30, 1974, for example, The Christian Science Monitor reported that:

"By itself, the official U.S. mission in South Vietnam . . . is still the largest American mission in the world. No major reductions are expected in the forseeable future . . . (Ambassador Martin) is trying to discourage any publicity concerning the American presence here . . . Major General John E. Murray, the chief of the Defense Attaché Office . . . was recently told to stop giving interviews. . . ."

Such reports have been echoed by the Chicago Tribune, which referred on June 9, 1974, to Martin's "continuing effort to restrict the flow of information from official American sources to the press." On February 25, 1974, moreover, The New York Times reported that "the Embassy told at least two private companies—Lear-Siegler, which employs a large force of aircraft mechanics here and Computer Science Corporation, which works on military and police computer systems—to say nothing publicly about their work, according to company executives."

Attempts to keep journalists away from Indochina news extends to places like Thailand, moreover. On January 11, 1974, the Los Angeles Times reported on an infrequent trip to Udorn Airforce Base in Thailand that:

"When American reporters asked to talk with members of this American unit (working with Lao and Cambodian pilots) they were told this could not be done without the consent of the Thai government."

Given such restrictions on the press, it is remarkable how many reports have leaked out in the past year and a half indicating a pattern of covert American involvement in Indochina reminiscent of, *but far greater than*, the kind of disguised Presidential intervention in Indochina between 1954 and 1962 which led to direct involvement later.

The pages which follow present many of these newspaper reports indicating the well-known pattern of Presidential covert involvement in Indochina, as well as other reports from direct participants in Indochina after the ceasefire.

No one of these reports in and of itself is proof positive of continuing U.S. covert war.

When considered as a whole, however, these reports are clearly a major cause for alarm.

The publication of the Pentagon Papers revealed that newspaper reports about U.S. involvement in Indochina between 1954 and 1962 were surprisingly accurate, despite the fact that they were hotly denied by Executive branch officials at the time.

Given this history, it would be the height of folly for Congress to ignore the numerous press and first-person reports which have come out of Indochina since the ceasefire. We had to wait nearly 20 years for the Pentagon Papers, during which time a small covert war grew into a massive overt one.

It has become more than clear that unless Congress acts to reduce our funding of Presidential covert war in Indochina this year, history may well repeat itself.

IV. COVERT WAR: BACKGROUND

Historically, the American people and Congress have taken the Executive's word on matters of public policy. The burden of proof has laid upon critics to disprove Administration claims, rather than on the Administration to provide evidence that it is living up to its word.

In the case of Presidential war-making abroad, however, the U.S. Executive branch has clearly forfeited public or congressional trust. For since World War II, it has been revealed countless times that the Executive has been intervening abroad while covering it up at home.

In Indochina alone, for example, Executive activities that have now been revealed after being hidden from the American people and Congress for years include:

Installing Ngo Dinh Diem in power in 1954, acknowledged within the American Mission as an unpopular dictator who unilaterally cancelled elections in 1956 in violation of the Geneva Accords, while publicly praised as a popular, democratic, sovereign leader (Pentagon Papers); withholding information from Congress and the American people about U.S.-directed commando raids against North Vietnam, thus making the Gulf of Tonkin incident appear unprovoked (Pentagon Papers); funding and directing Thai and other foreign troops in Laos, in direct violation of Congressional law; secretly bombing Cambodia for 14 months, and falsifying records so that the U.S. Congress and people would not know; publicly denying the bombing of northern Laos from May 1964 until September 1969 when Congress was first told, and March 1970, when the American people first heard; U.S. cross-border operations into Laos and Cambodia in 1971 and 1972, thus expressly violating Congressional law against sending U.S. ground forces into these countries; carrying out rain-making missions over Indochina while publicly denying that they were being carried out; attempting to cause

[2] There are also signs that the Administration may try backdoor funding of Thieu through the World Bank and Overseas Private Investment Corporation (OPIC) guarantees of private American investment in South Vietnam.

fire storms, also not acknowledged until years later.[3]

And, in addition to these now officially-confirmed covert activities, there are a wide variety of other clandestine activities which have been revealed by numerous persons with first-person experience, but are still officially denied by the Executive branch. These include the sending of military personnel into Laos and instructing them to wear civilian clothes and carry cards identifying them as working for the Agency for International Development; the dispatch of U.S.-directed intelligence-gathering teams into China and North Vietnam from northern Laos, thus jeopardizing the shaky neutrality of Laos; the use of CIA-trained Vietnamese to dress like the NLF and carry out atrocities, in the hope of having these blamed on the NLF; the falsification of documents given to the American and Vietnamese press; U.S. established quotas which led to the deliberate assassination of tens of thousands of Vietnamese under the U.S.-sponsored Phoenix program.

This record of Executive deceit alone suggests that the U.S. Presidential branch may be reasonably required to advance evidence that it is *not* engaged in similar activities today, rather than requiring critics to advance documentary proof.

The case for requiring the Executive to prove its non-involvement, however, is immeasurably strengthened by a little-noticed but tremendously important story, reported in the Los Angeles Times on May 16, 1974. This report states that:

"The Air Force law office says it is legal, for military or foreign policy reasons, to disguise military operations through inaccurate or untrue official reports. The conclusion was stated in a memorandum to the Senate Armed Services Committee in connection with the Committee's investigation last year of the secret bombing of Cambodia for 14 months before May, 1970."

This shocking contention makes it clear that neither the Congress nor the American people can any longer be content with mere denials of Executive covert war in Indochina.

Indeed, logic would demand that the dozens of newspaper and first-person reports which follow, indicating Presidential covert war in Indochina, should be taken as true—with the burden for disproving them lying upon the Presidential branch.

This point, moreover, is strengthened by a consideration of four major strategic goals of Presidential covert war.

V. COVERT WAR: BASIC STRATEGIC GOALS

The purpose of continued U.S. Executive intervention in Indochina is to keep the Provisional Revolutionary Government (PRG), Khmer Rouge, and Pathet Lao from power in Indochina.

Obtaining funding to pay the salaries of local military forces, their arms, and providing support for the general economy, is key of course. But U.S. personnel—advising the military forces and police, holding the economy together, repairing the aircraft—are no less important. For there would be no need for American intervention in the first place if a GVN or Lon Nol government was able to stand on its own.

It is no coincidence, for example, that as the Khmer Rouge have continued to gain territory and support in Cambodia, the Washington Post reported on June 6, 1974, that:

"The new U.S. Ambassador in Phnom Phenh, John Gunther Dean, has in two months made it absolutely clear to Cambodians and foreigners alike in Phnom Penh that he is, in effect, running the country."

Nor is it surprising that after the Administration had for years attempted to avoid an open American build-up in Cambodia, the Washington Post reported on June 9, 1974, that:

"The Cambodian government and the U.S. Embassy are engaged in a costly program of aid to win the support of civilian populations in insurgent areas . . . The mission now is the second largest AID unit in the world."

For the fact is that Presidential covert war is characterized by the disguised attempt to use American technology and personnel to compensate for the political deficiencies of local regimes in Indochina. Its main strategic goals—and failings—can be described thusly:

(1) Obtaining funding through manipulation of domestic public opinion—The principal requirement of Presidential covert war is funding. Neither Congress nor the American people would approve funding of Executive war-making in Indochina in violation of Article 4 of the Paris Agreement, which reads "The United States will not continue its military involvement or intervene in the internal affairs of South Vietnam." As a result, the Administration has consistently tried to deceive public opinion about its real involvement in Indochina. Such manipulation of public opinion may enjoy some short-term successes, as when the Administration managed to spend more than $3 billion on war in Indochina in Fiscal Year 1974. Long-term results, however, are counter-productive. It leads to the wasting of billions of dollars our economy can no longer afford; it poisons the political atmosphere, as the American people gradually learn they've been deceived. Most importantly, it continues the excessive concentration of power in the Executive which has already proved so disastrous to this country. An informed public and Congress would have kept us out of Indochina in the first place, and would today see us using our resources for healing at home and abroad.

(2) Maintaining narrow-based, military-oriented local administrations in power—The Administration has chosen to continue trying to keep in power those who represent a tiny minority of the people: the civilian rich, the top-ranking military officers and, to some extent, the western-educated. The result is either that the Administration fears political competition and opts instead for war, as in South Vietnam; the U.S.-supported side becomes so weak that the other side refuses to negotiate with it, as in Cambodia; or the U.S. is forced to accept political compromise, see the other side gain in power, and pressures grow for re-intervention, as in Laos. And the result is also increased corruption and war, leading to declining local economies and armed forces, leading to increased demands for aid from the U.S. Presidential branch.

(3) Using U.S. technology and advisers to control local military operations—Given the Administration's narrow political base in Indochina, it is formed to try and compensate by extremely heavy inputs of U.S. military advisers, war material and funding to develop and field local military forces. This makes such local forces entirely dependent on American logistics and personnel, and invariably inferior to their guerrilla adversaries. This leads to growing pressures for *direct* American intervention—e.g., through covert or overt bombing by American pilots or U.S. Marine landings—ever-increasing costs, and increased deception at home.

(4) Practising population control through police and refugee programs—Since U.S. Executive-backed local administrations cannot win popular support, the emphasis instead has been on physical control of the population. Executive policy has since the 1960s resettled nearly 14 million refugees in areas closer to U.S. Executive control in South Vietnam, Cambodia and Laos. Under the Nixon Doctrine, however, there has been a noticeably increased emphasis on police operations, ranging from greatly increased surveillance and national I.D. card programs, to constant arrests, to the physical liquidation of opponents. This practice, however, has also proved counter-productive since it violates the most basic tenets of humanity, leading to world-wide protest, increased lying by American leaders, and the further alienation of a local population constantly subject to mass surveillance, round-ups, summary sentencing, and inhuman torture and prison mistreatment.

VI. COVERT WAR: MANIPULATING DOMESTIC OPINION TO OBTAIN FUNDING

The key to the Presidential branch's ability to wage covert war is its ability to obtain funding from the Congress and American people. Such funding in turn, derives from the Executive's control over *information* about its activities.

We have already described (see Section III above) the methods used by the Presidential branch to keep information about its activities from Congress and the American people. This attempt, however, is only partially successful, and information frequently leaks out contradicting the Administration's public position.

A few examples of how the Administration has tried to deceive Congress and the American people about the military and political situation in Indochina in order to obtain funding follow:

(a) Executive deception on military matters.

1. Ceasefire Violations—American officials constantly claim that the communists have taken the initiative in violating the ceasefire militarily. Yet Representative Peter Frelinghuysen, a major spokesman favoring continued aid to the Thieu government, recently stated on p. 4 of his May 1974 report, "Vietnam—A Changing Crucible" that:

"The GVN has fared well during post-cease-fire maneuvering: Since January 1973 it has added 770 hamlets to the list of those over which it has dominant control, and it has reportedly reduced the number of disrupted hamlets by well over a third. The Communists meanwhile have lost over 90 hamlets that were under their firm control at the time of the ceasefire . . ."

2. Violation of U.S. Pledge to Withdraw Advisers—The Administration has never revealed its secret "assurance" when signing the Paris Agreement that it would withdraw all military or civilian advisers to the Vietnamese armed forces within 12 months. This pledge, revealed in a secret memo prepared by George Aldrich, State Department deputy legal adviser, states in part that:

"Secret—The United States has assured the DRV that we shall withdraw from South Vietnam within 12 months from the signature of the agreement all our civilian personnel working in the armed forces of the Republic of Vietnam." (Wash. Post, June 4, 1974)

When this pledge was revealed by author Tad Szulc, the State Department denied that this "assurance" constituted a firm promise to do so. Today, over 17 months after the signing of that Agreement, some 3,800 American civilians continue to work with the South Vietnamese Armed Services.

On June 3, 1974, the St. Louis Post-

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[3] Secret bombing of Cambodia and cross-border operations into Laos and Cambodia are described in "The White Paper on Secret Operations in Laos and Cambodia", Senator Hughes, CONGRESSIONAL RECORD, vol. 119, pt. 22, p. 29047. Rain-making missions were recently revealed, see *Washington Post*, May 19, 1974. The bombing of Northern Laos is described in testimony before the Senate Refugee Subcommittee.

Funding of Thai mercenaries in Laos was first revealed before the Senate Foreign Relations Committee, firestorm attempts in Science.

Dispatch reported that at the end of March 1974, 2,643 U.S. employees contracted to the Pentagon were working with the South Vietnamese military, 936 were employed directly by the Defense Attache Office in Saigon, and 225 made up the official DAO military contingent.

3. Exaggerating PRG Military Pressure—U.S. and GVN officials have blatantly attempted to deceive the American people and Congress about the Thieu government's need for economic and military aid. During March and October, 1973, for example, Administration spokesmen trumpeted the idea that a "North Vietnamese offensive" was imminent. To this day, of course, none has materialized.

Even more serious was the transparently false attempt to wangle an extra $474 million supplemental military appropriation for the GVN during the spring of 1974. The U.S. Congress was flatly told that if Thieu did not have this money, his army might collapse. On March 12, 1974, for example, Assistant Secretary of Defense William Clements testified before the Senate Armed Services Committee:

"Without additional funds the South Vietnamese forces are going to be in extremely dire straits here in April, May and June. There is just no doubt about it. . . . We are going to run out of funds here in the latter part of this fiscal year unless we are given additional funds."

In the event, of course, the funding request was denied. Theoretically, the ARVN should thus have been near collapse. In fact, however, the Washington Post reported on May 9, 1974, after the request had been denied, that:

"(Pentagon spokesman) Friedheim also appeared to take a less dire view . . . than have some other White House and Defense officials. Friedheim noted that . . . only two months remain in the current fiscal year." . . .

4. Exaggerating Nature of Soviet and Chinese Aid—Ambassador Graham Martin has stated that "our intention all along was to balance the aid given by the Soviet Union and the People's Republic of China to North Vietnam."

According to the estimates of the U.S. Defense Intelligence Agency itself, however, Soviet and Chinese aid to North Vietnam in 1973 was only $290 million. U.S. military aid to the GVN alone in calendar year 1973, however, was $2.271 billion, or eight times as much. When one remembers that the United States alone spent hundreds of millions in direct expenditures for U.S. military forces, as well as hundreds of millions of dollars more in Cambodia and Laos, the United States actually wound up outspending the Soviet Union and China by far more in the first year since the ceasefire.

Even more importantly, Soviet and Chinese aid to North Vietnam decreased by 47% from 1972 to 1973, from $605 million down to $290 million. U.S. aid to Thieu decreased by only 5% from 1972 to 1973, however, from $2.383 billion to $2.271 billion. (See Tables 6 and 7.)

(B) EXECUTIVE DECEPTION ON POLITICAL MATTER.

1. Administration Humanitarian Concern—The Administration continues to stress its humanitarian concern for affairs in South Vietnam, while castigating the other side for its lack of humanitarian concern. On June 26, 1974, however, Senator Kennedy revealed confidential cables from U.S. Ambassador Graham Martin in Saigon advocating that the U.S. hold up its contribution to the International Red Cross in an attempt to pressure them not to invite the Provisional Revolutionary Government (PRG) to an international conference to be held in Geneva in September to discuss limiting weapons which are either indiscriminate or cause unnecessary suffering; on June 23, 1974, the N.Y. Times reported that the U.S. was opposing UNICEF aid to children in North Vietnam and PRG zones.

And, most seriously, the Administration has still not even begun to remove the many mines still maiming and killing numerous Vietnamese peasants in Saigon zones.

2. Political Prisoners in South Vietnam—On May 28, Secretary Kissinger supported Graham Martin's charge that there is no evidence that Saigon is holding large numbers of political prisoners, and added that "the extensive evidence available to us simply does not sustain the highly publicized charges that civilian prisoners are subjected to widespread, systematic mistreatment . . ." (Senator Kennedy insert, C.R., May 28, 1974)

On June 7, 1974, however, Representative Abzug inserted into the Congressional Record (p. E3657) a listing of over 100 articles which emanted from Saigon, from western journalists or residents, indicating widespread mistreatment of large numbers of political prisoners; since the Saigon government has not allowed even the International Red Cross to talk freely with civilian detainees, and since it has also turned down requests for visits by Bishop Thomas Gumbleton of Detroit and other groups and individuals, the closing off of the prisons to the outside world (with the exception of a few guided tours) is cause for alarm, in and of itself. The assertion that the U.S. Embassy has "extensive evidence" on the treatment of prisoners is curious, since an earlier U.S. Embassy study stated that U.S. advisers had been withdrawn from the prisons since the ceasefire, and that Embassy information was based on "internal" GVN records.

3. Administration Policy in Laos—U.S. officials constantly maintain that they support the coalition government in Laos. Testifying before the House Foreign Affairs Committee on June 13, 1974, for example, Mr. Robert Nooter stated that "the formation of a Provisional Government of National Union (PGNU) this past April represents a bona fide political resolution of Laos internal differences. The U.S. supports this effort . . ."

On June 23, 1974, however, Senator Edward Kennedy issued a press release, based on a still secret General Accounting Office report, which revealed in fact the Administration has not been supporting the PGNU at all. On the contrary. To date, all funds had been going to the right wing Royal Lao faction directly, an ominous throw-back recalling the pattern of past coup-making which has upset political settlements before in Laos.

Kennedy's charges appeared to gain some substance, moreover, by a N.Y. Times report the next day which indicated that a Vice-Admiral Ray Peet had told a House committee that U.S. objectives in Laos were "to maintain the survival of the politically neutral Royal Laotian Government . . . and to encourage pursuit by Laos of objectives compatible with the United States."

4. Administration "Food For Peace" Politics—And there is fresh indication that while pretending to obey a new Congressional prohibition against using Food For Peace monies for war, the Administration is continuing to use local currencies generated by the sale of Food For Peace commodities for military purposes in South Vietnam and Cambodia, as it has in the past.

On June 30, 1974, for example, The Washington Post reported from Phnom Penh that:

"Congressional efforts to prevent military use of funds generated by the Food For Peace program apparently are being frustrated by some ingenious bookkeeping to circumvent the intent of Congress by simply allowing the funds to pile up unused in a bank account and then printing an equal amount of new money to pay soldiers. In Saigon, it also appears possible that funds generated by the program could be channeled into other non-military areas of the economy, freeing up equal amounts of money for military use and thus again frustrating Congress' efforts at control".

This tiny sample of Administration untruths make it clear that manipulation of domestic public opinion lies at the heart of Presidential covert war.

For the American people and Congress would clearly not support any further expenditures in Indochina were the Administration to admit the truth of the examples above, i.e., that the Administration was violating the Agreement by not withdrawing its advisers and supporting Thieu's violations of the Agreement, which were not, in turn, occasioned by either communist pressure or Soviet or Chinese aid; and that Administration policy was non-humanitarian, covering up for Thieu's political prisoners, threatening the Laotian peace agreement, and violating a congressional ban on using Food For Peace for military purposes.

VII: COVERT WAR; A COMMITMENT TO NARROW-BASED LOCAL ADMINISTRATIONS

The Administration's decision to attempt to keep administrations like those of Thieu and Lon Nol in power inevitably lead it to practice covert war.

For the basic fact is that the narrow-based GVN and Lon Nol administrations cannot reach political accommodations with their adversaries. As a result, continued aid to such administrations simply encourages the perpetuation of war, leading to increased political and economic deterioration, leading to pressures for *increased* American involvement.

In fact, it is only when American aid is conditional upon U.S.-backed local administrations reaching a political compromise—even to their relative disadvantage—that the chances for American disengagement increase. The most dramatic example of this is Laos.

(a) Saigon zones.

The major problem facing the GVN today is political and moral in nature, not economic. AID officials try to explain the very serious problems in GVN zones as due to rising world commodity prices, the withdrawal of the American presence, and other factors out of anyone's control. In fact, as a comparison with the frugal, well-balanced economy in PRG zones reveals, the heart of the GVN's economic problem is not financial, and these problems cannot be solved by American aid. In a word, there is enough to go around in GVN zones. The problem is that the rich and the military elite are taking far more than their proper share, leaving the majority—the poor—to go hungry.

The root cause of GVN problems is the Administration's refusal to chance political competition with the PRG.

The primary responsibility for this, of course, lies with the U.S. Executive branch. The U.S., after all, supplies 86.3% of the GVN's income, including all of its ammo, guns and tanks and planes and bombs. (See insert by Senator McGovern, C.R., May 6, 1974). It is fundamentally inane to suggest that despite this preponderant role played by the U.S., it does not have the leverage to ensure that the GVN at least test the PRG's offer to compete politically.

Such political competition would appear to be in the PRG's interests. The first step toward forming the National Council of National Reconciliation and Concord, for example, would logically be enforcing Article 11 which gives basic democratic freedoms to all Vietnamese. Under Article 11 all Vietnamese would be given freedom of political activity (presumably freeing many political prisoners from GVN's prisons), freedom of residence (which would allow the refugees to return home), and freedom to organize (which would allow the Third Force and PRG to organize in the cities.) At the same time, the

PRG would be expected to allow the GVN similarly to organize in PRG zones.

Perhaps because it fears that the GVN could not stand up to political competition with the PRG, the U.S. Executive has taken no known steps to push for such a political compromise. Instead, it has given uncompromising support to Thieu, whose position includes the following points:

The PRG must set a date for elections before the people can have their democratic rights as outlined in Article 11. (This position violates the Paris Agreement, which sets no conditions on the enforcement of Article 11. It could also only be viewed as an attempt to obstruct any kind of settlement by the PRG, which could hardly be expected to surface its cadre and start campaigning solely on the promise that Thieu will allow Article 11 to be enforced.)

There is no "Third Force," one of "three equal segments" recognized in article 12. (On March 25, for example, GVN spokesman Bui Bao Truc declared that "the third force is merely an imaginary segment,"—which means among other things that the National Council of Reconciliation could not come into being, since it is to be composed of the three parts.)

The North Vietnamese must withdraw from South Vietnam before the GVN will agree to elections. (Again, this position is a major violation of the Parish Agreement. The withdrawal of such a condition by the United States was clearly one of the major factors which led to the signing of the Agreement, which nowhere mentions the presence of the North Vietnamese. In Article 1 of the Agreement explicitly states that Vietnam is one country.)

The Administration, by requesting aid to the GVN despite its stated attitude toward the Paris Agreement—an attitude of setting impossible conditions which it knows in advance the other side will not meet—gives the impression that it is not seriously interested in promoting a political settlement in South Vietnam. Instead, it has clearly opted for covert war to keep the PRG from power.

This war, in turn, is the basic reason for South Vietnam's economic problems—which are enormous. As a result of the war, the U.S. supports a GVN which refuses to allow refugees to return to their native homes in or near PRG areas. This creates a great unproductive mass of millions of people either clustered near cities or resettled in arid, landless sites, millions of people who must be fed from the outside.

As a result of the war, the U.S. supports a GVN which refuses to demobilize significant portions of its 1.1 million man army, 350,000 civil servants, or 120,000 police. All 1.57 million of them do not produce and must also be paid, as well as fed.

As a result of the war, South Vietnam has seen a 75% increase in prices last year, a 25% rise this year (Baltimore Sun, May 8, 1974); cash reserves have fallen dangerously low, under $100 million (L. A. Times, May 16); South Vietnam had to bring in imports totalling $795 million in 1973, while exporting only $56 million—producing a trade deficit of $739 million.

And such economic problems, in turn, have helped increase South Vietnam's corruption problems to epidemic proportions.

In recent months, Saigon newspapers have reported a major rice smuggling operation out of Vietnam to other Asian countries where prices are higher (Dai Dan Toc, 5/11, 5/13 Dien Tin, 5/12); a timber smuggling scandal, which has seen high government officials seize 450,000 acres in the last six months, depriving the government of $150–190 million in revenues (Dai Dan Toc, 3/15, 5/18); a scrap metal scandal, which the State Department says involves $20–$40 million, Saigon newspapers say is more like $1–2 billion (Ta Sang, 4/10; Dai Dan Toc, 4/15; Chicago Tribune, 6/5); a fertilizer scandal, by which 100–150 high-ranking officials have gotten rich through speculation, hoarding, and price manipulation (NY Post, 5/20; Song Than, 5/30; Hoa Dinh, 5/13); 50–150,000 non-existent soldiers drawing salaries (Chicago Daily News, 6/4); grass-roots corruption going to the very lowest of officials, for example a refugee official who stole money that was supposed to go to refugees to build new homes (UPI, St. Louis Post-Dispatch, May 12, 1974); Six ARVN Generals named as war-profiteers, by a Vietnamese Senator enjoying immunity from arrest. (L.A. Times, 6/17).

The combination of this war economy coupled with thoroughgoing official corruption has produced increasing economic hardship for South Vietnam's people. The Baltimore Sun reported on May 8, for example, that:

"In the northern part of South Vietnam, people are dying of starvation because speculative rice handling has made this basic food too expensive to buy."

Reports of suicides due to economic pressures are becoming increasingly frequent (e.g., NY Times, 5/1; Dien Tin, 5/23). There are increasing reports of crumbling morale, shortages of basic commodities, massive unemployment.

The situation has become so serious, indeed, that it is unlikely that even if the Administration's full request was passed this year that it would serve as more than a mere stop-gap measure. No evidence whatsoever has been introduced to support the claim that granting $750 million in Indochina Postwar Reconstruction aid would start South Vietnam on the road to self-sufficiency; there is a general consensus, however, that such a sum would be a mere temporary measure designed to allow the GVN to hold its own for another year—unless it is willing to work towards a political compromise.

The solution to South Vietnam's quite serious economic problems, therefore, is not simply to give a substantial amount of Food For Peace and/or Indochina Postwar Reconstruction aid. For people are not hungry for lack of food. In FY 74 for example, the GVN received more Food For Peace ($304.8 million) than all of Africa ($122 million), Latin America ($67.6 million), Bangladesh ($41.4 million) and Pakistan ($38.1 million) combined.

The problem is that the Food For Peace South Vietnam received costs too much—due to war and corruption—for those who need it most to purchase it. Lavish American aid can only encourage war and corruption, and therefore hunger. A massive reduction in American aid will force the GVN to think about finding a political solution, thereby structurally increasing the chances that South Vietnam can become self-sufficient.

As we look towards the political arena, however, we find that once again U.S. aid is not "stabilizing" the situation, but rather leading to a deterioration in the political climate in GVN zones.

The U.S. permitting Thieu to push through an amendment for him to run for a third term as President caused Senator Nguyen Van Huyen, a leading anti-communist Catholic, to resign as head of the Senate on January 19; Senator Vu Van Mau, head of the Buddhist Lotus group, shaved his head in protest, calling Thieu a "dictator" and "incompetent"; on January 10, the NY Times reported that politics in GVN zones had been reduced to competition between two palace cliques, one headed by Thieu's cousin, Hoang Duc Nha—the other by a man named Nguyen Van Ngan; Nguyen Van Ngan was then reported arrested five months later because, at least according to one commentator, Thieu feared Ngan's rising power (LA Times, 5/31).

Meanwhile, protests—small, but visible, by the few who dare speak publicly—have continued: a hunger strike by hundreds of Buddhist monks, Cao Daiists, and other third force political prisoners was reported in Chi Hoa prison in March (NY Times, 3/7, 3/12); 20 Hoa Hao Buddhists cut off the little fingers of their left hands in protest against restrictions on them (UPI, 6/7); 300 monks were reported demonstrating in the Delta to protest arrest of six monks (Philadelphia Inquirer, 6/13); 19 Buddhists and Madame Ngo Ba Thanh led a march through Saigon calling for the release of Thieu's political prisoners (Christian Science Monitor, 5/7); a Buddhist reception for the families of political prisoners was held, though surrounded by police (Agence France Presse, 5/1).

(b) Lon Nol zones—

As bad as the political and economic situation in GVN zones is, however, the situation in Cambodia for the Lon Nol government is even more hopeless.

Once again, the responsibility for the rapidly deteriorating situation lies with a U.S. Executive branch which has preferred to wage covert war in Cambodia rather than attempt to reach a political solution, no matter how distasteful it might find such a political compromise.

As the Washington Post reported on June 30, the Lon Nol government is entirely dependent on U.S. funds to continue its day-to-day functioning: "Cambodia's domestically generated government revenues from taxes in fiscal year 1974 amounted to $54 million—not nearly enough to cover its $109 million military and $60 million civilian budgets." And, of course, the U.S. is supplying all transport, arms, ammunition, and other basic commodities.

The basic fact is that Lon Nol controls little more than a few major towns, which can only be supplied by an American airlift or occasional boat; as a result prices are reported to have risen more than 300%, with foodstuffs up 400% in the past year. Speculation and corruption are also reported to have risen tremendously (Chicago Daily News, 6/12). In a separate report, the Chicago Tribune reported that millions of dollars of U.S. arms aid has been disappearing into Cambodia, much of it turning up with the Khmer Rouge (June 26).

The basic military and economic weakness is reflected above all in Lon Nol's political problems. His only real base of popular support when he took power was the teachers and students. By now, however, he was long since broken with both. In January 22,000 teachers went on strike, later supported by students. Students continued demonstrating regularly, culminating in a May 31st march of some 1,500 through the center of town; the killing of the Cambodian Minister of Education, after being held by demonstrating students, (the identity of the assassin is not yet known) symbolizes the major and perhaps irrevocable break between the Lon Nol government and students and teachers.

Lon Nol, however, has become increasingly isolated, even within the small coterie of politicians with which he surrounds himself. Forced through American pressure to join a coalition with Cheng Heng, Sirik Matak and In Tam about a year ago, Lon Nol has progressively gotten rid of each. This split was finally consummated recently when Long Boret formed a new cabinet in the aftermath of the Minister of Education's death. Six top cabinet officials quit; Sirik Matak was excluded from the new cabinet, along with all members of his Republican party. The final cabinet consisted of 7 members of Boret's Socio-Republican party, which supports Lon Nol; 6 independents; and two army men. Since In Tam had long since left, this newest cabinet reshuffle left Lon Nol with his narrowest political base since the U.S. forced him to take in the others a year earlier.

Under the circumstances then, it is hard to think of a single coherent reason why the Congress should give any aid to Lon Nol at all, let alone the astronomical sum of $550

million being asked for by the Administration for Fiscal Year 1975.

The major justification for our involvement in Cambodia originally was that it was necessary to protect U.S. ground troops fighting in South Vietnam.

As American troops were progressively withdrawn from South Vietnam, the Administration changed its rationale to protecting the Cambodians from a North Vietnamese invasion. During the past few years, however, the North Vietnamese have not been involved in the fighting between Lon Nol and Khmer Rouge troops. As the N.Y. Times reported on November 25, 1973:

"The Government tells them that they are fighting Vietnamese invaders and the soldiers are beginning to discover that that is not true . . . Nobody sees North Vietnamese troops in battle any more. The voices that call to Government soldiers from across the battlefields are Khmer voices, the soldiers say; the bodies are Khmer bodies."

—The new Administration position that lavish American aid to Lon Nol will show the other sides that it cannot win a military victory, thus pushing it towards negotiations. There is no evidence to support this point of view, however, and even less justification for why the United States should be involved in what is now admitted to be a civil war among Cambodians.

In fact, as in Laos, continued U.S. support to Lon Nol will simply lead to more fighting, less likelihood for a political settlement, and increased costs for the United States. Thus, it is that Lon Nol has lost territory and people in the past year, despite a giant U.S. military and air package totaling $631.5 million, more than we gave to all of Latin America last year.

And thus it is that this staggering amount of money not only accomplished very little last year, but has seen the Administration ask for almost twice as much for FY 1975 in Cambodia ($550.8 million) as it did in FY 74 ($287.3 million).

Cambodia where the U.S. Executive today spends vast sums to keep a half-mad dictator in power despite his lack of any other observable support, either externally or internally, is the greatest example of our time of what is wrong about Presidential covert warfare.

As I have suggested, the time has come for Congress to move to terminate such war around the globe. I can think of no more appropriate place to begin than Cambodia.

(c) Laos—

The one example of how Congress can terminate Presidential covert war in Indochina arises from Laos.

Since 1962 Laos has been the very model of the futility of Presidential covert war. Successive American administrations poured in billions of dollars, built up a Meo and then Thai "Secret Army," and dropped nearly 2 million tons of bombs on Laos, in an attempt to keep a small group of right-wing generals under the titular leadership of Souvanna Phouma in power.

The result? A steady increase in territory and population by the Pathet Lao; the decimation of the Meo people and heavy losses by Thai troops; the destruction of much of what was one of the most beautiful societies on the face of the earth; and the waste of perhaps more than $10 billion and hundreds of American lives.

Throughout all those long years of Presidential covert war in Laos, moreover, the main obstacle to a political solution was clearly not the Laotians but rather a U.S. Executive which wished to bomb the Ho Chi Minh trail in southern Laos to aid its war effort in South Vietnam, use northern Laos as a base for intelligence-gathering missions into China and North Vietnam and, it was suggested in a Washington Star-News article dated May 21, 1974, "to suck the North Vietnamese' 'into Laos so as to tie up some of their troops which, it was felt might otherwise be used in South Vietnam.

In 1973 however, due to increasing military gains by the Pathet Lao and the switch to covert U.S. involvement in South Vietnam, it was the U.S. which changed and decided to push the Lao right wing to accept a political settlement in Laos.

The result of this, of course, has been increased stability, a potential savings of hundreds of millions of dollars, and a potential end to American involvement in a war that few Americans ever know about, let alone desire.

Of course, the U.S. decision to push for a political settlement has also meant that the Pathet Lao have made considerable gains politically, and are in a much better position to one day govern Laos. But this is a lesson the American people must learn. I do not sense that it has been overly painful for them.

How long this situation will last, however, is anyone's guess. The U.S. Executive branch ultimately intervened both in 1958 and 1962 to prevent the Pathet Lao from taking power, and the danger exists that it will do so this time as well.

The clearest warning sign yet of this is the GAO report that the Administration has continued funneling aid to the Laotian right wing, in violation of the Laotian Peace Agreement.

It is clearly up to Congress to make the lesson of Laos stick by stipulating that no aid go to any projects in Laos unless approved unanimously by all factions in the Provisional Government of National Union (PGNU).

VIII. COVERT WAR: THE NECESSITY OF U.S. MILITARY PERSONNEL AND TECHNOLOGY

It must be remembered that an Administration like that of the GVN or Lon Nol is not even remotely capable of maintaining their present military force levels.

In part, this is a simple matter of economics. The GVN is not capable of raising more than 15% of its annual income, with 85% coming from the United States. As a result, American funds and materiel are necessary to provide all the wherewithal to keep the GVN's 1.1 million-man army and 2,000-plane air force from collapsing. And, of course, the Lon Nol government is even more penniless, making it even more dependent on American aid.

American personnel, however, are as important as U.S. materiel. If American personnel were not available to repair aircraft, handle logistics, plan operations, American equipment would either lie unused or unrepaired, appear on the black market of major cities, or be sold to the highest bidder (usually the PRG of Khmer Rouge)—in even greater quantities than now is the case.

During my trip to South Vietnam last year, for example, I was constantly told by American technicians that Thieu's air force and army would collapse in a matter of weeks without American technicians.

(a) U.S. Military personnel.

Thailand today serves as both the personnel and logistics base of the covert U.S. military presense in Indochina. Virtually all rice, ammunition and bombs used in Cambodia move from Sattahip port in southern Thailand (LA Times, May 8, 1974). U.S. personnel are training in Lao and Cambodian pilots in Udorn and other U.S. air bases in Thailand (June 13, 1974). Brigadier General James Hildreth, the U.S. officer in charge of Udorn Air Force Base, has admitted to reporters that the U.S. is still flying reconnaissance missions from Thailand over South Vietnam, Cambodia and Laos (LA Times, January 11, 1974); and U.S. officials have admitted flying reconnaissance flights over North Vietnam as well from Thailand. (See NY Times, April 21, 1973).

Thailand has also served as a major base for Air America. Air America, the CIA-owned airline, has greatly increased its role in Indochina since the Ceasefire. Providing a civilian "cover," it performs many of the functions carried out by the U.S. Air Force before the Ceasefire: deploying local troops, transporting U.S. military and CIA personnel, dropping arms and supplies to local garrisons. It is no surprise than Congressman Aspin reported on January 9, 1974, that Air America in 1973 had doubled its contracts over 1972, from $17.7 million up to $41.4 million. The recent announcement that Air America has been purchased by Thai-American, Inc., was described as a response to public pressure in Thailand against the CIA. It remains to be seen if the functions being carried out by Air America will also be terminated, or whether instead they will now simply be carried out by Thai-American and/or other such companies. (Washington Post, June 4, 1974)

On March 28, 1974, Senator Harold Hughes revealed that an average of over 5,000 "hostile fire payments" had been made monthly to U.S. military personnel for activities in Indochina: 6,263 in October, 1973, 5,669 in November, 4,700 in December and 4,015 in January 1974. The Defense Department at the time explained that such payments were for "American servicemen who are performing non-combat activities in Vietnam, Laos and Cambodia and whose presence . . . makes them vulnerable . . . to hostile fire." This revelation made it clear that U.S. military personnel, as well as U.S. civilians, were engaged in combat-related activities, although the Defense Department did not make it clear what these payments were being given for.

On June 5 Defense Secretary Schlesinger revealed what at least some of these payments were for. Testifying before the House Armed Services Committee, Schlesinger stated that the U.S. Air Force was flying some 690 missions monthly out of Thailand into Cambodia, dropping supplies and ammunition to Lon Nol troops stationed in outlying outposts. The Defense Department later stated that the 690 figure was high for the month of August, 1973, and that the average was on the order of 425 missions a month throughout 1973. (UPI, June 6, 1974.)

U.S. fighter pilots flying protection for these supply missions into Cambodia are also drawing hostile fire pay, sources have reported to the Indochina Resource Center. Other activities for which U.S. military personnel could be drawing combat pay vary from similar supply and reconnaissance missions into Vietnam and Laos, to clandestine services as military advisors to local armed forces.

Within Indochina itself, U.S. personnel play an indispensable role in holding the local air forces and armies together. The logistics and technical requirements of keeping together South Vietnam's giant 1.1 million-man army and 2,000-plane air force, for example, make American technicians and logistics experts indispensable. As I stated previously, I was told repeatedly on my post-ceasefire visit to South Vietnam that neither Lon Non's nor Thieu's armed forces could function without these men.

American personnel are necessary to repair the sophisticated aircraft, tanks and other machines of war which are the mainstay of the Thieu and Lon Nol armies; to manage the gigantic logistics flow of billions of dollars worth of arms, ammunition, clothing, food and the thousands of other items necessary to keep the Lon Nol and Thieu military forces in the field; to carry out the overall direction and planning necessary to coordinate ground and air operations, plan out overall strategic operations, and carry out other tasks beyond the capacities of the Thieu or Lon Nol governments.

For example, American technicians have historically done the detailed and complicated work necessary to analyze recon photos to select bombing targets for the Thieu and

Lon Nol air forces. While it has not yet been revealed that this has continued since the Ceasefire, there is every reason to believe that the reconnaissance missions currently being carried out by American aircraft today over Indochina, in violation of the Paris Agreement, are being used for such targeting.

There are increasing indications, moreover, that American personnel are serving in advisory capacities in combat situations, in violation of Congressional law, as well as the Paris Agreement.

There are numerous reports, most notably by the General Accounting Office, that U.S. military and civilian personnel under the control fo the CIA have been violating a Congressional ban against advising Cambodian troops on the ground. The most recent such reports were filed by the Washington Post on March 13, 1974, reporting the activities of a Major Ondecker who was directing Cambodian troops at Kampot; and by writer Richard Boyle, who recently returned from Cambodia with photographs and names of persons he claimed were advising Cambodian troops in combat.

There have also been periodic reports within South Vietnam of Americans involved in combat-related roles with the South Vietnamese armed forces.

The Boston Globe, for example, reported on January 27, 1974, that IBM executive Robert Ransom stated that on a recent trip to South Vietnam that he was told by a former American military advisor that "Americans are still flying gunships from Da Nang airbase . . . often camouflaged under a Red Cross emblem." David Shipler of the NY Times reported on 2/25/74 that: "American civilians . . . not only see that the South Vietnamese get the equipment they ask for, but also advise them on what to ask for . . . More direct, overt advice is sometimes given by zealous Americans who are still stationed in every province . . ."

There are also indications of an ongoing CIA role in Indochina separate from that of disguised U.S. military personnel since the ceasefire. On July 24, 1973, for example, Tammy Arbuckle of the Washington Star-News reported that the CIA has been setting up Cambodian paramilitary units in several provinces in Cambodia, separate and distinct from the regular Cambodian army.

And in South Vietnam, U.S. Ambassador Martin was reported in a May 3, 1974, AP dispatch to have admitted that an Air America plane had been used to transport North Vietnamese POWs. Martin only made this admission after an AP photograph had been taken of seven North Vietnamese POWs being led onto the plane. Martin claimed that he had authorized the flight for "humanitarian" reasons to help one wounded prisoner, and did not know about the other six. It is well-known within South Vietnam that the CIA has been directly involved in the interrogation and torture of prisoners since the beginning of the war.

Similarly in Laos, although all Americans involved in the war have been reportedly withdrawn, 500 "civilians" remain behind, and the recent GAO revelation that the Administration has been directly funneling money to the Laotian right wing in violation of the Laotian Peace Agreement suggests that the Administration has no more intention of withdrawing its covert personnel from Laos today than it did in 1962. One's fears are not quieted by reports such as the March 14, 1974, letter in Rolling Stone from a U.S. airman stating that "(I am) stationed in a remote U.S. Air Force base in Thailand . . . Recently U.S. military forces are being introduced into this area, covertly, and especially into Vientiane and other Laotian areas."

The most complete report yet to emerge since the Ceasefire about American military activities in Indochina since the Ceasefire is that given by Steven M. Davis, who worked for the Federal Electric Corporation in South Vietnam from January through June, 1973. Mr. Davis worked in the top-secret Saigon Telecommunications Center of the American Embassy. Colonel A. C. Berger of the Defense Intelligence Agency (DIA) in a letter dated November 7, 1973, to Senator George McGovern confirmed that Steven Davis did indeed work at the Telecommunications Facility during January–June, 1973, and also confirmed one of Mr. Davis's charges: that improper security procedures were being used.

Mr. Davis, as reported by Pacific News Service reporter Joan Holden, has reported the following based on his work at the Telecommunications Facility:

More than 100 U.S. military advisors are operating in Cambodia in violation of the Congressional ban on such activity.

More than 100 more Americans were serving as mercenaries with the Cambodian armed forces, under the control of the CIA.

U.S. teams designated as search groups for U.S. Missing in Action have included personnel whose task is military spying.

General Kosh, an American captured by the Chinese during the Paracel Islands fighting, was actually an Army Captain advising Thieu army units under the guise of a civilian employee in charge of monitoring logistics flow to Da Nang.

The U.S. was not only flying regular reconnaissance missions in violation of the Paris Agreement, but U.S. aircraft were bombing in South Vietnam on occasion.

U.S. Air Force personnel were manning beacons within South Vietnam to guide aerial bombardment of Cambodia and South Vietnam.

(b) U.S. War Materiel.

The obvious importance of U.S. materiel and technology in keeping the Thieu and Lon Nol governments alive need not be stressed here.

It is useful to note, however, that the covert practice of attempting to use improved technology to compensate for low morale is so engrained that the Administration has been attempting to modernize equipment, blatantly violating Article 7 of the Paris Agreement, which holds that equipment can only be replaced on a "one-for-one" basis.

Congressman Aspin recently revealed, in the Congressional Record of June 13, 1974, that the Administration has requested funds violating the "one-for-one" clause of the Paris Agreement in four separate categories, namely:

Funds to modernize the South Vietnamese Air Force by replacing the F–5A with the technically superior F–5F.

Funds to send in C–130s to replace the far smaller C–7 transport aircraft presently in use.

Funds for 29 A–37B fighters to replace. in part, the old propeller-driven, single-engine A–1s.

Funds to modernize 4 transport aircraft by turning them into gunships.

And these examples, of course, are merely in addition to many other reported violations of the "one-for-one" clause, most notably the Administration plan to send in 60 F–5Es to replace the older F–5As. The F–5E is an entirely different plane than the F–5A, having twice the combat radius, nearly twice the acceleration rate, and carrying nearly a half-ton greater bomb load capacity. On April 7, 1974, moreover, the Saigon newspaper Dien Tin reported that 80 American specialists would arrive at Bien Hoa airbase to assemble the new F–5Es, within South Vietnam.

The most useful measure of the central role played by American materiel in supporting U.S. Presidential covert war in Indochina, however, is simply the sheer quantity of arms and ammunition being shipped into Indochina. As we have pointed out this quantity is far in excess of what even the Defense Intelligence Agency claims is being shipped into Indochina by the Soviet Union and the People's Republic of China. (See Table 6.)

Even more to the point, however, is that the Administration is clearly attempting to give Thieu far more materiel than he needs to defend himself.

In Fiscal Year 1974 the Administration allocated $359 million in funding for the "procurement" section of its military aid to Thieu. In Fiscal Year 1975, however, the Administration is requesting more than twice as much, or $852 million.

It should be noted that Administration officials unanimously state that they do not expect a major offensive in the coming year.

These vast inputs of covert American personnel and materiel, however, simply do not suffice to strengthen Thieu or Lon Nol. On the contrary—by keeping them dependent on American personnel and resources, there is no chance for the kind of structural changes necessary to fight their opponents. The result is simply increasing corruption, sloth and lack of morale—and increasing gains by their opposition, thus leading to increasing pressures for direct American intervention.

The Indochina Resource Center has received a number of reports, one of which is included here as Appendix Two, indicating that U.S. Marines are standing by to invade Cambodia should Phnom Penh be threatened.

As Executive officials grow more worried, moreover, they state quite openly their intention to resume American bombing should Saigon or Phnom Penh be seriously threatened.

On November 1, 1973, for example, U.S. Air Force Commander Vogt was quoted in the LA Times as saying, "Now that we're not actually dropping bombs, we must maintain our capability to resume such action if we have to . . . The whole idea of retaining those units in Thailand . . . is to be ready in case the enemy miscalculates and decides he wants to resume on a massive scale."

On December 3rd Defense Secretary Schlesinger was reported as saying that "If Hanoi . . . were to launch an all-out assault . . . I believe the President would be prepared to come back to Congress and ask for support of (U.S.) military activities in support of South Vietnam." And on January 7, 1974, Schlesinger repeated the threat, adding that he thought that Congress would agree.

The Administration is not simply threatening to resume the bombing by words, however. This year it has requested the giant sum of $463 million—more than it is spending on all of Africa—to maintain American air units in Thailand prepared to resume the bombing.

IX. COVERT WAR; POLICE AND REFUGEE PROGRAMS FOR POPULATION CONTROL

The hallmark of Presidential covert war is its emphasis on controlling the local population. During the 1950s and 1960s, this emphasis saw the creation of nearly 14 million refugees, according to the U.S. Senate Subcommittee on Refugees, as much of rural Indochina was moved away from areas near rural guerrillas towards provincial capitals and cities where they could be more easily controlled. Also, during the 1960s the local police forces in Indochina were vastly expanded through American aid and advisors in an attempt to physically prevent the people from aiding the guerrilla forces once they were in areas of government control.

Once again, American personnel and funding have the key elements in both police and refugee programs for the last decade, due to the lack of technical expertise and economic base of the local administrations. There are numerous indications that this American role is continuing up to the present day.

(a) Police Programs.

The GVN's reliance on police programs to control the population since the Ceasefire has been well-documented. On June 7, 1974, for example, Rep. Bella Abzug inserted in the Congressional Record a listing of more than 100 articles appearing in the western press since the Ceasefire, most emanating directly from Saigon, which detail the continuing operations of the GVN's police and prison system.

A wide variety of western sources have documented that Saigon's 120,000-man police force has continued constant sweeps, post-curfew round-ups of men, women and children, constant checks on ID cards and frequent arrests and torture of individuals on political charges since the Ceasefire.

In testimony before the House Pacific Affairs Subcommittee on September 13, 1973, for example, I described the police system in South Vietnam as I saw it upon my visit there in June and July, 1973:

Constant surveillance of the population as a whole;

Random arrests carried out during systematic sweeps throughout GVN towns and villages;

Detention and torture of numerous individuals without benefit of counsel;

Summary sentencing either by a military court or, in most cases, by "administrative detention" in which the arrestee has no counsel or trial;

Imprisonment for years characterized by lack of proper food, water, and medical care; and

Increased surveillance and harassment upon release from prison.

Extensive documentation has emerged also of the continued detention of tens of thousands of political prisoners since the Ceasefire, as well as a continuing policy of new arrests since the Ceasefire.

On September 13, 1973, for example, Representative Abzug entered into the record of the House Pacific Affairs Subcommittee hearing an official telegram from the national Phoenix Directorate ordering all local Phoenix offices to continue operations. This telegram, printed in Le Monde on May 17, 1973, clearly indicated that the GVN was continuing to "neutralize," i.e., arrest or assassinate, individuals.

The Administration openly intended to keep funding the GVN's police and prison system after the Ceasefire. On June 4, 1973, for example, Senator Kennedy revealed that the U.S. Agency for International Development was requesting $15.2 million for continued funding of the GVN's police and prison system for the Fiscal Year beginning July 1, 1973, i.e., six months after the Paris Agreement had been signed. (See the Congressional Record, June 4, 1973, p. 17839.)

Subsequent Congressional action forced the Administration to stop such direct funding of the police and prison system. Despite this, however, the fact that U.S. funds supply at least 85% of the GVN's income means, of course, that the lion's share of maintaining the GVN's police system still comes from the U.S., however indirectly.

The complexities of the GVN's police apparatus, moreover, necessitate American advice and support. During the past decade, for example, the U.S. Office of Public Safety planned and implemented a National ID Card Program which saw the issuance of over 10 million ID cards to all Vietnamese over the age of 15. All Vietnamese are required to carry these ID cards, on pain of arrest. The cards are linked to giant computers, in which fingerprints and bio-dossiers are stored, located at the Telecommunications Directorate.

Under the Paris Agreement, the Administration was required to withdraw *all* advisors to Saigon's police force. In February, 1974, however, one year after the signing of the Paris Agreement, a team of Americans sent to Saigon by the right-wing American Security Council reported that:

"A handful of U.S. civilian technicians continue to provide advice in the operation of a newly-installed computer system which keeps tabs on more than 10 million South Vietnamese." (From Vietnam Report: "Not in Vain", American Security Council, page 8)

The NY Times, in its February 25, 1974, survey of continuing American involvement in South Vietnam after the Ceasefire, reported that:

"The South Vietnamese National Police continue to receive regular advice from Americans . . . to high-ranking (Vietnamese police) officers said they and their staffs met frequently with the Saigon station chief of the CIA and his staff. . . Police officials confirmed that in some provinces American 'liaison' men who work with the police remain on the job. . . . Local policemen still refer to 'American police advisors'. . . Police here have military functions, and engage in infiltration, arrest, interrogation and torture of Communists and political dissidents."

Steven Davis, the Federal Electric Corporation employee who worked at the Saigon Telecommunications Directorate, has reported that on May 14, 1973, he saw a message to local CIA offices in South Vietnam directing that the Phoenix program in South Vietnam was to be transferred to the South Vietnamese National Police, thus freeing local agents under the control of the CIA to start new Phoenix programs in South Vietnam in areas where Phoenix had not yet operated.

(b) Refugee Programs.

Since the Ceasefire, the GVN has openly continued its policy of concentrating refugees in camps and refusing to allow them to return to their original villages.

On January 25, 1973, for example, two days before the Paris Agreement was signed, the Washington Post reported that:

"The South Vietnamese government will not permit hundreds of thousands of refugees from Communist-held areas to return to their homes after the cease-fire takes effect and will punish them if they try, according to U.S. officials here."

In addition to keeping refugees in their camps, moreover, GVN policy has also aimed at enlarging its claimed territorial control by forcibly removing refugees to areas uninhabited by either side. On March 22, 1973, and July 5, 1973, for example, the NY Times reported "resettlement" of several hundred thousand people in an effort "to get broader control."

The result has been unending misery for millions of refugees who have been forced to live on arid, unproductive soil, in areas where farming is almost impossible. On November 23, 1973, for example, the Washington Post reported:

"As if on cue, the inhabitants of Thanthuy's moldering shanties come out to plead with their unexpected visitors: we are hungry. This land is poor. We want to go back to our village. Please ask the government to let us go home."

Police controls in such refugee camps are tight.

On March 28, 1974, for example, Diane Jones of the American Friends Service Committee testified before the Senate Appropriations Committee on conditions in refugee camps she had visited in South Vietnam between October, 1973, and February, 1974. She reported that:

"These camps looked nothing like villages, but like concentration camps, some of them totally surrounded by barbed wire or bamboo stake fences, with tall military watchtowers on the perimeters . . . people were not allowed beyond the camp boundaries except during certain hours of the day. . . . The inhabitants of these camps had to register with camp officials when they left and when they returned. In Xuyen Phuoc camp in Quang Nam province, I talked extensively with a government official who told me his job was political control of the population . . . he showed me stacks of pictures, one picture of each family in the camp . . . he said that he had to check *daily* each family against their family report. . . . If anyone disappeared without asking permission, he said the person's family could be arrested."

American policy is directly responsible for such refugee control programs.

In Fiscal Year 1974 the Administration expended over $70 million on such refugee programs. In Fiscal Year 1975, it is requesting $116.5 million to continue them, an increase of more than 50%.

There are convincing indications, moreover, that American officials are aware of the true nature of this refugee program. Indeed, the evidence indicates that this policy of controlling refugees may be as much a result of deliberate American policy as GVN's desires.

A U.S. Senate Refugee Subcommittee study published one year after the signing of the Paris Agreement, for example, reprints several *internal* U.S. documents. One, an official description of refugee resettlement sites in Military Region II, dated October 17, 1973, characterizes 30 resettlement sites as being economically unviable.

A letter from the U.S. Consul General in Bien Hoa, Mr. Robert Walkinshaw, dated April 3, 1973, states that:

"The people will move into areas that were previously considered marginal, thus secure the area, improve movement and security along major routes of communication, develop the agriculture . . . and bring economic viability to the country as a whole."

And the most thorough and convincing picture yet to emerge of the U.S. role in refugee control was presented to the House Foreign Affairs Committee on July 2, 1974, by Mr. Edward Block, an A.I.D. refugee official in South Vietnam from April, 1972, until December, 1973.

"The real objectives of the U.S. mission (include) to encourage the GVN to hold hundreds of thousands, perhaps millions, of refugees as dependents of the government rather than allowing them to return freely and peacefully to their original villages . . . to help the Saigon government to occupy additional territory presently contested or claimed by the PRG. . ."

"(This) objective is evidenced by the fact that the GVN continued to keep more than a half million refugees in camps long after the Ceasefire agreement had been signed. . ."

"Hundreds of thousands of refugees from the 1972 April offensive are currently being poorly resettled under the same conditions that exist for the 1968–1971 refuees. . ."

"Little or no assistance is provided for land clearing; refugees are often placed in resettlement where no land is available; little or no farmland is ever distributed where it is available . . . in many cases, food allowances are arbitrarily cut off, causing widespread hunger and malnutrition."

"The Stieng Montagnards of Binh Long province (were) concentrated for a year and a half in the squalid An Loi refugee camp where they watched more than 300 of their children die like flies."

"A.I.D. officials argue that no refugees have come forth to request their return to home in PRG-controlled areas. This argument might as well be no refugees have come forth to commit suicide, because the GVN still maintains a policy of shooting or jailing anyone caught moving about in areas outside of its immediate control."

"Once the GVN occupies . . . new areas, it wastes little time in seizing this opportunity to utilize refugees for their own counterinsurgency purposes, despite possible hazards to the people involved. For example, I know first-hand that in resettlement in

Quang Nam province, the GVN has been busy recruiting children between the ages of 7 and 14 to perform intelligence and detection work within their villages and the surrounding areas."

X. PRESIDENTIAL COVERT WAR: A TIME TO SPEAK FOR THE LIVING

There is no more ominous sign for the future health of this nation than our present tendency to speak of our Indochina involvement as if it has ended.

We rarely speak of it at all. The media rarely carries the many stories filed from Indochina,—Walter Cronkite is reported as saying that we know we lost the war, and therefore want to forget it. Time and again, traveling about the country, one is told that "people just don't want to hear about Vietnam any more."

To the extent that Vietnam is still an issue, it is as if it were a long-distant tragedy, one that laid its heaviest burdens on Americans. "Vietnam" today means primarily veterans' problems, amnesty, POWs, the accounting for U.S. Missing-in-Action.

These concerns are understandably real to most Americans. Our Vietnam past haunts us, and will for many years to come.

The time, however, has clearly come to speak of the present as well, to remember not only the dead but the living.

It is time to speak of tens of thousands of political prisoners in South Vietnam, subjected to torture, hunger, thirst and beatings at this very moment, people who have been imprisoned without trial or hope or relief.

It is time to speak of millions of refugees in Cambodia and South Vietnam whom we helped bomb and force out of their ancestral homes, people who sit landless and jobless in arid camps today because we still help prevent their return to the villages of their birth.

It is time to speak of the millions more in South Vietnam now being watched, subjected to mass round-ups, harassed by a nightmarish police system that we created.

And,—most of all—it is time today to speak of the hundreds of thousands of Vietnamese and Cambodian and Laotians who are alive and whole, but will be dead or maimed a year from today if Administration aid requests are granted.

It is time to speak of these living,—not only for their sakes, but for ours.

I will never forget the words of a Laotian refugee whom I interviewed after he had survived 5 years of our bombing in northeastern Laos:

"In the region of the Plain of Jars, there came to be a lake of blood and destruction. For there were airplanes and the sound of bombs throughout the skies and the hills. All we had were the holes."

This nation as a whole learned during the 1960s that we could not ignore this lake of blood. We learned that, for example:

To let our Executive leaders destroy abroad meant that they would not construct a Great or New Society at home;

To tolerate Presidential lawlessness in Indochina would lead to Presidential lawlessness in Watergate; and

To ignore the CIA's police mentality in Vietnam would see this mentality blossom here through data banks, electronic surveillance, and countless other invasions of privacy.

Much progress has been made, finally. At long last, the principle is finally taking hold that we have no right to intervene in other nations' internal affairs. We can now dream of the day when our leaders will turn away from interference abroad to meeting the needs of their own people at home.

But for this progress to continue, today's ongoing Presidential covert war in Indochina can no longer be ignored.

There is almost unanimous agreement today that we were "wrong" to get involved in Indochina. Some say this from a legal point of view, others from a moral one, and still others from a practical perspective. But virtually all Americans say it today.

What we must also say, however, is that if this Presidential covert involvement was "wrong" in 1954, it is also "wrong" in 1974.

For if we are to learn one single lesson from the past 25 years of U.S. intervention in Indochina, let it be this:

We must confront the lake of blood our leaders are still creating in Indochina,—no matter how unpleasant, difficult or painful. For it has already begun to wash across this land, leaving spiritual and physical gashes that will be felt for generations.

And, in the end, this lake of blood will either engulf us,—or purify us and set us free.

RESOLUTIONS ADOPTED BY ROA NATIONAL CONVENTION ON JULY 6, 1974

Mr. THURMOND. Mr. President, 30 resolutions were adopted by the Reserve Officers Association at their national convention at Atlanta, Ga., July 6, 1974. These resolutions represent the best thinking of the leaders in this outstanding organization dedicated to preserving a strong national defense posture.

Mr. President, I ask unanimous consent these resolutions be printed in the RECORD.

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

RESOLUTIONS ADOPTED BY THE NATIONAL CONVENTION OF THE RESERVE OFFICERS ASSOCIATION OF THE UNITED STATES, JULY 6, 1974

RESOLUTION NO. 1: U.S. RIGHTS IN THE PANAMA CANAL

Whereas, a recent agreement has been signed by the United States Secretary of State and the Panamanian Foreign Minister to draft a new treaty, terminating the Panama Treaty of 1903, and

Whereas, the new treaty will eventually transfer and surrender title, control, operation and defense of the Canal and Canal Zone to Panama together with other concessions, and

Whereas, the Reserve Officers Association of the United States has previously resolved that it supports the retention of the United States' rights to utilization, control and protection of the Panama Canal, and

Whereas, the Constitution of the Reserve Officers Association of the United States (Article A–2) states that "the object of the Association shall be to support a military policy for the United States that will provide adequate National Security and to promote the development and execution thereof," and

Whereas, House Resolution 63, 93rd Congress, gives the United States full sovereign rights, power and authority in perpetuity over the Canal Zone,

Now therefore be it resolved that in the best interests of the national security of the United States, the Reserve Officers Association of the United States affirms its previous action and supports a national policy which gives the United States full sovereign rights, authority, control, operation and defense of the Panama Canal and Canal Zone in perpetuity, and

Be it further resolved that no Executive action be taken respecting the foregoing without the approval of the Congress of the United States.

RESOLUTION NO. 2: ARMY AND AIR FORCE RESERVE TECHNICIAN CAREER PROGRAM

Whereas, the current Army and Air Force Reserve Technician Programs have been in effect for some years without specific statutory basis, based only on administrative agreements between the Army, Air Force and the Civil Service Commission, and

Whereas, the legal restrictions on these agreements have led to a situation in which career management of Army and Air Force Technicians is becoming increasingly difficult, and

Whereas, it is necessary to reconcile the personnel management and career patterns of technicians as Reserves and Civil Service employees, and

Whereas, it is also necessary and desirable that the military career patterns of technicians and other Reserves be one and the same, and

Whereas, the Air Force, serving as the Department of Defense executive agent, has prepared a legislative proposal (DOD Program No. 93–21) to provide a statutory basis for the technician program which will require technicians to be fully qualified under military standards for the Reserve position to which assigned and giving due consideration to the protection of those individuals concerned and to a balanced career program,

Now therefore be it resolved that the Reserve Officers Association of the United States supports the legislative proposals concerning the Army and Air Force Technician Career Program.

RESOLUTION NO. 3: RESERVE RETIRED BENEFITS, TOTAL DISABILITY

Whereas, Chapter 67, Title 10, U.S. Code (formerly Title III, Public Law 80–810) provides for retired pay to members of the Reserve components after completing 20 or more years of satisfactory federal service and upon attaining statutory age (currently age 60) but provides neither retired pay nor other benefits prior to attaining such age, and

Whereas, members of the Reserve components transferred to the Retired Reserve pending attainment of statutory age are, in effect, "in limbo" as to receipt of retired benefits, though otherwise qualified for and certified for such benefits at statutory age 60, and

Whereas, Chapter 67, Title 10, U.S. Code has no provisions for those members of the Reserve components transferred to the Retired Reserve awaiting attainment of statutory age who have subsequently become totally disabled, and

Whereas, current members of the Reserve components transferred to the Retired Reserve after completing 20 or more years of satisfactory federal service have reached the normal peak of their earning capacity and likewise their financial needs, but will normally be in dire financial straits because of total disability and inability to work, and

Whereas, it is both just and right to provide more liberal benefits to the totally disabled, and

Whereas, the totally disabled are more likely to forfeit their earned benefits through death, and

Whereas, it is deemed that the foregoing would be strong incentive for attaining and retaining Reserve component personnel strength in an all-volunteer force or a zero-draft environment,

Now therefore be it resolved that the Reserve Officers Association of the United States seek and support appropriate legislation which would provide for all retired benefits for current members of the Reserve components who suffer total disability not resulting from intentional misconduct or willful neglect and are otherwise qualified for retired pay except for not having reached the statutory age.

RESOLUTION NO. 4: LEGAL DEFENSE FOR RESERVISTS

Whereas, the Attorney General of Ohio refused to provide legal defense for the Ohio

National Guardsmen on active duty during the Kent State University riots until directed to do so by the governor, and

Whereas, the U.S. Supreme Court recently ruled that Ohio National Guardsmen on active duty may be held liable as individuals in damage suits for alleged criminal acts even though acting under legal orders from proper authorities, and

Whereas, members of the Reserve components are volunteers who knowingly and willingly assume the incidental and inherent risks in their military calling when on active duty during and following natural disasters, riot, insurrection or other domestic emergencies, and

Whereas, such members, when they were asked to volunteer, were not informed of that additional risk now ordered imposed on them by the recent decision of the U.S. Supreme Court compelling them to assume their own legal expenses when sued civilly, and

Whereas, other civilian and military personnel are now represented by the Justice Department when sued for action taken in the course of discharging their delegated duties, and

Whereas, it is the sense of the Reserve Officers Association of the United States that our nation should provide the same protection for members of its Reserve components,

Now therefore be it resolved by the Reserve Officers Association of the United States that the Congress and President of the United States be urged to act with dispatch to provide by law and/or regulation that members of the Reserve components be informed, at the time of enlistment or commissioning, of this lack of legal representation, and

Be it further resolved that legislation be enacted to provide that the government assume the obligation of legal defense and indemnification for members of the Reserve components in both civil and criminal prosecutions arising out of the performance of their military duties.

RESOLUTION NO. 5: RESTORE THE U.S. CITIZENSHIP OF ROBERT E. LEE

Whereas, Robert E. Lee, the Confederacy's greatest general and one of Virginia's most distinguished sons, whom the entire nation has long recognized because of his outstanding virtues of courage, patriotism and selfless devotion to duty, and his contribution in healing the wounds of the War Between the States, did not have his United States citizenship restored after the War Between the States, and

Whereas, previous attempts have failed to restore this citizenship primarily because there had been no proof that he had ever complied with the requirements of amnesty by swearing "to support, protect, and defend the Constitution of the United States," and

Whereas, archivists in the National Archives in 1970 discovered his amnesty oath taken at Washington College in Lexington, Virginia, on October 2, 1865, and his application for reinstatement of citizenship submitted to President Andrew Johnson after being favorably endorsed by General Ulysses S. Grant on June 16, 1865, and

Whereas, the Robert E. Lee Chapter of ROA was named after this distinguished citizen-soldier who resided in Arlington, Virginia, and

Whereas, Senator Harry F. Byrd, Jr., and Representative Thomas N. Downing introduced Joint Resolutions on February 21, 1974, and March 6, 1974, respectively, to restore General Lee's citizenship,

Now therefore be it resolved that the Reserve Officers Association of the United States endorses the resolutions made by Senator Byrd and Representative Downing to restore posthumously United States citizenship to Robert E. Lee.

RESOLUTION NO. 6: VOLUNTARY ASSIGNMENT OF RETIRED PERSONNEL TO READY RESERVE IN CRITICAL SKILLS

Whereas, current statutes and regulations involve considerable "red tape" including Secretarial approval to allow retired personnel to be assigned to the Ready Reserve, and

Whereas, retired personnel are required to waive a portion of their retirement pay when serving in the Reserves, and

Whereas, it is becoming more difficult to recruit Reservists in an all-volunteer environment, and

Whereas, the retired rolls are the best source of highly qualified personnel in critically needed specialties, and

Whereas, the Department of Defense has submitted a bill, H.R. 10367, 93rd Congress, which would allow the voluntary assignment of Retired Reservists of the Army and Air Force, members of the Fleet Reserve and Fleet Marine Corps Reserve, and members of the Retired List of the Coast Guard qualified in critical skills to the Ready Reserve, without loss of retired pay, and

Whereas, H.R. 10367 has passed the House of Reprsentatives,

Now therefore be it resolved that the Reserve Officers Association of the United States urges the Congress of the United States to enact legislation which would provide the selective assignment of retired personnel to the Ready Reserve without loss of retired pay.

RESOLUTION NO. 7: TIMELY PROVISION OF DOD PLANNING DATA PRIOR TO REORGANIZATION AND REDUCTIONS

Whereas, the Deputy Assistant Secretary of Defense (Reserve Affairs), in an Armed Forces Day statement published in the *Commanders Digest* said "Changing perceptions of military threats and of strategies to meet such threats also require a re-evaluation of the missions assigned to Guard and Reserve units to identify those which have marginal value under current military concepts. . . . Decisions resulting from this study may result in a force which is larger and more ready or one which is smaller and more ready," and

Whereas, for example, it is obvious from recent congressional testimony of the Chief of Naval Reserve that Navy planners have submitted to pressures for cuts to favor a number which can be suitably supported within a future resource allocation for the Reserve and which makes a hardware versus personnel trade-off rather than providing for a number of drilling Reservists that is fully justified by defense requirements,

Now therefore be it resolved that the Reserve Officers Association of the United States urges the President and the Congress to insist upon adequate planning data being made available to the Congress in a manner which will insure adequate discussion of the projected role of the Reserve components as well as support an adequate national defense in advance of large scale reductions as currently reflected in the Department of Defense budget request.

RESOLUTION NO. 8: SPACE AVAILABLE TRAVEL ON MILITARY AIRCRAFT

Whereas, Reserve personnel of the armed services serve faithfully, often at great personal sacrifice to themselves and their families, and

Whereas, travel by air on a space available basis is one of the several benefits derived from service and benefits both active and retired personnel, and

Whereas, it is generally accepted that increased benefits, incentives and privileges are essential to attract and retain qualified personnel for active Reserve service, and that these benefits and incentives must include elements for both active and retired personnel, and

Whereas, many aircraft flights have vacant space aboard, and

Whereas, the space available benefit is one which can be provided at negligible cost to the government, and

Whereas, there are apparent efforts to erode this privilege for all military personnel, active, Reserve and retired,

Now therefore be it resolved that the Reserve Officers Association of the United States expresses its strongest objections to any attempt to eliminate or erode the right of Reservists to space available travel on military aircraft.

RESOLUTION NO. 9: AUTHORIZATION FOR DRILL PAY TO RESERVISTS FOR DUTY PERFORMED PRIOR TO INITIAL ACTIVE DUTY

Whereas, current Defense policy restricts drill pay of non-prior service personnel prior to completion of initial active duty.

Now therefore be it resolved that the Reserve Officers Association of the United States urges the Secretary of Defense to provide for immediate entry on active duty, where feasible and practicable, for non-prior service personnel as is presently available to Regular enlistees, and

Be it further resolved that drill pay be authorized for attendance at scheduled drills from date of enlistment until entry on period of initial active duty.

RESOLUTION NO. 10: DISTRIBUTION OF MILITARY PAY INCREASES

Whereas, the Department of Defense is sponsoring legislation whereby pay raises for military personnel will be divided equally between basic pay, quarters allowance and subsistence pay, and

Whereas, the original legislation was limited to basic pay by the Congress implying an intent to keep basic pay at proper levels, and

Whereas, the proposal will result in a diminished retirement pay base, and

Whereas, this will harm the retiree, Reserve and Regular,

Now therefore be it resolved that the Reserve Officers Association of the United States urges the Congress to reject said proposal to distribute increases in military compensation between basic pay, quarters allowance and subsistence allowance.

RESOLUTION NO. 11: COST OF LIVING INDEX

Whereas, the Consumer Price Index (CPI) as now calculated is based primarily upon rent, transportation, food and medical costs, which are most important to those retired persons drawing retirement monies, and

Whereas, there are now being advocated changes in this formula which would be inimical to these persons,

Now therefore be it resolved that the Reserve Officers Association of the United States strongly urges the calculation of the cost of living on the retired person's essential life maintenance items.

RESOLUTION NO. 12: DOD TO REASSUME THE FUNDING OF THE SELECTIVE SERVICE SYSTEM'S RESERVE AND NATIONAL GUARD TRAINING PROGRAM

Whereas, the Department of Defense relies upon the Selective Service System to meet its manpower mobilization requirements in a national emergency, and

Whereas, the DOD has utilized the services of Selective Service Reserve and National Guard officers in national emergencies from 1940 to the present date, and

Whereas, the DOD now exercises full control over these comparatively few designated Selective Service Reserve and National Guard officers earmarked for duty with the Selective Service System in a national emergency, including most all aspects of their Reserve service, including retention, promotion, con-

duct, wearing of the uniform and educational requirements, and

Whereas, the reason for existence of these designated Reserve and National Guard officers is derived entirely from the prospective mobilization requirements of the armed services, and

Whereas, the DOD has funded the cost incident to the maintenance of this Selective Service Reserve and National Guard force from 1936 to June 1972 and even now has never publicly stated this funding should not be continued as a proper DOD budget item, and

Whereas, until June of 1972, when directed to do so by the Office of Management and Budget, the Selective Service System was not required to fund this Reserve and National Guard program from funds appropriated to it, and

Whereas, requiring the Selective Service System to fund this Reserve and National Guard program for the DOD has no more basis or validity than requiring the DOD to reimburse the Selective Service System for costs it incurs incident to the delivery of registrants to the Armed Forces Examining and Entrance Stations for physical examination and induction,

Now therefore be it resolved that the Reserve Officers Association of the United States urges the Office of Management and Budget to direct the armed services to resume the funding of the Selective Service Reserve and National Guard Officer Training Program, and that it rescind its requirement that the Selective Service System fund this joint Armed Services Reserve Program.

RESOLUTION NO. 13: DEACTION OF USAR CIVIL AFFAIRS UNITS

Whereas, the Secretary of Defense has ordered a reduction of 48,000 Category A personnel of the Army Reserve, and

Whereas, at the same time the Secretary directed the Department of the Army to begin preparations to change Civil Affairs (CA) units from Category A to Category D, and

Whereas, testimony before the House and Senate Armed Services Committees showed these Secretary of Defense orders were issued without an adequate study of the need for such a drastic reduction or identification of other units to be cut from the force structure, both actions apparently in violation of previous congressional mandates, and

Whereas, both the Senate and the House in subsequent actions voted to increase the size of the active Category A Army Reserve force and not decrease it, and

Whereas, by international law and treaty the Department of the Army has a requirement to discharge obligations and functions of Civil Affairs, the elimination of which in no way would relieve the Army from its increasing responsibilities in this sensitive area, and

Whereas, the total elimination of CA USAR troop units from the Army Reserve force structure would make it virtually impossible for the Army to carry out its CA mission in event of contingencies abroad or at home, there being no alternative Active Army resource available for such missions,

Now therefore be it resolved that the Reserve Officers Association of the United States urges the Secretary of Defense to authorize an increase, not a decrease, in the Category A strength of the Army Reserve, and

Be it further resolved that the Secretary of Defense not implement his plan to eliminate Civil Affairs from the Army Reserve without prior approval of the Congress of the United States and a thorough study of the implications of Army Reserve strength levels.

RESOLUTION NO. 14: COMMAND/MANAGEMENT OF ARMY RESERVE BY ARMY RESERVISTS

Whereas, the Total Force Policy now places increased reliance on the Reserve components, and

Whereas, the Reserve command of the USAR now stops at the Army Readiness Regions or U.S. Force Command (FORSCOM) level, and

Whereas, the Chief, Army Reserve, should control and be accountable for all aspects relating to development of readiness of the USAR,

Now therefore be it resolved by the Reserve Officers Association of the United States that the Department of the Army vest command and management of the USAR in Reserve officers, and

Be it further resolved that this U.S. Army Reserve chain of command and management be established with a position reporting to Chief of Staff and extending down through all levels of command.

RESOLUTION NO. 15: NAVAL RESERVE COMPONENT TOTAL FORCE POLICY

Whereas, the implementation of the Total Force Policy of the Active and Reserve components of the U.S. Navy has heretofore evolved without integration of Naval Reserve Personnel considerations based upon the Program Planning Guidance Memorandum (Warplan), and

Whereas, the lact of such integration causes severe difficulties in translation of the policy into meaningful programming and planning of mixed forces, and

Whereas, the lack of such integration fails to exploit economic advantages inherent in the Naval Reserve program through inclusion of Naval Reserve considerations based upon the scenarios established by the Programming Planning and Guidance Memorandum promulgated by the Secretary of Defense,

Now, therefore be it resolved that the Reserve Officers Association of the United States urges the Secretary of Navy to act with all possible dispatch in implementing the Total Force Policy through integration of Naval Reserve Component Personnel into the Program Planning Guidance Memorandum (War-plan) promulgated by the Secretary of Defense.

RESOLUTION NO. 16: NAVAL RESERVE OPERATING TEMPO

Whereas, the United States Naval Reserve has been subjected to a reduction in operating tempo, which is disproportionate to that of the other Reserve forces, to the detriment of readiness training, and

Whereas, the policy of the President of the United States for greater reliance on Reserve forces dictates a need for a higher state of readiness,

Now therefore be it resolved that the Reserve Officers Association of the United States urges the Congress to authorize the fuel and appropriate the funds required to support not less than twenty-one steaming days per quarter for each Naval Reserve ship for Naval Reserve training and not less than 248,000 flying hours to support the Naval Air Reserve (during Fiscal Year 1975) so that the readiness of those forces can be maintained at a state which will allow the Naval Reserve to fulfill its responsibilities to the defense of the United States.

RESOLUTION NO. 17: CIVIL SERVICE REPLACING TRAINING AND ADMINISTRATION OF RESERVES (TAR)

Whereas, enlisted Naval Reserve TAR billets are being deleted, and civilian billets are being designated in lieu thereof, and

Whereas, in a number of instances these newly designated civilian billets are not being properly funded, and

Whereas, if civilians are utilized in these billets, they are either unable or unwilling to work the necessary extra hours to support the requirements of the Naval Reserve without overtime pay, and

Whereas, if civilians fill these billets, they cannot be expected to perform the additional military duties that Navy personnel must perform, and

Whereas, it is extremely desirous to rotate enlisted TAR personnel between shore and sea billets, thus enhancing their training and operational expertise on both ends of the assignments,

Now therefore be it resolved that the Reserve Officers Association of the United States requests the Secretary of the Navy that enlisted TAR billets previously civilianized be restored and filled by TARs and that no further civilianization of enlisted TAR billets be effected, and

Be it further resolved that the Reserve Officers Association of the United States deplores the civilianization of military Reserve slots as a deterioration in the mobilization readiness of our armed forces in time of emergency.

RESOLUTION NO. 18: NATIONAL NAVAL MUSEUM IN CHARLESTON, SOUTH CAROLINA

Whereas, the General Assembly of South Carolina has created the Patriot's Point Development Authority for the purpose of establishing a national naval museum, and

Whereas, this national naval museum will comprise a carrier as well as many other types of ships, and

Whereas, there is no museum of the size and composition being planned that is capable of preserving and sustaining the naval and maritime heritage of our country, and

Whereas, this museum will permit young Americans to become better acquainted with the achievements and sacrifices of their forefathers and thus help to rekindle in them pride and patriotism, thus supporting the aims and objectives of the Navy and the Naval Reserve, and

Whereas, this museum will be in operation by our nation's two hundredth anniversary,

Now, therefore be it resolved by the Reserve Officers Association of the United States that it supports the concept of the Patriot's Point National Naval Museum in Charleston, South Carolina.

RESOLUTION NO. 19: SUPPORT OF MILITARY AIRLIFT COMMAND RESERVE ASSOCIATES UNITS

Whereas, the Air Force Reserve entered into the Military Airlift Command (MAC) Associate Unit Program upon its inception in 1967 and has worked diligently and with ingenuity to prove the merit of the concept, and

Whereas, a Reserve Associate Unit has been designated, collocated, manned and trained to augment each of MAC's C–141, C–5, and C–9 Active Force Units, and

Whereas, these Reserve Associate Units provide aircrew, support and maintenance augmentation equal to 38 percent of the MAC world-wide capability, and

Whereas, MAC considers this concept to be the most effective means of providing for expanded aircraft utilitization requirements for strategic airlift during peak demands of situations involving activation of forces or reacting to contingency operations, and

Whereas, collocation of Associate Units with Active Force Units provides MAC the operational control of the strategic airlift fleet and the centralized crew scheduling and maintenance effort which is deemed essential for enhancing aircraft utilization during such emergencies, and

Whereas, such collocation provides for cost-effective utilization of sophisticated and expensive facilities, tools and supply stocks.

Now therefore be it resolved that the Reserve Officers Association of the United States currently supports the Military Airlift Command (MAC)/Air Force Reserve Associate concept and recommends continuation of this program, and

Be it further resolved that if any of the MAC fleet is reallocated to another component, immediate action be initiated to provide comparable unit equipment for all presently formed MAC-gained Air Force Reserve Units.

RESOLUTION NO. 20: AIRCREW STATUS AND FLIGHT PAY, AF FLIGHT NURSES

Whereas, the Air Force flight nurse as a non-rated officer crewmember has sole medical responsibility during flight of as many as eighty patients, and in most instances has the full responsibility for making crucial decisions regarding changes in patients' conditions, including diagnosis and treatment of changes in health status, and works closely with the aircraft commander in formulation of decisions affecting patient safety and welfare, and

Whereas, the Aviation Career Incentive Act of 1974 indicate that aviation career incentive pay is not authorized for non-rated officer crewmembers, and

Whereas, non-rated officers (flight nurses) presently on orders as crewmembers have been changed to non-crew status (this has resulted in these personnel being paid hazardous duty incentive pay instead of flight pay effective 1 June 1974, a reduction for the same duty to roughly 50 percent), and

Whereas, flight surgeons continue as designated crewmembers, receiving flight pay for their medical responsibilities, and

Whereas, the identfication of flight nurses as noncrewmembers will result in:

a. a significant pay reduction to these highly trained and vitally needed personnel,

b. exclusion of the flight nurse from consideration for quarters, crew rest and crew transportation on aeromedical evacuation missions,

c. serious problems in retention and recruiting in the tactical and strategic aeromedical units, and

d. innumerable problems in standardization, training and qualification of nurses as flight nurses; Now, therefore, be it

Resolved, That the Reserve Officers Association of the United States seek an immediate change to AFM 35–13 to identify flight nurses as crewmembers; and Be it further

Resolved, That appropriate steps be taken to secure an interpretation of the intent of, or a legislative amendment to, the Aviation Career Incentive Act to provide that flight nurses shall be entitled to aviation incentive pay (flight pay) while engaged in flight duties.

RESOLUTION NO. 21: AUTHORIZE PROFESSIONALLY QUALIFIED OFFICERS TO SERVE AS COMMANDERS OF AF FLYING UNITS

Whereas, Section 8577 of Title 10, U.S. Code, reads, "Flying units shall be commanded by commissioned officers of the Air Force who have received aeronautical ratings as pilots of service types of aircraft," and

Whereas, the Title 10, U.S. Code, prescribes the maximum utilization of human resources of the United States Air Force, and

Whereas, the policy of the Air Force is to offer equal opportunity for all members of the Armed Forces, and

Whereas, under Section 8577, Title 10, U.S. Code, the Air Force is not able to take advantage of its full officer management and executive potential,

Now therefore be it resolved that the Reserve Officers Association of the United States endorses the current DOD Legislative Program No. 93–91 and encourages congressional action to amend Section 8577 of Title 10 of the U.S. Code to provide that flying units be commanded by appropriate rated personnel.

RESOLUTION NO. 22: NON-RATED AIR-CREW MEMBERS

Whereas, non-rated officer crewmembers work closely with the aircraft commander in formulation of decisions affecting aerial operations, and

Whereas, the Aviation Career Incentive Act of 1974 indicates that aviation career incentive pay is not authorized for non-rated officer crewmembers, and

Whereas, certain non-rated officers presently on orders as crewmembers have been changed to non-crewmember status (this has resulted in these personnel being paid hazardous duty incentive pay instead of flight pay effective 1 June 1974, a reduction for the same duty of roughly 50 percent),

Now therefore be it resolved that the Reserve Officers Association of the United States seeks an immediate change to AFM 35–13 to identify non-rated aircrew officer members so they can be paid as a fully qualified officer crewmember.

RESOLUTION NO. 23: BETTER UTILIZATION OF LOWER ELEMENT AIR FORCE RESERVE OFFICERS

Whereas, the nonaffiliated (NARS) and Category D officers desire to participate more effectively,

Whereas, the Category A Ready Reserve units require a potential pool of trained officers as replacements,

Whereas, the attachment for points only of these officers to Category A units will be in the best interests of the Air Force and without any additional cost to the Air Force,

Now therefore be it resolved that the Reserve Officers Association of the United States coordinate with AFRES/AFRE to implement the necessary authority to authorize and encourage Category D and nonaffiliated Reserve officers to be attached for points only to Category A units.

RESOLUTION NO. 24: JUNIOR OFFICERS WORKSHOP

Whereas, it is to the benefit of the Armed Forces and the Reserve Officers Association of the United States to encourage junior officers to participate in department and national level ROA activities in order to promote a continuing program to develop the necessary leadership potentials and more complete understanding of the ROA program, and

Whereas, historically, junior officer attendance and involvement has been limited due to various factors such as economic and geographic,

Now therefore be it resolved by the Reserve Officers Association of the United States that each department be strongly urged to select, from among those nominated by its chapters, outstanding officers below grade 0–4 to be sent to each national meeting and that the registration and other expenses of these officers be subsidized by the sponsoring department, and

Be it further resolved that the Junior Officer Affairs Committee at each national meeting, through senior advisors and a scheduled workshop program, inform these junior officers of the purposes, advantages and mechanisms of ROA membership and participation.

RESOLUTION NO. 25: ARMY RESERVE RECRUITING

Whereas, the Congress has authorized the Army Reserve to attain a strength of 260,000 in its Troop Program Units, and

Whereas, the Total Force Policy, as enunciated by the Secretary of Defense, decrees that the military establishment of our nation now places increased reliance on the Reserve components, and

Whereas, the Reserve Officers Association of the United States has placed "National Security" as its principal credo and motivation, and

Whereas, the Chief, Army Reserve, has asked for the active support of the Army members of ROA in a meaningful recruiting effort to enlist new Army Reservists in order to help bring the Troop Program Units up to authorized strength,

Now therefore be it resolved by the Reserve Officers Association of the United States that each Army member of the ROA will fully support a meaningful recruiting program by ROA to enlist new Army Reservists by contacting one prospective recruit and explaining the benefits of participation in the Reserve program.

RESOLUTION NO. 26: REGIONAL ROA CONFERENCES

Whereas, a large number of officers of the Reserve forces cannot attend National ROA Conferences, and

Whereas, the Reserve forces have increased in importance in national contingency planning, and

Whereas, a great need exists for younger officers to meet in their areas with ROA and Reserve officials to raise questions, express ideas and receive information and guidance, and

Whereas, ROA has the expertise and capability to sponsor regional meetings,

Now therefore be it resolved by the Reserve Officers Association of the United States that a feasibility study be instituted by National Headquarters, ROA, to determine whether or not it is logistically possible to undertake Regional Annual ROA Informational Conferences throughout the country, and to report its findings in this regard to the next Annual Mid-Winter Conference at Washington, D.C.

RESOLUTION NO. 27: SURVEY OF STATE BENEFITS FOR RESERVISTS

Whereas, there are numerous statutes in the various states that provide certain benefits to members of the Reserve forces, and

Whereas, it is very difficult for each ROA department to research these various benefits, and

Whereas, comparability of these benefits between the states is desirable for the Reserve forces,

Now therefore be it resolved that the National Headquarters of ROA make inquiry as to the current availability of information in regard to benefits offered by the various states to active and retired Reservists and, if feasible to do so, that this information be disseminated to the various ROA departments.

RESOLUTION NO. 28: ELECTION OF HONORARY LIFE MEMBERS

Whereas, the following citizens have shown extraordinary interest in matters of national security, and

Whereas, they have made meaningful and effective contributions toward insuring the safety of this country,

Now therefore be it resolved that Dr. Dan Callahan, Rear Admiral Jeremiah Denton, Lieutenant General Ira Eaker, Marjorie Holt, M.C., Mike Mansfield, U.S.S., be elected Honorary Life Members of the Reserve Officers Association of the United States in accordance with Article A–3, Section 1(e), of the ROA Constitution.

RESOLUTION NO. 29: IN EULOGY OF JOHN LANG

Whereas, on the 27th of June 1974 the Lord chose to terminate the career of Major General John A. Lang, Jr., USAFR, and

Whereas, thus ended a lifetime of devotion to God and country, and

Whereas, John Lang distinguished himself in both his civilian and his military career, and

Whereas, John Lang's selflessness, generosity and love of fellow man gained him a host of friends and admirers beyond number, and

Whereas, John Lang leaves behind his beloved wife Catherine and four children, John, Richard, Laura and Martha,

Now therefore be it resolved that the Reserve Officers Association of the United States eulogizes the life, work and character of Major General John A Lang, Jr., USAFR,

Be it further resolved that on behalf of all its members, this Association extends the deepest sympathy to John Lang's widow and children on the loss of their beloved husband and father.

RESOLUTION NO. 30: EXPRESSION OF APPRECIATION TO BRIG. GEN. THOMAS H. KING

Whereas, Brig. Gen. Thomas H. King has given of himself unstintingly for many years for the betterment and good of ROA, and

Whereas, such giving has at times approached being his principal occupation, and

Whereas, General King has been considered the unofficial "pro bono" house counsel for Headquarters, and

Whereas, most recently he undertook the representation of the Reserve Officers Association of the United States in the preparation of an amicus curiae (friend of the court) brief on behalf of all congressmen holding Reserve commissions, and

Whereas, in the current court term the Supreme Court has determined that the parties seeking to deny to congressmen the right to continue their Reserve affiliation have no standing to assert such a claim, thereby preserving this right in congressmen,

Now therefore be it resolved that the Reserve Officers Association of the United States publicly recognizes Brig. Gen. Thomas H. King's devotion to the cause of his country's military Reserves.

MATERNITY BENEFITS

Mr. BEALL. Mr. President, on July 18, 1974, I introduced S. 3781, to provide maternity benefits to wives of certain former members of the uniformed services and to certain former female members.

I have received from Mr. Francis W. Stover of the Veterans of Foreign Wars an endorsement of this measure.

I certainly hope that the Armed Services Committee will take early and favorable action.

I ask unanimous consent that the VFW letter be printed in the RECORD.

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

VETERANS OF FOREIGN WARS,
Washington, D.C., July 23, 1974.

Hon. J. GLENN BEALL, JR.,
U.S. Senate,
Washington, D.C.

DEAR SENATOR BEALL: It was with extreme gratification we noted your introduction of S. 3781—to amend Chapter 55 of Title 10, United States Code, to provide maternity benefits to wives of certain former members of the Uniformed Services and to certain former female members.

Inasmuch as your Bill fulfills a mandate from our last National Convention in the form of Resolution No. 741 (copy enclosed), rest assured, you have the full support of the 1.8 million members of the Veterans of Foreign Wars of the United States and the more than 500,000 members of our Ladies Auxiliary in this legislation.

In view of the foregoing, we will be working with the Committee on Armed Services for early consideration and passage of this much needed remedial legislation.

With best wishes and kind personal regards, I am

Sincerely,

FRANCIS W. STOVER,
Director,
National Legislative Service.

THE FCC'S FAIRNESS REPORT

Mr. PROXMIRE. Mr. President, the Federal Communications Commission on June 27 adopted and on July 12 released a "fairness report" reaffirming its fairness doctrine that controls broadcast news programing.

Three years ago, in June 1971, the FCC began a re-examination of the fairness doctrine. The commission had not looked at it comprehensively since its principles were set forth in 1949.

A press release from the FCC issued July 3 began this way:

In an action stressing the need for the fairness doctrine, the Commission has reaffirmed its position that "strict adherence" to the doctrine is the "single most important requirement of operation in the public interest" and an absolute necessity "for grant of a renewal of license."

There is no doubt in my mind, as I continue a series of speeches against the fairness doctrine begun on July 15, that the so-called fairness doctrine violates the spirit and letter of the first amendment. I say that knowing full well that the Supreme Court has on several occasions upheld the constitutionality of the doctrine.

Any restriction on the news function of broadcasting is an abridgment of the free press. And, as we all know, the first amendment prohibits Congress from abridging—that is, diminishing—the freedom of speech and the freedom of the press.

The licensing of broadcasting is an abridgment. When licensing is predicated on that which is broadcast, that, I believe, is manifestly a diminuation of those freedoms.

Mr. President, today I intend to begin a page-by-page examination of the FCC's new fairness report to show rationally how it abrogates the intent of the first amendment.

But first, I want to cite a quotation from a 1919 opinion by Oliver Wendell Holmes, a quotation that was used on this floor against my position the other day:

When men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas—that the best test of truth is the power of thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out. That at any rate is the theory of our Constitution. It is an experiment, as all life is an experiment.

On the face of it, that quotation from the great American jurist stands on its own. It cries out for support of the free exchange of ideas. It is an eloquent and cogent defense of the first amendment.

But can it truly stand alone? What is its context?

The quotation can be found in the Supreme Court proceedings in Abrams against United States in which the Court upheld a conviction under the Espionage Act. The defendant was charged with distributing circulars promoting resistance to U.S. participation in World War I and with advocating strikes in munitions factories. The majority decision did not consider the constitutionality of the Espionage Act.

And Mr. Justice Holmes?

He dissented. The quotation is from his dissent in that case. He was not afraid of freedom of speech and of the press.

Mr. Justice Holmes knew how truth evolves in a democracy. He knew it was not produced by government fiat. He knew that truth was not a commodity stored in governmental agencies and handed down like wisdom from Olympus.

I do not believe Mr. Justice Holmes, if he lived now, would be afraid of free broadcasting.

The FCC views it differently. To be honest, one does have to admit that the FCC is doing only what the Congress told it to do. And—although I have changed my position—I did indeed have a part in doing that.

Yet, it seems that the FCC goes overboard in its ardor.

Mr. President, I will refer from time to time to numbered paragraphs in the FCC's new fairness report, which was inserted in the RECORD July 15 beginning on page 23209. I point this out so as to avoid lengthy quotations in this speech.

In paragraph 1 of its latest fairness report, the Commission says it had two fundamental considerations in reexamining the fairness doctrine. One consideration is maintenance and growth of a broadcast system compatible with the public interest. That is based on the other consideration, which the FCC phrases this way:

First, in view of the profound, unquestioned national commitment embodied in the First Amendment, our goal in this area must be to foster "uninhibited, robust, wide-open" debate on public issues." (The commission is quoting the 1964 case of New York Times Co. v. Sullivan, the famous decision that says, in effect, it is pretty hard to libel a politician.)

Ironic, is it not, that the "unquestioned national commitment" to uninhibited, robust and wide-open debate when it comes to radio and television is limited by the fairness doctrine?

Does the fairness doctrine limit broadcasters?

I received a letter the other day from a broadcaster in Oregon which shows the problem. Here is what he had to say. I will quote all but the last sentence—a personal reference—of his letter, because he ties in the lack of freedom of broadcast journalists to newspapers and economic factors.

We were pleased to read of your comments on the Senate Floor regarding First Amendment protection for broadcasting.

Fact: During the past few years, the number of print media has been greatly reduced and increasing paper costs will reduce the number even more. When print is gone, who will carry the word?

In our market there are six broadcast properties and one print. Only the print can operate in an uninhibited fashion and we must shy from many gut issues because we have no desire to rock-the-boat with the agency who controls our life's breath.

We have been forced to temper our comments in the face of threatened hearings which, even if we had won, would have broken us through our bank account.

We have no "Ford Foundation" to underwrite our defense to meet the underwritten challenges of our antagonists. To set aside sufficient capital to meet these challenges would seriously debilitate our service to our community. We must always restrain our actions to stay within the safety of a no-hearing format. That is program control.

We cannot investigate . . . and although encouraged to editorialize, we will always antagonize one side or the other, and the offended party immediately threatens action. We have been repeatedly threatened in this

manner, even to the extent of "boycotting" that cost us thousands of dollars. We have learned our lessons of moderation the hard way.

Everytime a print media goes out of business, the First Amendment dies a little, and will continue to die until broadcasting is allowed to replace them in the Fourth Estate.

If not available elsewhere, we have ample documentation of these statements available here.

I cite this letter to show that the fairness doctrine presents real problems to the broadcasters. But my interest in repealing the fairness doctrine is not to carry water for broadcasters, many of whom have very profitable businesses. My interest is in seeing that the citizens of our country have the full protection of the first amendment.

Television and radio are the popular media. According to Elmer W. Lower, president of ABC News, 78 million people watch evening TV news in a week. Put another way, he said:

Nearly seventy percent of the total public will look first to television for most of the news about what's going on in the world.

Whether newspapers will be able to solve their technological and economic problems I cannot say, although it does seem likely American ingenuity will do so. Nevertheless, the American public needs truly free broadcasting for its own search for the truth through the competition of the market, as Mr. Justice Holmes said.

In paragraph 3 of its fairness report, the FCC quotes the basic premises of the fairness doctrine as enunciated by the Commission in 1949 in its Report on Editorializing. The 1949 report says:

It is axiomatic that one of the most vital questions of mass communication in a democracy is the development of an informed public opinion through the public dissemination of news and ideas concerning the vital public issues of the day.

The section quoted by the FCC goes on to say that the commission has "recognized the necessity for licensees to devote a reasonable percentage of their broadcast time" to those purposes.

In paragraph 4 the FCC notes the very problem I am talking about when it says:

At first appearance, this affirmative use of government power to expand broadcast debate would seem to raise a striking paradox, for freedom of speech has traditionally implied an absence of governmental supervision or control. Throughout most of our history, the principal function of the First Amendment has been to protect the free marketplace of ideas by precluding governmental intrusion.

The FCC goes on to say that evolution of the mass media technologically and in "concentration of control" has led to a different approach to the first amendment. The FCC report continues:

This approach—an affirmative one—recognizes the responsibility of government in maintaining and enhancing a system of freedom of expression.

The FCC itself sees the paradox—freedom without freedom. But then it just lets the paradox lie there. It presents no really hard, reasoned point to back its self-contradictory argument.

I maintain this:

The first amendment logically is negative, a prohibition. It says Congress shall pass no laws prohibiting the free exercise of religion—it shall not abridge or diminish free speech or a free press.

The first amendment tells Congress to keep its hands off of these freedoms. To do nothing.

Now how can that mandate be made into a "system of free expression"? How can something prohibited be systematized, be arranged methodically?

How can there be a "different approach" to No?

How can one enhance "no law"?

One cannot take nothing and make more nothing.

How can freedom be maintained by putting conditions on freedom?

I am aware, of course, of the famous dictum about shouting "fire!" in a crowded theater; and of the necessity of libel and slander laws.

But the FCC does not really back up its argument. It states it almost baldly.

It does give a citation in paragraph 4 of one T. Emerson and his chapter XVII of "The System of Freedom of Expression." And in paragraph 5 it cites a 1945 Supreme Court decision in Associated Press against United States. That decision said:

It would be strange indeed however if the grave concern for freedom of the press which prompted adoption of the First Amendment should be read as a command that the government was without power to protect that freedom.

But then the court in that case went immediately to the point of the case, the Sherman Antitrust Act. It argues

Surely a command that the government itself shall not impede the free flow of ideas does not afford non-governmental combinations a refuge if they impose restraints upon that constitutionally guaranteed freedom.

The FCC cites a case, regardless of its own merits, that does not deal directly with a defense of the "paradox" it raises in the preceding paragraph.

The citation is a nonsequitur. It just does not follow.

In paragraph 6, the FCC goes into the problem in early broadcasting of radio stations operating on any frequency without regard to other stations.

It is absolutely clear that there must be regulations to keep one broadcaster from interferring with the signal of another. And that is a proper role of government. But that is a technical, an engineering problem, which has nothing to do whatsoever with programing. And the fairness doctrine is about programing, not engineering.

I shall have more to say on this subject in a later speech.

Paragraph 7 notes the establishment of an effective system of governmental licensing of broadcasters in 1927.

And, again, the FCC alludes to the paradox. It says:

It would have been unthinkable, of course, for the government to have been in the business of deciding who could publish newspapers and magazines and who could not.

To back itself up, it quotes Justice Felix Frankfurter in a 1943 case, National Broadcasting Co. against United States. The Communications Act, the Court held, "does not restrict the Commission merely to supervision of the traffic. It puts upon the Commission the burden of determining the composition of that traffic."

The FCC report notes that the NBC case left "a great many first amendment questions unanswered."

The FCC attempts to answer these questions in paragraphs 8 through 13. It relies to a great extent on the often quoted Red Lion case in its defense.

Central to the arguments presented by the FCC in these paragraphs is the scarcity of broadcasting facilities.

In paragraph 13 the FCC tries to argue with one of the legal voices raised against the fairness doctrine. It was a dissent of Chief Judge Bazelon of the District of Columbia Circuit in Brandywine-Main Line Radio, Inc. against FCC. That is the case in which WXUR, a Media, Pa., station lost its license.

In his dissent, Judge Bazelon points out:

This will be the first time that the FCC has denied a license renewal because of fairness doctrine obligations.

Others will dispute that, because the majority held that WXUR was taken off the air because it did not live up to its programing promises made to the FCC.

To me, that is just a different way of slicing the same sausage.

The FCC fairness report quotes Judge Bazelon as suggesting that the time has come for "the Commission to draw back and consider whether time and technology have so eroded the necessity for governmental imposition of fairness obligations that the doctrine has come to defeat its purposes in a variety of circumstances."

In that same paragraph from Judge Bazelon's dissent, which the FCC did not choose to quote, the chief judge noted that the FCC was restudying the fairness doctrine—which it now has completed—to see whether fairness policies truly promote a marketplace of uninhibited, wide, and robust debate. Then follows the full sentence from which the FCC quoted Bazelon:

It is proper that this court urge the Commission to reconsider this case in light of its fairness hearings; that we encourage the Commission to draw back and consider whether time and technology have so eroded the necessity for governmental imposition of fairness obligations that the doctrine has come to defeat its purposes in a variety of circumstances; that we ask whether an alternative does not suggest itself—whether, as will printed press, more freedom for the individual broadcaster would enhance, rather than retard, the public's right to a marketplace of ideas.

The FCC's fairness report glossed over the pertinent questions by the judge.

Immediately after quoting Chief Judge Bazelon in an incomplete fashion, the FCC quotes Red Lion on the scarcity of frequencies. Then the FCC says:

The effective development of an electronic medium with an abundance of channels (through the use of cable, or otherwise) is still very much a thing of the future.

But Judge Bazelon hit that point head on earlier in his dissent. He said:

But Red Lion cannot be read as the final word on scarcity: the cable of technology of the future was not even mentioned in the Court's decision.

Judge Bazelon's next paragraph follows with this information, quoting a 1972 book called "The Wired Nation." Bazelon said:

It is a fact, that with *existing equipment and technology* (his emphasis) "a single coaxial [tv] cable can carry between 28 and 36 channels of television, plus the entire AM and FM radio bands and a quantity of other non-visual electronic signals." It is predicted that in perhaps 10 years it will be possible to provide to the television viewer 400 channels; that by 1980 half the nation will be on cable television; and that a host of educational and public services will accompany the cable revolution which are simple mind-boggling.

Mr. President, I ask unanimous consent that Chief Judge Bazelon's entire dissent in the Brandywine case be printed in the RECORD at the end of this speech.

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

(See exhibit 1.)

Mr. PROXMIRE. Mr. President, the FCC, after saying that the effective development of cable is in the future, gets right back into the paradox it faces in trying to square regulation and the first amendment. It does that in back-to-back sentences:

For the present, do not believe that it would be appropriate—or even permissible—for a government agency charged with the allocation of the channels now available to ignore the legitimate First Amendment interests of the general public. We recognize, however, that there exists within the framework of fairness doctrine administration and enforcement the potential for undue governmental interference in the processes of broadcast journalism, and the concomitant diminution of the broadcaster's and the public's legitimate First Amendment interests.

Mr. President, the next section of the FCC fairness report gives the Commission's position on why it believes the fairness doctrine does not inhibit broadcast journalism. I will deal with that in my next speech.

But in summary, so far, it can be seen that in dealing with the so-called scarcity of broadcast facilities—the actual basis for the regulation of programing—the FCC ignores one important point and brushes off another.

The FCC ignores the fact that radio and television stations are more numerous than daily newspapers. As of the end of June 1974 there were nearly five times more radio and TV stations than daily newspapers. If one wants to count only commercial radio and TV broadcasting stations, daily newspapers are less than 23 percent as numerous.

But a more telling point: in 92 of the top 100 TV markets in the land, you will find three or more TV stations with network affiliations. In seven you will find only two stations, and in only one of those markets is there but a single station with a network affiliation.

Compare that with what Chief Judge Bazelon said in his Brandywine dissent, after noting that nearly every American city receives a number of radio and TV signals:

But out of 1,400 newspaper cities, there are only fifteen left with face-to-face competition.

Even a more striking argument may be made against the scarcity of broadcast spectrum space.

Consider only television channels. As of September 1971, there were still available around the country 462 commercial channels—67 VHF and 395 UHF channels. In addition, there were 434 noncommercial channels available. From a different source, it can be determined that those figures have not changed substantially in the last 3 years. As of June 30, only three VHF and six UHF commercial channels have been added to those on the air. And, another 32 noncommercial TV stations of both types have gone on the air.

The number of daily newspapers has remained virtually unchanged.

I must admit, the question of ownership is a little more complex. There are 73 communities in the United States in which one firm owns all the local broadcast and newspaper properties.

Despite that fact, however, listeners and viewers have access to more competitive voices than do readers of daily newspapers.

And, no one is seriously challenging the first amendment rights of newspapers.

That brings me to the point the FCC brushes off in its fairness report: cable TV.

Its potential is in the future. No doubt about it. But if even only a quarter of its potential is met by 1980, cable can bring scores of channels into most American homes.

But right now, in 1974, it can be seen that the FCC has refused to look at the facts. There is no scarcity of broadcast facilities. It bases its principal argument for continuance of the fairness doctrine on a false premise.

It need not have done that. The law authorizing the fairness doctrine is broad enough that the FCC could have taken the real world into consideration.

But it is too much to expect a government bureaucracy to overcome its own inertia.

That is why, the fairness doctrine must go. It continues to mock the first amendment.

Herbert W. Hobler, a New Jersey broadcaster, has made that point well. He says:

Americans . . . one of your freedoms is missing!

Chief Judge Bazelon's entire dissent follows:

EXHIBIT 1

BRANDYWINE-MAIN LINE RADIO, INC., APPELLANT, V. FEDERAL COMMUNICATIONS COMMISSION, GREATER PHILADELPHIA COUNCIL OF CHURCHES ET AL., INTERVENORS. No. 71-1181.

United States Court of Appeals, District of Columbia Circuit. Argued April 10, 1972. Decided Sept. 25, 1972.

Dissenting Opinion Nov. 4, 1972.

Rehearing Denied Dec. 4, 1972.

Cert. denied 412 U.S. 922 (1973).

Appeal by broadcast licensee from decision of the Federal Communications Commission which denied renewal of AM-FM broadcast license. The Court of Appeals, Tamm, Circuit Judge, held that in view of FCC's findings that AM-FM broadcast licensee failed to observe the fairness doctrine, that it violated the "personal attack" principle and misrepresented to the Commission its programming plans, Federal Communications Commission was justified in refusing to renew broadcast license on consideration of the licensee's total performance.

Affirmed.

J. Skelly Wright, Circuit Judge, concurred and filed opinion.

Bazelon, Chief Judge, dissented and filed opinion. Wright, Circuit Judge, filed a response in which Tamm, Circuit Judge, concurred.

1. Telecommunications—435

The "fairness doctrine" applies to all broadcast licensees. Communications Act of 1934, § 315, 47 U.S.C.A. § 315.

2. Telecommunications—435

Areawide programming is not valid consideration in determining whether broadcast licensee has complied with the requirement of the "fairness doctrine." Communications Act of 1934, § 315, 47 U.S.C.A. § 315.

3. Telecommunications—432

The "personal attack" principle was not intended to protect persons from personal abuse, but rather was adopted so as to enable the listening public to hear expositions of the various positions taken by responsible individuals and groups on important disputed issues and fact that those attacked often showed no concern did not excuse broadcast licensee from violations of the doctrine. Communications Act of 1934, § 315, 47 U.S.C.A. § 315.

4. Telecommunications—435

Purpose of the "fairness doctrine" is to assure that when controversial issues of public importance are aired on radio and television frequencies, fair coverage is given to both sides of issues presented. Communications Act of 1934, § 315, 47 U.S.C.A. § 315.

5. Telecommunications—435

The "fairness doctrine" is distinct from the statutory requirement that equal time be allotted all qualified candidates for public office. Communications Act of 1934, § 315, 47 U.S.C.A. § 315.

6. Telecommunications—435

The "fairness doctrine" is not subject to formulistic application and meeting of the obligations can only be achieved by seeking out balance in broadcast coverage. Communications Act of 1934, § 315, 47 U.S.C.A. § 315.

7. Telecommunications—435

The cornerstone of the "fairness doctrine" is good faith and licensee discretion. Communications Act of 1934, § 315, 47 U.S.C.A. § 315.

8. Telecommunications—435

Under the "fairness doctrine," all that is required is balance; equal opportunities, except as specifically provided for by statute, are not required. Communications Act of 1934, § 315, 47 U.S.C.A. § 315.

9. Telecommunications—435

The "equal opportunities" requirement of statute pertaining to equal time for political candidates is applicable only to uses of station facilities by candidates for public office and calls for equal treatment as to the amount of time to be afforded, the nature of the time slot, etc., and thus works with virtually mathematical precision. Communications Act of 1934, § 315, 47 U.S.C.A. § 315.

10. Telecommunications—435

The ultimate test of the "fairness doctrine" is reasonableness of the broadcast licensee's efforts to provide reasonable opportunity to inform the public on the contrasting viewpoint. Communications Act of 1934, § 315, 47 U.S.C.A. § 315.

11. Telecommunications—435

The first consideration in determining whether broadcast licensee has observed the "fairness doctrine" is the good faith of the broadcast licensee. Communications Act of 1934, § 315, 47 U.S.C.A. § 315.

12. Telecommunications—437

Finding of Federal Communications Commission that AM–FM broadcast licensee, which had been fully informed by the FCC at the time it acquired its license by transfer of the obligations under both the "fairness doctrine" and the "personal attack" principle, failed to observe the "fairness doctrine" by presenting only one side on issues of controversial importance to the public was supported by substantial evidence in broadcast license renewal proceeding. Communications Act of 1934, §§ 301 et seq., 315, 47 U.S.C.A. §§ 301 et seq., 315.

13. Telecommunications—432

Whenever there is an attack made on a person or group during a broadcast in the context of a controversial issue of public importance, the individual attacked has a right to respond. Communications Act of 1934, § 315, 47 U.S.C.A. § 315.

14. Telecommunications—388

The demands of public interest are prime considerations for the Federal Communications Commission in granting broadcasting licenses, renewing licenses and modifying them. Communications Act of 1934, §§ 303, 303(r), 307, 307(a, d), 309(a), 47 U.S.C.A. §§ 303, 303(r), 307, 307(a, d), 309(a).

15. Telecommunications—388

Radio and television station operation must be carried out in the public interest. Communications Act of 1934, §§ 303, 303(r), 307, 307(a, d), 309(a), 41 U.S.C.A. §§ 303, 303 (r), 307, 307(a, d), 309(a).

16. Telecommunications—432

The Federal Communication regulations concerning personal attack are not beyond the scope of the congressionally conferred power to assure that stations are operated by those whose possession of licenses serves the public interest. Communications Act of 1934, §§ 303, 303(r), 307, 307(a, d), 309(a), 47 U.S.C.A. §§ 303, 303(r), 307, 307(a, d), 309 (a).

17. Telecommunications—437

Substantial evidence supported findings of Federal Communications Commission in broadcast license renewal proceeding that AM–FM licensee demonstrated complete disregard for the FCC rules and regulations pertaining to personal attacks. Communications Act of 1934, § 315, 47 U.S.C.A. § 315.

18. Telecommunications—432

The obligation rests squarely on the shoulders of the licensee to adhere to the regulations pertaining to personal attacks and the licensee may not pass its obligations in the area to those who purchase time from the licensee. Communications Act of 1934, § 315, 47 U.S.C.A. § 315.

19. Telecommunications—432

Small staffs in no way exculpate broadcast licensees from their affirmative duties under regulations pertaining to personal attack. Communications Act of 1934, § 315, 47 U.S.C.A. § 315.

20. Telecommunications—437

Substantial evidence in broadcast license renewal proceedings supported finding of Federal Communication Commission that licensee did not act in good faith at time it obtained its broadcast license by transfer in its representations of the types of programs to be broadcast over its AM-FM station. Communications Act of 1934, § 315, 47 U.S.C.A. § 315.

21. Telecommunications—397

Misrepresentations by broadcast licensee at time it acquired its license by transfer concerning the nature of the programs it proposed to broadcast provided ample justification for the Federal Communications Commission to refuse to renew broadcast license. Communications Act of 1934, § 315, U.S.C.A. § 315.

22. Constitutional Law—90

Broadcast licensee's rights under the First Amendment were not violated by the refusal of the Federal Communications Commission to renew the broadcast license where the sanction was based on continuous refusals by the licensee to meet its obligations under the "fairness doctrine" and under the "personal attack" principle. U.S.C.A. Const. Amend. 1; Communications Act of 1934, § 315, 47 U.S.C.A. § 307(a, d).

23. Telecommunications—388

Question of whether broadcast licensee is operating in the public interest, the established standard for license renewal, is determined at the time of renewal and at this time the Federal Communications Commission must take the licensee's total performance into account, including its adherence to the fairness doctrine. Communications Act of 1934, § 307 (a, d), 47 U.S.C.A. § 307(a, d).

24. Telecommunications—388

In determining whether to renew broadcast license, Federal Communications Commission must give prime consideration to the effectiveness of broadcast licensee in his role as trustee for the public. Communications Act of 1934, § 307(a, d), 47 U.S.C.A. § 307(a, d).

25. Telecommunications—388

The policy of the Communications Act is clear that no person is to have anything in the nature of property right as a result of granting of broadcast license and the channels presently occupied remain free for new assignment to another licensee in the interest of the listening public; it is not the purpose of the Act to protect a licensee against competition but to protect the public. Communications Act of 1934, § 307(a, d), 47 U.S.C.A. § 307(a, d).

26. Telecommunications—397, 432, 435

In view of Federal Communications Commission's findings that AM-FM broadcast licensee failed to observe the "fairness doctrine", that it violated the "personal attack" principle and misrepresented to the Commission its programming plans, FCC was justified in refusing to renew broadcast license on consideration of the licensee's total performance. U.S.C.A. Const. Amend. 1; Communications Act of 1934, §§ 303, 303(r), 307, 309, 315, 47 U.S.C.A. §§ 303, 303(r), 307, 309, 315.

27. Telecommunication—383

The Federal Communications Commission can only inform and advise broadcast licensee as to the law; it cannot coerce a licensee to comply. Communications Act of 1934, § 301 et seq., 47 U.S.C.A. § 301 et seq.

Messrs. Benedict P. Cottone and Eugene F. Mullin, Washington, D.C., with whom Mr. John C. Eldridge, Washington, D.C., was on the brief, for appellant.

Mr. Joseph A. Marino Associate Gen. Counsel, F.C.C., for appellee. Messrs. Richard E. Wiley, Gen. Counsel at the time the brief was filed, John H. Conlin, Associate Gen. Counsel at the time the brief was filed, and Miss Katrina Renouf, Counsel, F.C.C., at the time the brief was filed, were on the brief for appellee.

Messrs. Thomas Schattenfield, Michael Valder and David Tillotson, Washington, D.C., were on the brief for intervenors.

Before BAZELON, Chief Judge, and WRIGHT and TAMM, Circuit Judges.

TAMM, Circuit Judge:

We hold no freedom more inviolable than our precious first amendment right to freedom of speech. Free and unfettered debate has been a cornerstone of our Republic for almost two hundred years. Any attempt to silence those who would speak, no matter how unpopular their opinions, no matter how controversial their views, must be met with immovable opposition by those who cherish our basic freedoms and hold them dear.

[T]he peculiar evil of silencing the expression of opinion is that it is robbing the human race; posterity as well as the existing generation; those who dissent from the opinion still more than those who hold it. If the opinion is right, they are deprived of the opportunity of exchanging error for truth: if wrong, they lose what is almost as great a benefit, the clearer perception and livelier impression of truth, produced by its collision with error.[1]

This is the setting in which we must consider the dispute arising from the refusal of the Federal Communications Commission (hereinafter "the Commission") to renew the broadcast license of Brandywine-Main Line Radio, Inc. (hereinafter either "Brandywine" or "WXUR") as licensee of radio stations WXUR and WXUR–TV, located in Media, Pennsylvania.[2] Yet, even in light of the extremely high standard which we have set in this case, we must affirm the opinion of the Commission.

I. FACTUAL BACKGROUND

A. Early Operations of WXUR

Brandywine was licensed to operate WXUR in 1962 by the Commission after a determination that such license would be beneficial in serving the public interest. WXUR–AM is a daytime standard broadcast station while WXUR–FM is a full-time station. The two stations are the sole stations in Media, Pennsylvania. As has been known to happen, Brandywine suffered financial reverses and the stockholders expressed an interest in selling the company in 1964. Contemporaneously, Station WVCH, located in Chester, Pennsylvania (a town which neighbors Media) elected to terminate broadcasting *20th Century Reformation Hour*, the program produced by Dr. Carl McIntire.[3] This event left Rev. McIntire with no outlet for his program in the Philadelphia broadcast market. It is understandable, therefore, that when Dr. McIntire learned that WXUR might be available, the Faith Theological Seminary[4] (hereinafter "the Seminary") entered into an agreement to purchase Brandywine's stockholders' interest in October, 1964. The Seminary filed an application with the Commission seeking approval for the proposed purchase of Brandywine's stock and for Commission approval for the Seminary's proposed operation of WXUR.

B. The Transfer Application

In its proposal to the Commission the Seminary stated that it would continue the station's general format of broadcasting entertainment, talk shows and short newscasts, and in addition, two one-hour religious programs would be broadcast each weekday;[5] the station would also broadcast religious programs until noon on Sunday.[6] The terms of the Seminary application sought Commission permission to operate "for the principal purpose of broadcasting the Gospel of our Lord and Saviour Jesus Christ, for the defense of the Gospel, and for the purposes set forth in the Charter of Incorporation." This application was not without opposition, however, as some fifteen community groups and a number of individuals and churches within the community made their opposition known to the Commission.[7] The Commission noted that it also received communications from many individuals and churches who were proponents of the transfer. As the Commission noted "[t]he complaints [opposing the

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Footnotes at end of article.

transfer application] are based on the relationship to the transferee of the Reverend Carl McIntire, President of the Board of Directors of Faith Theological Seminary, Inc." [8]

The major concern of the opponents to the transfer was that the station would be incapable of providing for a balanced presentation of opposing views in light of McIntire's connection with the Seminary and in view of his radio programs and publications.

The main thrust of the complaints concerning Rev. McIntire, is that, in his radio programs and publications, he has made false and misleading statements and deliberate distortions of the facts relating to various public issues such as race relations, religious unity, foreign aid, etc.; that he has made "intemperate" attacks on other religious denominations and leaders, various organizations, governmental agencies, political figures and international organizations; and that such expressions are irresponsible and a divisive force in the community and help create a climate of fear, prejudice and distrust of democratic institutions. It is also alleged that, in light of his record of "partisan and extremist" views on various public issues, he lacks the degree of social and public responsibility demanded of broadcast licensees and that these views will carry over into the operation of the stations in view of his connection with the transferee. It is alleged, finally, that a serious question is thus raised, in light of his views, whether he is or will be able to bring about a balanced presentation of opposing views or whether he will place his personal views above the station's public interest obligations.[9]

While the applications for transfer were still pending, the Commission communicated with the Seminary with regard to various aspects of the application and with particular interest as to whether station "facilities would be available to other faiths for the presentation of religious programs, and, if so, under what conditions or circumstances." The Seminary responded by filing an amendment to the original application which included an exhibit which stated the Seminary's intent to "make time available on an equal and non-discriminatory basis to all religious faiths requesting time for the presentation of religious programs." [10] To further insure balance in the area of religious broadcasting the Seminary's amendment provided for a half-hour program on Sunday to be known as *Interfaith Forum*.[11]

C. Commission Approval of Transfer

The Commission's Memorandum Opinion and Order [12] granting the transfer application was forthcoming on March 19, 1965.[13] This opinion, known as the *Borst Decision*, summarizes the nature of the complaints received [14] opposing the Seminary's application. The Commission continued by expressing that, as a matter of policy:

[t]he Commission is wisely forbidden from choosing "among applicants upon the basis of their political, economic or social views . . ." As Mr. Justice Douglas stated:

"The strength of our [broadcasting] system is in the dignity, resourcefulness and the intelligence of our people. Our confidence is in their ability to make the wisest choice. That system cannot flourish if regimentation takes hold.[15]

The Decision noted that Dr. McIntire represented that his relationship with WXUR would be as that of a broadcaster and that management decisions would be left to three other members of the Seminary's Board who would constitute the Board of Brandywine.[16] Despite all of this the Commission did consider the basic fear of the application's opponents that the station would be under Dr. McIntire's influence and that it would not give full and fair treatment to divergent views on controversial issues as required by both standards of public interest and the Commission's fairness doctrine.[17] The Commission's ultimate conclusion was that a hearing on the transfer application was unnecessary because of the in-depth representations, contained in the application, to fully comply with the station's acknowledged obligations in the fairness arena.[18]

The *Borst Decision* went to great lengths to reinforce and reiterate the transferee's duties and obligations under both the fairness doctrine and the personal attack corollary. The Commission took notice of Brandywine's written submission that equal opportunity would be afforded to opposing viewpoints on controversial public issues [19] but nonetheless felt constrained to

[s]pecifically direct attention to our ruling in Cullman Broadcasting Co., FCC 63-849 [requiring presentation of conflicting views at licensee expense if advocates willing to pay for broadcast time cannot be found] and to our personal attack principles (see *Public Notice of July 1, 1974, Applicability of the Fairness Doctrine, Part E*) the licensee is required to operate in accordance with these requirements, and unless immediately informed to the contrary, we take the licensee's representation to encompass these requirements.[20]

The Commission expressed the view that Dr. McIntire's record of offering free response time for either an opportunity to debate some issue or respond to some attack "[would] not suffice to discharge the fairness responsibilities of a licensee carrying the broadcasts in question." [21]

The Commission made every effort to assuage the fears of Brandywine's opponents that WXUR would become a medium over which McIntire could express his personal views to the exclusion of the views of the listening public. The Commission reprinted the following detailed programming promise from the Brandywine application:

"It will be the policy of the transferee to make time available on an equal and nondiscriminatory basis to all religious faiths. . . . In other words, the same terms and conditions will be applicable to all faiths . . . as will be applicable to the religious faith . . . [of] the transferee. . . . It will be the policy to make time available to religious faiths equally. . . . However, . . . a half hour will be available and utilized on Sundays . . . for an Interfaith Forum program, in which ministers or representatives of different faiths will be invited to participate in round-table discussions of religious principles and tenets as related to current social problems.

"Every effort will be made to obtain varied participation from week to week to assure the greatest possible balance of views on the subjects of discussion. The transferee will invite the cooperation of recognized ministerial associations in the Greater Philadelphia area to present their recommendations as to participants and subjects of discussion on this program and in the event of failure to obtain such cooperation, the transferee will extend invitations to, and make sincere efforts to obtain participation by, individual churches and faiths in a manner which will assure, to the fullest extent possible, fair and equal representation of varying views.[22]"

The Commission granted Brandywine's application for transfer with one final warning to the Seminary broadcast group.

"In reaching this determination, we have relied upon the specific representations by the transferee indicating awareness of a licensee's responsibilities. In any event, this grant is subject to the same conditions applicable to all broadcast grants . . . [including, among itemized conditions] . . . that [Brandywine] will abide by the requirements of the fairness doctrine (see [Fairness Primer]).[23]"

The new management began broadcast operations on April 29, 1965.

D. The License Period

Brandywine's initial license period ran from April 29, 1965, through April 1, 1966.[24] It is important for this court to examine WXUR's operations during this period as these operations are the actual predicate of the action before us.

When the new management group assumed broadcast control on April 29, 1965, they began making substantial changes in the station's program format, despite the fact that these changes were not indicated in the proposed program format as presented by the Seminary in the transfer application. In addition, one of the programs on which the Commission placed the greatest reliance in granting the application, *Interfaith Dialogue*, did not first appear on WXUR until November 28, 1965, some seven months after the Seminary assumed control of the station.[25] The Commission enumerated a partial listing of programs which did appear in the early license period although not included in the Seminary's amended "Typical Program Schedule." On May 3, 1965, WXUR broadcast *Lifeline* and *Manion Forum; Behind the Headlines* on May 4, 1965; *Howard Kershner's Commentary* on May 5, 1965; *Independent Americans* on May 6, 1965; *The Dan Smoot Report* on May 7, 1965; *Church League of America* on May 8, 1965; and *Christian Crusade* on June 14, 1965.[26] In this regard, it is interesting to note the admission by John H. Norris, the station's manager, that "as soon as the F.C.C. said that . . . [the Seminary] could take the Station over," he commenced making arrangements for broadcast of the above programs.[27] All of these programs shared one common charactertistic: they were devoted almost solely to coverage and discussion of viewpoints on controversial issues of public importance. Personal attacks on the honesty, integrity and character of both groups and individuals were, unfortunately, not infrequent.[28]

Seven months after the Seminary commenced operation of WXUR, the station was the subject of public condemnation by the Media Borough Council [29] and the House of Representatives of the Pennsylvania General Assembly.[30] The Seminary's Broadcast Board attempted to soothe some of the ruffled nerves created by the *Freedom of Speech* program,[31] and continued its attempts at rehabilitating the station's image by introducing *Inter-Faith Dialogue*, promised in the January 1965 amendment to Brandywine's transfer application, on November 28, 1965.[32]

WXUR was required to file its renewal application by early May, 1966. They were sent the necessary "renewal packet" early in 1966 by the Commission. At this time WXUR was also continuing to receive more specific communications from the Commission relating to complaints it had received from individuals, community groups and local governmental bodies. The record discloses that WXUR made attempts at this time to once again enhance its public image by attempting to produce several programs containing contrasting viewpoints on controversial issues of public importance. Each of these programs were carefully detailed in Brandywine's renewal application filed May 3, 1966.[33] That application would have, if granted, provided Brandywine a license for a three-year period from August 1, 1966, through July 31, 1969. Based on Brandywine's operating record from March 17, 1965, through the May 3, 1966, filing date, nineteen parties opposed the renewal application and urged the Commission to deny Brandywine's application.[34] This opposition was in the form of a joint pleading filed with the Commission on July 19, 1966.

After considering the submissions of the

Footnotes at end of article.

parties the Commission found that substantial questions did exist as to

whether the applicant has met the conditions set forth in the Commission's . . . [Transfer Order] . . . during its license period from April 29, 1965 to August 1, 1966; . . . whether the applicant fully and candidly advised the Commission of its program plans in connection with its [transfer] application . . .; the applicant's efforts to comply with the Commission's Fairness Doctrine, including the personal attack principle; and . . . whether the applicant has used the facilities of its stations to serve the sectarian and political views of its principals and to raise funds for their support rather than to serve the community generally, and whether this was misrepresented to the Commission in its application for acquisition of control of these stations. In the latter connection, the Commission notes the charges that the applicant has operated stations WXUR and WXUR–FM, as a divisive force in the community by disparaging racial and religious groups and by castigating and vilifying persons and groups espousing views on public controversial issues different from those of the applicant.[35]

The Commission adopted a number of issues for the hearing of which four remain pertinent to these proceedings:

To determine whether the applicant failed to inform the Commission fully of its program plans in connection with its application for acquisition of control of Stations;

To determine whether the applicant has complied with the Fairness Doctrine and Section 315 of the Act by affording a reasonable opportunity for the discussion of conflicting views on issues of public importance during its license period;

To determine whether during its license period the applicant has complied with the personal attack principle of the Fairness Doctrine by furnishing copies of pertinent tapes, continuities or summaries to persons or groups attacked, with specific offers of the stations' facilities for responses, where discussions of controversial public issues have involved personal attacks;

To determine whether the applicant in connection with its application for transfer of control of Stations WXUR and WXUR–FM misrepresented to the Commission its program plans.[36]

The Commission designated the WXUR renewal application for hearing stating that it was

unable to determine that a grant of these renewal applications would serve the public interest, convenience, and necessity. In order to insure that a full record is made detailing all pertinent and relevant facts concerning the applicant's operations of stations WXUR and WXUR–FM and its representations concerning such application, an evidentiary hearing is required.[37]

E. The Hearing

Hearing Examiner H. Gifford Irion called the evidentiary hearing to order on October 2, 1967, in Media, Pennsylvania.[38] The hearings recessed for over three months on December 15, 1967, after the bulk of the Intervenor's and Broadcast Bureau's evidence had been submitted, to allow Brandywine to prepare its case. The Brandywine presentation began on March 20, 1968.[39]

The record of the hearings closed on June 26, 1968, after a compilation of a nearly 8,000 page record and several hundred exhibits.

F. The Initial Decision

Hearing Examiner Irion released his Initial Decision on December 13, 1968. This very lengthy examination of the case [40] was most thorough with regard to findings of fact, however, the high quality of fact finding led the examiner to only irrational conclusions and findings of law. Intervenors have termed this decision "a whitewash of Brandywine's performance as a licensee" [41]—this court must concur in that assessment. Several examples will make this clear.

[1, 2] 1. *Presentation of Contrasting Viewpoints on Controversial Issues.* Hearing Examiner Irion found that WXUR should be excused from complying with the fairness doctrine because of the small staff retained by the station. Secondly, he found that programming on WXUR was balanced by the programming of other licensees in the Philadelphia market. Both of these conclusions are clearly erroneous. The fairness doctrine applies to *all* licensees, while area wide programming is not a valid consideration in determining whether a licensee has complied with the fairness requirements. *See* Green v. F. C. C.[42]

2. *Personal Attack Violations.* The Examiner made numerous findings against WXUR for failure to comply with the personal attack principle of the fairness doctrine. However, his conclusions fail to recommend any sanctions for these numerous violations. It is not necessary for this court to prepare a line-by-line analysis and refutation of the Examiner's decision; nor would it be prudent for us to do so as the Commission has issued its own detailed opinion reversing the Examiner. Nonetheless we are sufficiently disturbed by the Examiner's final conclusion to pause for a moment to reflect and comment. Examiner Irion concluded by saying:

Thus the decision must be shaped by ultimate objectives rather than by isolated instances of error. This will not be an invitation to carelessness or disregard of the ethical principles involved in the personal attack rules since punishment by forfeiture will always await the transgressor but, in the unusual circumstances of this case, Draconian justice is inadvisable.[43]

It is clear to this court, as it was to the Commission, that the Examiner began his herculean opinion by determining both his conclusion and ultimate disposition of this case. Rather than suiting his conclusions to "let the punishment fit the crime", he chose to adopt a benevolent stance ill-suited to the facts in this case. The *Initial Decision* allows appearance to tyrannize over truth. The facts surrounding Brandywine's operation of WXUR are neither so pliant nor sufficiently malleable to allow for the conclusions of the Examiner.

The opinion did contain a number of findings adverse to Brandywine; however, the licensee failed to file exceptions as to any of these matters.[44] Both intervenors and the Broadcast Bureau of the Commission filed extensive exceptions.

G. The Commission's Decision

The Commission refused to adopt the Hearing Examiner's *Initial Opinion* and adopted its own opinion on July 7, 1970 in which it denied the licensee's application for renewal after an independent review of the record. In its review the Commission drew adverse conclusions with reference to Brandywine's compliance with the fairness doctrine [45] compliance wit hthe personal attack principle,[46] and also with reference to the manner in which Brandywine misrepresented its program plans to the Commission.[47] Let us examine the Commission's reasoning in each area separately.

1. The Fairness Doctrine

The fairness doctrine was, in the Commission's view, the central aspect of the litigation. The reason for this is axiomatic—prior to issuing Brandywine's initial license a tremendous amount of concern was expressed to the Commission by numerous parties, each fearing that WXUR would fail to comply with the doctrine. Brandywine's response to these fears was clear and apparently forthright—it had promised at the time of the transfer application to fully comply with the doctrine.[48] In point of fact, the decision of the Commission had "reiterated the necessity that a licensee serve the public interest by adherence to the Fairness Doctrine, including the personal attack principle." [49]

The Commission proceeded to review the record, including fifteen days of monitored broadcasts,[50] and concluded "that Brandywine under its new ownership did not make reasonable efforts to comply with the Fairness Doctrine during the license period." [51] The Commission discovered, as a result of studying the submissions based on the monitored periods, that WXUR had failed to comply in a number of instances in which one side of an issue was broadcast

during these periods without presenting any opposing viewpoints on any but one of these issues, and with an insignificant presentation on that issue, despite the fact that such controversial issue programming was a substantial part of WXUR's total programming.[52]

Additionally, the Commission found that WXUR had failed to affirmatively come forth with the requisite responsive evidence necessary to illustrate Brandywine's efforts to assure compliance with both the fairness doctrine and the personal attack principles, as promised in the initial transfer application. The Commission found that:

"Brandywine failed to establish any regular procedure for previewing, monitoring or reviewing its broadcasts, and thus did not regularly know what views were being presented on controversial issues of public importance. Despite the *prima facie* evidence presented by the other parties on this issue, Brandywine did not respond with any further review of its treatment of such controversial issues, either for the full license period or any smaller reasonable segment of time. Furthermore it made no showing of public announcements inviting the presentation of contrasting views at the times the issues in Appendix A (or others) were discussed, nor of any other adequate action to encourage the presentation of contrasting viewpoints on these issues.[53] Brandywine relies upon certain call-in and interview programs as meeting its fairness obligations. However, our review of the record shows that these programs were inadequate to this purpose because they either were not directed at obtaining opposing views on the issues (*i.e.*, speakers were not secured or presented in connection with these issues), or were so conducted as to discourage the presentation of views not shared by their moderators." [54]

WXUR contended that Rev. McIntire had undertaken substantive efforts to assure compliance with the fairness doctrine. This submission took the form of letters which evidenced unaccepted invitations to appear on the *20th Century Reformation Hour*. The Commission rejected this would-be indicia of compliance since "these were not invitations by the licensee and, more important, they do not constitute adequate invitations to present contrasting views on the issues set forth in Appendix A." [55] Similarly, the Commission rejected the suggestion that the licensee's fairness obligations could be met by the existence of a daily one-hour call-in program, entitled *Freedom of Speech*, on which a listener could comment briefly on any topic he wished.[56] "On the contrary," the Commission stated, "its operation demonstrates a failure to provide a fair forum by a licensee specifically on notice of its responsibilities in the fairness area." [57] This was especially true since, from the inception of the program until the replacement of Thomas Livezey as moderator, after the adverse resolution of the Media Borough Council,[58] the program

was conducted so as to discourage viewpoints with which [the moderator] disagreed. From the outset he both cut off and insulted callers who did not share his views. This conduct, for which Brandywine is of course responsible, is patently inconsistent with the requirement of fairness.[59]

Footnotes at end of article.

Likewise, the Commission rejected two other daily programs as examples of efforts to provide the required balance. The first of these was *Delaware County Today* [60] on which the moderator dealt with those opposed to his views by "rough[ing them] up" and by "forc[ing them] to give their views in an antagonistic setting." [61] The second program on which WXUR sought to rely was *Radio Free Philadelphia*.[62] The commencement of this program was shortly after Brandywine filed its renewal application with the Commission and shortly prior to the filing of the petition to deny. Therefore, the program had a very brief period of relevance to this proceeding.[63]

The Commission indicated that a detailed discussion of these programs and issues was necessary

both because they are critical to resolution of the fairness issue in this case and because the Examiner neither tied his view that WXUR had put on all shades of the political spectrum to the station's treatment of particular controversial issues nor made a distinction between the pre- and post-renewal date programming. *We are not concerned with the social, political, or religious philosophy of the licensee or any person using its facilities.* Our interest is i nthe right of the public to a reasonable opportunity to hear contrasting views on controversial issues; whether this right has been accorded by the licensee can be determined only in the context of issues, not by generalized political labels. In the face of particular attention being drawn to the necessity for fairness at the time control of the station was transferred, the record shows no reasonable attempt to meet the station's obligations in this area. See Editorializing by Broadcast Licensees, 13 FCC 1246 (1949).[64]

The Commission refused to give weight to the Examiner's conclusion that WXUR's small staff in some way exculpated the station for its failure to achieve balance in fairness.

"The objective of the Fairness Doctrine is to protect the listeners' right of access to information about all sides of controversial issues of public importance. No showing has been made of inability to comply with fairness requirements because of financial limitations." [65]

The Commission was also unmoved by Brandywine's "alleged delegation of Fairness Doctrine responsibilities to the sponsors or producers of the programs it broadcast. (Tr. 7874–75)." [66]

Fairness Doctrine responsibilities may not be delegated. Editorializing by Broadcast Licensees, 13 F.C.C. at 1248; see also "Living Should Be Fun," 33 F.C.C. 101, 107 (1962) . . . . [T]he ultimate responsibility for compliance with the Fairness Doctrine rests with the licensee. Norris [the General Manager] must have known this if he understood the Doctrine as thoroughly as he claimed. (See Tr. 1664–65 and 1880–82.) In any event, we have not found that any delegee adequately performed these functions.[67]

The Commission concluded its consideration of this topic by finding that Brandywine "was indifferent to its affirmative obligation 'to encourage and implement the broadcast of all sides of controversial public issues' (paragraph 9, Editorializing by Broadcast Licensees, 13 F.C.C. at 1251), and indeed it was hostile to such broadcasts." [68]

2. Personal Attack Principle

It was clear to the Commission, as it was to Examiner Irion, that WXUR "repeatedly violated the personal attack principle." [69] This was in spite of specific instructions from the Commission to Brandywine at the time that the initial transfer application was approved. This court need not recount these violations seriatim as the Commission has already done so for us.[70] The Commission continued by noting that the Examiner had found additional attacks, as to which no exceptions were taken by Brandywine; however, the Commission found it unnecessary to "adopt all of the Examiner's findings in this respect," because recitation of "indisputable examples is sufficient," [71]

Subsequent to the attacks in issue in the case at bar the personal attack principle was codified into a formal rule.[72] Under the terms of the rule the Commission exempted bona-fide newscasts, bona-fide interviews, and on-the-spot coverage of bona-fide news events from the earlier reply requirements of the principle. Examination discloses that none of these exemptions prove applicable to the attacks broadcast by Brandywine and hence, "Brandywine was . . . obligated to comply with the personal attack principle in regard to each one of the personal attacks.[73] In each case the Commission found that Brandywine failed to give notice to the party attacked as required; they failed to send the required copies of transcripts, tapes or summaries; and similarly, they failed to offer an opportunity to reply to the aggrieved party as required. More dispositive, however, was the fact that:

Brandywine had not established any procedures to insure compliance. (Tr. 1662–1670). For example, Brandywine did not arrange to know either before or at the time of broadcast whether a given broadcast contained any personal attacks. (*Ibid.*) Brandywine was therefore incapable of sending transcripts, tapes or summaries of the broadcasts to those attacked either prior to or at the time of the broadcast.[74]

[3] Again, the station's argument to the effect that its small staff excused it from performing in this area was unpersuasive. The Examiner was willing to excuse WXUR since those attacked often showed no concern; however, the principle was never geared at protecting persons from personal abuse, but rather "to enable the listening public to hear expositions of the various positions taken by responsible individuals and groups on important disputed issues." [75]

The Commission concluded that "Brandywine simply ignored its plain duty to the public" and that this conduct was "particularly reprehensible in light of the fact the licensee had been cautioned at the outset concerning its duties in this area." [76]

3. Representations as to Programming

The Commission noted that an independent basis for denying the Brandywine renewal application was WXUR's utter failure to live up to its original representations concerning its program plans. The much-touted *Interfaith Forum*,[77] which was designed to promote open discussion concerning matters of modern-day religion, did not appear until November 28, 1965, ten days after the Media Borough Council's resolution, despite the fact that the program was promised specifically in Brandywine's January 25, 1965 transfer application amendment.[78] When *Interfaith Forum* did finally make its belated delut it did not fufill its advertised purpose to " 'make every effort' to get a varied participation." The show never took the form of the promised round-table discussion but, was an interview show on which students or faculty of the Faith Theological Seminary simply interviewed fellow seminarians. Brandywine sought to explain this away by claiming that the Greater Philadelphia Council of Churches had deliberately boycotted the program; yet, there is no support for this proposition in the record.[79]

Brandywine's actual programming practices were far more objectionable than the singular failure of *Interfaith Forum* to appear. From the very inception of Brandywine's control of WXUR there was a marked deviation from the original programming representations made to the Commission. Between April 29, 1965 and May 8, 1965 WXUR replaced a number of promised programs, mostly classified as "entertainment," with seven new programs.[80] The Commission found, and logic dictates that this court agree, that the plans for each of these programs predated the actual transfer. These changes must be viewed as substantial inasmuch as they differed significantly from those programs which they were replacing and were a departure from the general format promised in the Brandywine transfer application: *i. e.*, programming designed "for the purpose of broadcasting the Gospel of Our Lord and Savior Jesus Christ, for the defense of the Gospel and for the purposes set forth in the Seminary's Charter of Incorporation." [81]

The Commission refused to accept station manager Norris' representation that these new programs, for which sponsors allegedly purchased time from WXUR, were born of economic necessity in response to an alleged boycott on the part of commercial advertisers. Despite Brandywine's assertion that this action was in anticipation of the boycott, seven of the eight programs listed in footnote 80 were on the air between four and nine days after Brandywine's assumption of control.[82] Three of these programs were sponsored by an organization called the "American Patriotic News", which never paid any sponsorship fees to WXUR. As Norris was a trustee of the "American Patriotic News" and station manager of WXUR, it is safe to assume that he was aware that these three programs were generating no income. The Commission concluded that the Faith Theological Seminary

[failed to apprise us] fully concerning program plans, and also a significant departure from an express representation concerning the fair treatment of all religious faiths [sic]. In view of the circumstances, these failures can not be laid to inadvertence. They must be considered a conscious course of conduct.[83]

The Commission closed its 23-page opinion by stating:

"We conclude upon an evaluation of all the relevant and material evidence contained in the hearing record, that renewals of the WXUR and WXUR-FM licenses should not be granted. The record demonstrates that Brandywine failed to provide reasonable opportunities for the presentation of contrasting views on controversial issues of public importance, that it ignored the personal attack principle of the Fairness Doctrine, that the applicant's representations as to the manner in which the station would be operated were not adhered to, that no adequate efforts were made to keep the station attuned to the community's or area's needs and interests, and that no showing has been made that it was in fact, so attuned. *Any one of these violations would alone be sufficient to require denying the renewals here, and the violations are rendered even more serious by the fact that we carefully drew the Seminary's attention to a licensee's responsibilities before we approved transfer of the stations to its ownership and control.*" [84]

On August 6, 1970 Brandywine filed a motion to reconsider with the Commission.

H. Commission's opinion on reconsideration

The Commission released its memorandum Opinion and Order [85] denying Brandywine's request for reconsideration on February 11, 1971. The central theme raised by Brandywine constituted an assertion that the Commission's July Decision extended the concept of the fairness doctrine to an unconstitutional brink in that the July Decision was predicated upon "a disapproval of the content of the programs on WXUR." The Commission commented:

"Our decision was based solely upon fairness concepts whose constitutional validity has been sustained by the Supreme Court in Red Lion Broadcasting Co., Inc. v. F. C. C.,

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395 U.S. 367 [89 S.Ct. 1794, 23 L.Ed.2d 371] (1969) and in no sense upon any Commission attitude toward the content of any view expressed over Brandywine's facilities.[86]

The Commission expressed the view that Brandywine's failure to meet the affirmative duty set forth in Red Lion Broadcasting Co., Inc. v. F. C. C.[87] to "offer to make available a reasonable amount of broadcast time to those who have a view different from that which has already been expressed on his station",[88] was not beyond the pale of constitutional reach by the Commission, merely by demonstrating the existence of offers of time during which the proponents of contrasting views were harassed. The Commission stressed that this was a matter of presentation and not one of content.

[W]e did not hold that . . . there was anything wrong *per se* in harassing conduct by a moderator, but only that Brandywine could not rely for its achievement of fairness upon a program where one side was singled out for harassment.[89]

The Commission proceeded to consider each of the issues which Brandywine raised and concluded by reaffirming the majority of its earlier views. Let us consider each issue separately as we did with regard to the *July Decision*.

1. The Fairness Issue

In its petition for reconsideration Brandywine in no way challenged the Commission's earlier finding that despite Brandywine's initial representation and despite the Commission's strong warning in the transfer decision, "Brandywine had taken no steps to encourage the presentation of contrasting views on several issues of public importance where it had presented one side on each of these issues." [90] Brandywine contended that it had broadcast material on certain news, interview, and call-in shows which, although never considered by the Commission, did satisfy the fairness doctrine requirements as to these issues. The Commission began by reminding the licensee that its affirmative duties in the fairness arena would not be satisfied

by leaving the expression of contrasting views to such happenstance as the remarks of an unknown person on a call-in program, or to the possibility that a pertinent question will be asked on a general interview program unannounced as dealing with any particular issue and not presenting a guest selected as a responsible spokesman of a contrasting view.[91]

The Commission did not stop at this juncture but rather continued on to reexamine the material cited by petitioners and determined that this material was not "an expression of conflicting viewpoints in a reasonable ratio which might make a denial of renewal inappropriate." [92] The Commission commenced with an evidentiary point—the affirmative cases presented by the intervenors and the Broadcast Bureau, based on the two weeks of monitored programming, placed an evidentiary burden on Brandywine which could not be satisfied merely by demonstrating "some instances of the expression of opposing views in other time periods without also taking account of any further expression of the original views in such other time periods." [93] Brandywine failed to produce any evidence concerning what was broadcast during the periods they cited to the Commission except for those specific matters on which Brandywine relied. The Commission went on to say:

"In the face of the *prima facie* showing that its treatment of certain issues was unfair, Brandywine clearly was required to show how it encouraged the presentation of opposing views, or at least that the presentation of such views constituted a reasonable proportion to the time devoted to the issues, either throughout the license period or, at the minimum, during some other representative period of time. . . . Therefore, we adhere to our conclusion that Brandywine failed not only to seek some balance of opposing views but to carry opposing views in any fair ratio." [94]

Brandywine attempted to have the Commission exclude certain broadcast statements by Dr. McIntire since they were "religious." [95] The decision on which this attempt was founded was without relevance. The *Murray Letter*, on which Brandywine sought to rely, only held that devotional services were not a controversial issue within the scope and meaning of the fairness doctrine; but "[t]he fairness doctrine extends to all expressions of views on controversial issues of public importance, whether or not they may be deemed religious views by some persons." [96] This holding, the Commission stated, "is no more an abridgement of freedom of religion than of freedom of speech, an issue already decided by the Supreme Court in *Red Lion Broadcasting Co., supra.*" [97]

Brandywine charged that the Commission had neglected to consider various invitations to certain spokesmen. The Commission replied by commenting that "Brandywine mistakes our disagreement with its arguments for failure to consider them."[98] The Commission once again detailed its reasons for finding the Brandywine invitations inadequate. It also discounted McIntire's sundry invitations since they did not emanate from the licensee as the law requires. The Commission noted that its action was based primarily on the inadequacy of the various offers and once again spoke to Brandywine's practice of delegating its responsibilities under the fairness doctrine:

"Certainly if Dr. McIntire had made adequate invitations corresponding to the issues and had succeeded in getting spokesmen with opposing viewpoints to speak on his program, Brandywine would have been able to rely upon this success in complying with the fairness doctrine. However, the converse does not obtain. Brandywine can not absolve itself from failure to comply by merely pointing to Dr. McIntire's abortive efforts. Mr. McIntire's inadequate invitations and failure to get acceptances do not discharge Brandywine from its fairness duties. As we stated in the decision, "the ultimate responsibility of compliance with the fairness doctrine rests with the licensee.[99]"

On the positive side of the scale, the Commission decided that based on materials broadcast outside of the monitored weeks that WXUR "should be given the benefit of the doubt" [100] with regard to its coverage of the Vietnam War issue. However, the Commission found that with reference to issues relating to federal administration policy and activities, civil rights and liberties, United States foreign relations, the proposed New Jersey group defamation law, major news media, and loyalty of federal officials, that the citations submitted by Brandywine were either inadequate, inaccurate, lacking or insufficient in light of the balance of one-sided broadcast presentation.[101]

2. Personal Attack Principle

Brandywine attempted to escape the evidentiary burden placed on it by the Commission by claiming that the standards imposed by the Commission were too vague. The Commission dealt with this allegation by stating:

Brandywine contends that our judgment that it carried personal attacks without notifying the persons attacked of their right to respond is without evidentiary support and that we have no clear definition of "honesty, character, integrity or like personal qualities" against which to measure Brandywine's actions. However, the Supreme Court has sustained the rules against the charge of vagueness in Red Lion Broadcasting Co., supra, and we think that the attacks made over WXUR (see Appendix B of our decision) were such that no reasonable doubt exists as to their proper characterization. Brandywine further charges that we have not explained why the attacks were not made aside the fact that Brandywine does not in fact assert that the attacks were made during bona fide news programs—something it should do if it believes we were in error—we think it plain that they were not. Brandywine did not introduce these programs when they were broadcast as newscasts and they consisted entirely of comments not commonly considered to be news reporting.[102]

In addition, the Commission rejected Brandywine's argument that an adverse finding with respect to the personal attack principle was inconsistent with other Commission rulings in this area.[103]

The Commission also ruled that a 1969 finding by its Broadcast Bureau was not inconsistent with its ruling concerning certain remarks, not at issue in the case, broadcast by Brandywine. The Commission held the 1969 staff decision to be correct.

"In any event, what is important here is not whether there may be a reasonable doubt as to the correctness of the staff ruling in another situation, but rather whether there was such a doubt about the comment . . . in this case. We do not believe that Brandywine could have had such a doubt; nevertheless, it failed to follow the requirements of the rules." [104]

The final contention in this area, which the Commission also rejected, was that the Commission's decision constituted an unconstitutional *ex post facto* approach to the July, 1967 personal attack rules. The reason that the Commission rejected this contention was that the rules codified precepts which were already in effect and which Brandywine had specifically been made aware of by the Commission's transfer order.[105]

3. Representatives Concerning Program Plans

Once again, the Commission stressed that its concern was not with title changes being made to the program schedule but to Brandywine's "willingness to withhold [its] intentions with respect to a substantial amount of programming." [106] The action taken against Brandywine had nothing to do with program content; it was aimed against WXUR solely because of its failure to "candidly advise us and the public of its intentions." [107] The Commission determined that its concern was not based on WXUR's motive but rather its conduct.

"The fact of concealment may be more significant than the facts concealed. The willingness to deceive a regulatory body may be disclosed by immaterial and useless deceptions as well as by material and persuasive ones." F. C. C. v. WOKO, Inc., 329 U.S. 223, 227, 67 S.Ct. 213 216, 91 L.Ed. 204 (1946).[108]

The Commission concluded the *February Decision* by deleting its adverse findings in the *July Decision* as to the issue of ascertainment of community needs [109] and found, still again, "that Brandywine is not entitled to renewal of licenses of WXUR and WXUR-FM." [110]

Brandywine has taken the instant appeal from these findings.

II. THE FAIRNESS DOCTRINE

[4, 5] The requirements of the fairness doctrine are by no means regulations of recent advent. Not only is the concept of the doctrine an established historical fact in the broadcast industry but the doctrine itself has been little changed over the years. The purpose of the doctrine is to assure that when controversial issues of public importance are aired on radio and television frequencies that fair coverage be given to both sides of issues presented. The doctrine is a "common law development" which has evolved from a long line of rulings by the

Footnotes at end of article.

Commission on a case by case basis. As Justice White pointed out in *Red Lion*, the doctrine "is distinct from the statutory requirement of § 315 of the Communications Act[111] that equal time be allotted all qualified candidates for public office."[112] In 1967 the Commission codified two corollaries of the doctrine—the personal attack doctrine and the rules relating to political editorializing.[113]

The Supreme Court's opinion in *Red Lion* went to great lengths at setting out the history of the birth of the fairness doctrine and its related regulations. We shall review that material here because of its critical importance to the case at bar.

The government was not always engaged in the regulation of broadcast frequencies. In fact, it was only out of dire necessity and sheer confusion, accompanied by utter chaos, that the government entered into a role of broadcast regulations.[114] Indeed, it was not until 1927 that responsibility for the assignment and allocation of radio frequencies was assumed by the government.

It quickly became apparent that broadcast frequencies constituted a scarce resource whose use could be regulated and rationalized only by the Government. Without government control, the medium would be of little use because of the cacophony of competing voices, none of which could be clearly and predictably heard.[115] Consequently, the Federal Radio Commission was established to allocate frequencies among competing applicants in a manner responsive to the public "convenience, interest, or necessity."[116] The Court continued:

Very shortly thereafter the Commission expressed its view that the "public interest requires ample play for the free and fair competition of opposing views, and the commission believes that the principle applies . . . to all discussions of issues of importance to the public." Great Lakes Broadcasting Co., 3 F.R.C.Ann. Rep. 32, 33 (1929), rev'd on other grounds, 59 App.D.C. 197, 37 F.2d 993, cert. dismissed, 281 U.S. 706, 50 S.Ct. 467, 74 L.Ed. 1129 (1930). This doctrine was applied through denial of license renewals or construction permits both by the FRC, Trinity Methodist Church, South v. FRC, 61 App. D.C. 311, 62 F.2d 850 (1932), cert. denied, 288 U.S. 599, 53 S.Ct. 317, 77 L. Ed. 975 (1933), and its successor FCC, Young People's Association for the Propagation of the Gospel, 6 F.C.C. 178 (1938). After an extended period during which the licensee was obliged not only to cover and to cover fairly the views of others, but also to refrain from expressing his own personal views, Mayflower Broadcasting Corp., 8 F.C.C. 333 (1940), the latter limitation on the licensee was abandoned and the doctrine developed into its present form.

There is a two fold duty laid down by the FCC's decisions and described by the 1949 Report on Editorializing by Broadcast Licensees, 13 F.C.C. 1246 (1949). The broadcaster must give adequate coverage to public issues, United Broadcasting Co., 10 F.C.C. 515 (1945), and coverage must be fair in that it accurately reflects the opposing views. New Broadcasting Co., 6 P & F Radio Reg. 258 (1950). This must be done at the broadcaster's own expense if sponsorship is unavailable. Cullman Broadcasting Co., 25 P & F Radio Reg. 895 (1963). Moreover, the duty must be met by programming obtained at the licensee's own initiative if available from no other source. John J. Dempsey, 6 P & F Radio Reg. 615 (1950); see Metropolitan Broadcasting Corp., 19 P & F Radio Reg. 602 (1960); The Evening News Assn, 6 P & F Radio Reg. 283 (1950). The Federal Radio Commission had imposed these two basic duties on broadcasters since the outset. Great Lakes Broadcasting Co., 3 F.R.C.Ann.Rep. 32 (1929), rev'd on other grounds, 59 App.D.C. 197, 37 F.2d 993, cert. dismissed, 281 U.S. 706, 50 S.Ct. 467, 74 L.Ed. 1129 (1930); Chicago Federation of Labor v. FRC, 3 F.R.C.Ann.Rep. 36 (1929), aff'd, 59 App.D.C. 333, 41 F.2d 422 (1930); KFKB Broadcasting Assn. v. FRC, 60 App. D.C. 79, 47 F.2d 670 (1931), and in particular respects the personal attack rules and regulations at issue here have spelled them out in greater detail.[117]

Having laid the necessary historical predicate we can turn our attention to the law of the fairness doctrine.

The need for radio regulation has not seriously been questioned in over fifty years. As much as our historical study shows a need for this regulation, there has been a concomitant need for a fairness doctrine. America has turned away from its town meeting and processes of rural decision making. This is the electronic age—an age in which communications systems relay information to an eager public in fractions of milliseconds. Information has become the stock and trade of our informed public. So too has our method of getting information changed in the last half century. We are shifting our emphasis from the printed media to the electronic media. Radio and television consume massive portions of America's time. Because of this we must assume that the public be given access to varied information so that they may remain an intelligent and viable group—free to choose from the options available to them—free to make a choice. In a recent appearance before the Senate Subcommittee on Communications. Nicholas Johnson, a Commissioner of the F.C.C., expressed the need of the American people for which the Commission has undertaken to provide. This parable states the problems involved so succinctly that we reprint it in full:

Once upon a time there was a nation great in ideals and industrialization. It had businesses everywhere—and unsurpassed military might. Yet its greatest strength lay in its ideological foundation. This nation professed to be governed by the consent of its citizens. To ensure the successful functioning of this unique experiment in government, free education, libraries and full information were provided to all, so that this nation's two-hundred million governors, through wide-open debate, might govern themselves wisely. But as the years slipped by, the people spent more and more of their time in their air conditioned homes watching television, and less and less time listening to speakers in the public parks, attending town meetings, and reading handbills on the streets. Meanwhile, the number and importance of cruel issues were growing, and the need for well informed governors became paramount. Thus it was the great debate about the great debate began.

Everyone had his own theory of how to reverse this trend and return the democratic dialogue to the people, who were all at home watching their television sets. Some advocated letters, petitions, press conferences and picketing, but they had little success. Attention shifted to those who advocated bombing, burning, shooting and looting, because before and after the televising of such activities it was usually possible to present a short message, however distorted, concerning the merits of the controversy that generated such outrageous conduct. Then a third group came along. It said, "Let us simply go to the broadcasters peacefully, ask them for the time to present our concerns—we will even pay them." But the broadcasters politely explained that there was no time available for the discussion of public issues—such as war, life and politics—because the time all had to be used for programs and announcements necessary to the very difficult but essential task of inducing consumers to buy useless, joyless, and sometimes harmful products. Yet these patient and patriotic students, businessmen, and Senators were not deterred. They continued to preach the doctrine of "working within the system." "The Government," they said, "will treat us fairly. There is reason and justice in our land. Surely a democratic people need not be violent to be heard." And so it was that they came to the Federal Communications Commission . . . .[118]

In the past months this court, and several other circuit courts, have examined the fairness doctrine on several occasions, sometimes at great lengths.[119] It is clear to this court, therefore, that what we are about to state, with reference to the law in this area, is merely repetitive of our prior efforts. Nothing which we state here is new; however, it is our hope that through our efforts we will be able to instruct appellants as to the proper standard of the law and that we will allay any lingering doubts that appellants may have as to our consideration of the pertinent authorities.

The Commission's most recent elaboration on the fairness doctrine came following the *Red Lion* decision. In the Matter of Obligations of Broadcast Licensees Under the Fairness Doctrine[120] the Commission posited:

"The fairness doctrine was evolved as a policy under the public interest standard in a series of cases, given its definitive policy statement in the Commission's 1949 Editorializing Report (13 F.C.C. 1246), and codified into the Communications Act of 1959. See section 315(a), 47 U.S.C. 315(a); Red Lion Broadcasting Company, Inc. v. Federal Communications Commission, *supra*. It requires the broadcast licensee to afford reasonable opportunity for the discussion of conflicting viewpoints on controversial issues of public importance. The Commission early determined that if the fairness doctrine were to achieve its most salutary purpose, an affirmative obligation in this respect must be imposed upon the licensee. . . ."

* * * * *

The Commission's general approach to this facet of the fairness doctrine is set forth in a 1964 ruling, Letter to Mid-Florida Television Corporation, 40 F.C.C. 620, 621 (1964):

". . . The Commission does not seek to establish a rigid formula for compliance with the fairness doctrine. The mechanics of achieving fairness will necessarily vary with the circumstances, and it is within the discretion of each licensee, acting in good faith, to choose an appropriate method of implementing the policy to aid and encourage expression of contrasting viewpoints. Our experience indicates that licensees have chosen a variety of methods, and often combinations of various methods. . . ."[121]

This court made it clear in Democratic National Committee v. F.C.C. that "[t]he importance of the fairness doctrine is neither academic nor is it an administrative nicety. As the Commission stated: "The keystone of the fairness doctrine and of the public interest is the right of the public to be informed—to have presented to it the "conflicting views of issues of public importance".'"[122] The proposition of the fairness doctrine is easy to understand, and to accept, when one considers that because of the finite number of broadcast frequencies available "they have been necessarily considered a public trust. Every licensee who is fortunate in obtaining a license is mandated to operate in the public interest and has assumed the obligation of presenting important public questions fairly and without bias."[123] Because of the evident importance of the doctrine "it is the manifest intention of the Commission to maintain it as a viable instrument in protecting the right of the public to be fully informed on controversial issues."[124]

[6, 7] The fairenss doctrine is not subject to a formulistic application. Meeting the obligations can only be achieved by seeking out balance in broadcast coverage. Precise mathematic equality is neither required nor desirable. The cornerstone of the doctrine is good faith and licensee discretion.

Footnotes at end of article.

"[T]he licensee, in applying the fairness doctrine, is called upon to make reasonable judgments in good faith on the facts of each situation—as to whether a controversial issue of public importance is involved, as to what viewpoints have been or should be presented, as to the format and spokesmen to present the viewpoints, and all the other facets of such programming." [125]

This is an area in which the Commission has exercised a substantial degree of restraint.

"In passing on any complaint in this area, the Commission's role is not to substitute its judgment for that of the licensee as to any of the above programming decisions, but rather to determine whether the licensee can be said to have acted reasonably and in good faith. There is thus room for considerably more discretion on the part of the licensee under the fairness doctrine than under the "equal opportunities" requirement." [126]

Licensees seeking to meet the requirements imposed by the doctrine must be mindful of Congressional intent. It was never intended by either Congress, or the Commission, that the doctrine work toward suppression of the discussion of controversial issues. To the contrary the intent of the drafters was to "[require] the discussion of conflicting views on issues of public importance." [127]

The Supreme Court spelled out the duties of the licensee in the clearest possible terms in *Red Lion*.

"The broadcaster must give adequate coverage to public issues, ... and coverage must be fair in that it accurately reflects the opposing views. ... This must be done at the broadcaster's own expense if sponsorship is unavailable. ... Moreover, the duty must be met by programming obtained at the licensee's own initiative if available from no other source." [128]

Let us pause for a moment to reflect on the *Red Lion* litigation. The case arose out of an alleged breach of the personal attack doctrine. The attack came in the form of an opinionated broadcast by Rev. Billy Hargis, who also frequently broadcast on WXUR. Red Lion, which was managed by John H. Norris, the station manager of WXUR, failed to meet the requirements of the Commission which a licensee must follow in the event of a personal attack. These requirements, which are set out in *Times-Mirror Broadcasting Co.*,[129] call upon the licensee to send a tape, transcript or summary of the broadcast containing the attack to the wronged party. The licensee is required to offer the aggrieved party an opportunity to respond and must see that this opportunity be made without regard as to whether the response time will be paid for. In the opinion of this court in *Red Lion*[130] we went to great lengths to set out all of the correspondence between the Commission and Norris. Our account runs on for pages. Yet despite all of the instruction received by Norris he remained incapable of, or unwilling to, comply with the requirements in either *Red Lion* or the case currently under consideration.

The recent cases in our jurisdiction are more than adequate in setting out the current state of the law. In Green v. F.C.C.,[131] a case involving requests for time to oppose military enlistment on the air waves,

Judge Wilkey wrote that the doctrine did not require identical treatment for differing viewpoints of controversial issues, "as this would place an onerous and impractical burden on the licensees." Green v. F. C. C., *supra*, 144 U.S.App.D.C. at 358, 447 F.2d at 328. In addition we made it clear that unlike those corollaries to the doctrine that create equal-opportunities situations the doctrine itself does not create a right for any person or group to be granted time. "[T]he licensees may exercise their judgment as to what material is presented and by whom . . . The fairness doctrine is issue-oriented, and it would be sufficient if each licensee could show that the point of view advocated by petitioner . . . had been or was being presented on its station by others." *Id.* In our opinion in Business Executives' Move for Vietnam Peace v. F. C. C., *supra* [146 U.S.App. D.C. 181, 450 F.2d 642], we held that"[u]nder the permissive 'reasonableness' standard of particular format is by no means compulsory." *Id.*, at 187 of 146 U.S.App.D.C., at 648 of 450 F.2d. Thus, in opinion after opinion the Commission and the courts have stressed the wide degree of discretion available under the fairness doctrine and we have clearly stated time after time, *ad infinitum ad nauseam*, that the key to the doctrine is no mystical formula but rather the exercise of reasonable standards by the licensee. *See also* Neckritz v. F. C. C., 446 F.2d 501, 502 (9th Cir. 1971). [132]

[8–10] We reiterate—all that is required is balance; equal opportunities, except as specifically provided in § 315, are not required. We believe that imposing an absolute equal time standard for controversial issues would work to the detriment of the established intent of Congress and the Commission. As the Commission has previously noted:

"We have long stressed the different manner in which the "equal opportunities' and fairness requirements of Section 315 operate. The former is applicable only to uses of station facilities by candidates for public office and calls for *equal* treatment—as to the amount of time to be afforded, the nature of the time slot, etc. It thus works with virtually mathematical precision." [133] The Commission continued:

"In 1959 Congress codified the fairness doctrine, by inserting the provision in Section 315(a) that broadcast licensees "must operate in the public interest and . . . afford reasonable opportunity for the discussion of conflicting views on controversial issues of public importance." The conference report makes clear that this was a Congressional "restatement of the basic policy of the 'standard of fairness' which is imposed on broadcasters under the Communications Act of 1934" (H.Rep.No.1069, 86th Cong., 1st Sess., p. 5(1959)) . . . . And finally, the Supreme Court's opinion in *Red Lion* significantly recognizes the *Editorializing Report* as the statement of the basic principles embodied in the fairness doctrine," *See Red Lion supra* [395 U.S.] at pp. 384–386 [89 S.Ct. 1794]. [134] The ultimate test in this area is reasonableness. "The critical issue is whether the sum total of the licensee's efforts, taking into account his plans when the issue is a continuing one can be said to constitute a reasonable opportunity to inform the public on the contrasting viewpoint—one that is fair in the circumstances." [135]

[11] As the Fourth Circuit pointed out recently, the first line for deciding fairness cases is the good faith of the licensee. [136] It is, therefore, here that we must begin our analysis.

[12] The record of Brandywine-Main Line Radio is bleak in the area of good faith. At best, Brandywine's record is indicative of a lack of regard for fairness principles; at worst, it shows an utter disdain for Commission rulings and ignores its own responsibilities as a broadcaster and its representations to the Commission. At the very outset Brandywine was informed by the Commission, in the *Borst decision*, of the obligations of the licensee under both the fairness doctrine and the personal attack principle. This action was made necessary in the first instance because of the fear of so many in the community. It is apparent now that this fear was warranted and well founded. During the entire license period Brandywine willfully chose to disregard Commission mandate. With more brazen bravado than brains, Brandywine went on an independent frolic broadcasting what it chose, in any terms it chose, abusing those who dared differ with its viewpoints. This record is replete with example after example of one sided presentation on issues of controversial importance to the public. It is not necessary for this court to recount these matters again here. The Commission has amply done so and the record supports their contentions to the penultimate degree.

Rev. McIntire's attitude toward the fairness doctrine and the rights of the public in general is made clear by considering the following excerpts from an exchange of correspondence between McIntire and Albert J. Zack, Director of Public Relations for the AFL–CIO. Let us first consider this excerpt in a letter from Zack to McIntire, sent on November 5, 1965, in response to McIntire's invitation for Zack to appear on *20th Century Reformation Hour:*

"Day after day, program after program, you expound a point of view which is not only contrary to mine, and that of most Americans, but which grossly offends the concepts of Christian ethics. You now propose to set everything right by asking me to come to Collingswood and speak in reply to anything you may say concerning me.

"It simply will not do, Dr. McIntire. This not only does not meet the legal definition of "fairness"; but it does not meet the far more significant standards set by the conscience of men.

"No, I will not come to Collingswood though it is otherwise a pleasant town. I will not give credence to your argument that one appearance by an opponent answering anything you may say is adequate to balance your incessant drumfire of disunion and hate.

"If you wish, we will supply you with a tape or tapes of full program length telling the truth about the trade union movement and its policies, which you can alternate with your own daily commentaries, on your time—which, let us remember, is my time, too, since [the] air belongs to us all." [137]

Dr. McIntire replied on November 13, 1965 in these terms:

"You have completely misrepresented and misunderstood my invitation, as I did not imply even that your appearance in response to your attack upon me would 'set everything right.' As to the FCC's 'fairness doctrine' and its legal definition, *the FCC has made it plain that this so-called fairness doctrine comes into play on a specific broadcast only when an individual's character and integrity are attacked, but a discussion of one's views and the position which he holds in our national life is a proper and legitimate subject for debate* under the protections of the guarantees of freedom of speech and the free exercise of religion in the First Amendment. My offer to you actually went beyond any 'legal' definition of fairness.

* * * * *

"Radio stations are privately owned and it is possible in the dissemination of radio for private interests to contract for the time—which the 20th Century Reformation Hour has done. This time, for which we pay, is ours and not yours; nor does it belong to both of us with an obligation upon me to share it equally with you. It would appear to me that you have what I would call a rather socialistic view in this regard." [138]

We could give many more examples from the weighty record in this case, however, we fail to see what purpose that would serve. The exchange cited above makes it clear that McIntire either did not understand the fairness doctrine or chose to merely ignore it by twisting the law to meet his own requirements. McIntire attributes the requirements of the doctrine to the personal attack rules. Certainly, the doctrine is not so limited as this would imply. The doctrine requires balance when dealing with controversial issues of public importance. This is the extent of fairness.

Footnotes at end of article.

Throughout the pendency of these proceedings appellants have attempted to obfuscate the actual issues in this case by injecting a smoke-screen issue relating to McIntire and his *20th Century Reformation Hour*. Throughout the record we find references to stations cancelling the McIntire program because of the requirements of the fairness doctrine and, indeed, the suggestion is infused more than once that the Commission was "out to get" the Reverend. Certainly, none of this is central to the case at bar and little of it is relevant. These incantations amount to childish prattle. By cloaking these charges in the clothing of the first amendment [139] McIntire attempts to conjure right which the Constitution simply does not provide. As Alexander Hamilton said in another setting:

"To judge from the conduct of the opposite parties, we shall be led to conclude that they will mutually hope to evince the justness of their opinions, and to increase the number of their converts by the loudness of their declarations and the bitterness of their invectives.[140]

This is what we have here. At the risk of assisting Rev. McIntire in his bid for self-martyrdom, we note that his behavior is reminiscent of that of a not so legendary knight-errant named Quixote—who engaged himself by riding against otherwise harmless wind-mills. The actions taken by the Commission with reference to both Rev. McIntire and WXUR are more than supported by the record. Attempting to place the blame on the Commission for the shortcomings of the broadcaster and/or the licensee will not do. It would do the parties well to remember that:

"The fault, dear Brutus, is not in our stars,
"But in ourselves, that we are underlings." [141]

Left to their own wiles, Brandywine and Dr. McIntire would set the fairness doctrine to rest in a not so solemn sepulchre without regard for the right of the community to be fully informed. This record could not support the Commission's findings in this area more strongly.

III. PERSONAL ATTACK DOCTRINE

[13] The law in this area is well settled. Whenever there is an attack made on a person or group in the context of a controversial issue of public importance the individual attacked has a right to respond. The right is extended on the basis of two separate lines of authority—the holdings in *Red Lion* and *Times-Mirror Broadcasting Co.*, and on the basis of the Commission's regulations.[142]

"These obligations differ from the general fairness requirement that issues be presented, with coverage of competing views in that the broadcaster does not have the option of presenting the attacked party's side himself or choosing a third party to represent that side. But insofar as there is an obligation of the broadcaster to see that both sides are presented, and insofar as that is an affirmative obligation, the personal attack doctrine and regulations do not differ from the preceding fairness doctrine. The simple fact that the attacked men or unendorsed candidates may respond themselves or through agents is not a critical distinction, and indeed, it is not unreasonable for the FCC to conclude that the objective of adequate presentation of all sides may best be served by allowing those most closely affected to make the response, rather than leaving the response in the hands of the station which has attacked their candidacies, endorsed their opponents, or carried a personal attack upon them." [143]

[14–16] The Supreme Court laid to rest any existing challenges as to the Commission's authority in enacting regulations under the personal attack doctrine in *Red Lion*.[144] Congress has given a mandate to the "Commission from time to time, as public convenience, interest, or necessity requires" to enact "such rules and regulations and prescribe such restrictions and conditions . . . as may be necessary to carry out the provisions of this chapter. . . ." [145] The demands of public interest are prime considerations for the Commission in granting licenses,[146] renewing licenses,[147] and modifying them.[148] Additionally, station operation must be carried out in the public interest.[149]

This mandate to the FCC to assure that broadcasters operate in the public interest is a broad one, a power "not niggardly but expansive," National Broadcasting Co. v. United States, 319 U.S. 190, 219, 63 S.Ct. 997 87 L.Ed. 1344 (1943), whose validity we have long upheld. FCC v. Pottsville Broadcasting Co., 309 U.S. 134, 138, 60 S.Ct. 437, 84 L.Ed. 656 (1940); FCC v. RCA Communications, Inc., 346 U.S. 86, 90, 73 S.Ct. 998, 97 L.Ed. 1470 (1953); FRC v. Nelson Bros. Bond & Mortgage Co., 289 U.S. 266, 285, 53 S.Ct. 627, 77 L.Ed. 1166 (1933).] It is broad enough to encompass these regulations.[150]

As the Supreme Court has held specifically that the personal attack "regulations . . . are [not] beyond the scope of the congressionally conferred power to assure that stations are operated by those whose possession of a license serves 'the public interest' " [151] this leaves us only to examine the adequacy of the Commission's holding in the instant case.[152]

[17] The facts in this case indicate, as the Commission found, that the licensee demonstrated complete disregard for the rules in this area. There are instances on the record where the licensee totally failed to give any notification to persons attacked,[153] in other cases there were failures to send tapes, transcripts, or summaries.[154] The Commission found, adopting the Examiner's decision, that

[m]anagement did very little to comply with the mandate of the rules in supplying tapes or summaries. Usually the individual was obliged to request a tape and, even then, he had difficulty.[155]

This is a demonstration of Brandywine's degree of compliance in regard to personal attacks. We have reviewed the alleged attacks in this case and find many instances of attacks upon honesty character, integrity and other personal qualities of given persons or groups in the course of discussion of controversial issues of public importance. Yet we find that the licensee did not send tapes, that it did not send transcripts, that it did not send summaries. Is this the responsible behavior of an earnest licensee?

As was the case with regard to the fairness doctrine, Brandywine was informed of its responsibilities in personal attack situations by the Commission at the time of approving the initial transfer. Brandywine represented to the Commission that they understood and would abide by the responsibilities placed on them. As the Commission stated:

"The unavoidable conclusion is that Brandywine simply ignored its plain duty to the public. . . ." We note here again that these violations, although they would warrant the same conclusion in any event, are particularly reprehensible in light of the fact that the licensee had been cautioned at the outset concerning its duties in this area." [156]

[18, 19] Brandywine has attempted to pass its obligations in this area to those who purchase time from the licensee. The law is clear in this regard. The obligation rests squarely on the shoulders of the licensee. The fact that the licensee decided to act in avoidance of this obligation by seeking to delegate a non-delegable duty is another indicia of Brandywine's failings under the law. We fully understand Brandywine's two proned defense in this area. Firstly, Brandywine claims it is incapable of screening tapes prior to broadcast because of the small size of its staff. We note that small staffs in no way exculpate licensees from their affirmative duties. Brandywine would be incapable of operating without an engineer; similarly, a person suitable to protect the rights of the listening public is a necessity for a licensee. This is part of the expense of operating a radio station. Any economic argument to the contrary loses sight of the purposes of Commission regulation.

Brandywine's second assertion is even less valid. John Norris testified that the station did not have anyone listen to program tapes prior to broadcast as this act would constitute censorship.[157] This argument offends the sensibilities of the court for various reasons. This is *prima facie* evidence that despite the numerous and lengthy assertions of the licensee to the Commission, Brandywine never intended to comply with the personal attack rules. Any representation to the contrary on the part of the licensees can only be said to constitute a gratuitous design intended to lull the Commission into a feeling of security. Brandywine has dealt with the Commission in a setting which not only lacked good faith but was also meant to defraud the Commission with regard to the licensee's actual intentions in this area. Brandywine was aware of the personal attack rules, is acknowledged responsibility under them and then chose to disregard them under a guise claiming that the rules constituted licensee censorship. Such maneuvering has proven to be not so wise gamesmanship on the part of licensee. Brandywine's abuses in this area are so blatant as to be sufficient to shock the conscience of the court. The Commission had every justification for its findings in regard to the personal attack rules.

IV. BRANDYWINE'S PROGRAM REPRESENTATIONS

[20] This aspect of the case, while not the most troublesome, is clearly the most disturbing to the court. The facts in this area, as with the other areas of this case, were clearly set out by the Commission.[158] Brandywine made extensive representations to the Commission about the types of programs to be broadcast, as well as providing specific titles. Variation from the typical program schedule presented would not have been fatal if the changes had proven relatively minor or had they been implemented in good faith. Unfortunately, but not surprisingly, neither was the case.

The changes which took place on WXUR within the very first days following the transfer show a common design on the part of the licensee to engage in deceit and trickery in obtaining a broadcast license. Within nine days a totally unexpected group of seven programs, each of a nature different than those on the typical program schedule, were on the air. These programs, which Norris characterized as the "Hate Clubs of the Air," replaced programs which were predominantly entertainment oriented. The speed with which these changes took place can lead the court to one conclusion and one conclusion only—Brandywine intended to place these controversial programs on the air from the first but feared to so inform the Commission lest the transfer application be denied. This approach was foolish. As the Commission stated in the *Borst Decision* and as we stated earlier in this opinion,

[t]he Commission is wisely forbidden from choosing "among applicants on the basis of their political, economic or social views." [159]

The initial representation to the Commission was obviously "a best foot forward" effort by the licensee. The licensee feared that the truth would keep the license from being granted to it. Therefore, Brandywine sought through subterfuge to gain its license and then proceed to broadcast the type of material it believed to be most suitable—the type of material which would forward the ends of the fundamentalist movement—in

Footnotes at end of article.

utter disregard for either the public or their earlier representations to the Commission.

The second misrepresentation concerns *Interfaith Forum*. We have previously described the show at length [160] and need not reiterate here. The facts are simple—when it appeared from Commission inquiry that a more balanced approach to the question of religion was necessary the principal parties at Brandywine devised this program. The record shows that only after being censured by the local government did the licensee make any effort for this program to be broadcast, and even when it finally found its way to the airwaves its content was without resemblance to those representations made to the Commission. This was never an interfaith dialogue but rather an interview program of students and faculty at the Faith Theological Seminary. We find no fault with such a program but we fail to see how it complies with Brandywine's representations for dialogue between the faiths.

The applicable legal standard here was laid down by the Supreme Court over twenty-five years ago. In another communications case the Court said:

"The fact of concealment may be more significant than the facts concealed. The willingness to deceive a regulatory body may be disclosed by immaterial and useless deceptions as well as by material and persuasive ones." [162]

This is dispositive of this issue.

[21] This is a case in which the blind need for a radio outlet in the Philadelphia market has led men experienced in the broadcast industry to misrepresent the facts and to attempt to deceive a regulatory body all to a single end—propagation on the media of their philosophic dogma. These men may have possessed the highest aims for their cause but these aims were blind to the needs of the general public. Misrepresentations conceived to win a soap-box from which to shout one's views are the basest over-exaggeration of the liberties guaranteed in the first amendment. Since the airways are a scarce commodity and have been deemed a public trust it is easy for us to see that Dr. McIntire and his followers have every right for their views to be broadcast. Their right to operate a radio station is no different than the rights of any other group in America. Their rights are neither superior nor inferior. In seeking a broadcast station they had to meet the same requirements as anyone else seeking a license. The first of these requirements is candor and honesty in representations to the Commission. Their dismal failure in this regard is evidenced by this 8,000 page record. These men, with their hearts bent toward deliberate and premeditated deception, cannot be said to have dealt fairly with the Commission or the people in the Philadelphia area. Their statements constitute a series of heinous misrepresentations which, even without the other factors in this case, would be ample justification for the Commission to refuse to renew the broadcast license.

V. FIRST AMENDMENT CONSIDERATIONS

The most serious aspect of this case relates to the basic freedoms of speech and press which are essential guarantees of the first amendment. This is the area of greatest concern to the court. Any shortcomings in this area would necessitate our reversing the decision of the Commission. Not only must the Commission take a hard look at the case in this light but so must this court.

A. Historical Perspective

1. Freedoms of Speech and Free Press

The original draft of the federal Constitution was, curiously enough, silent on the question of freedom of the press. We say "curiously" because among the burning issues of the revolution and the colonial quest for freedom were the plight of Peter Zenger, who had been denied this right, and the issue of taxation of the press. So great was the concern of America that Alexander Hamilton was prompted to write the following:

"On the subject of the liberty of the press, as much as has been said, I cannot forbear adding a remark or two: in the first place, I observe, that there is not a syllable concerning it in the constitution of this State; in the next, I contend, that whatever has been said about it in that or any other State amounts to nothing. What signifies a declaration, that 'the liberty of the press shall be inviolably preserved'? What is the liberty of the press?" [163]

The response to Hamilton's complaint was not long in coming. This wrong was remedied almost immediately by the first amendment to the Constitution.

AMENDMENT 1

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or of the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The following passage from Blackstone's Commentaries is most instructive:

"The liberty of the press is, indeed, essential to the nature of a free state; but this consists in laying no *previous* restraints upon publication, and not in freedom from censure for criminal matter when published. Every free-man has an undoubted right to lay what sentiments he pleases before the public; to forbid this, is to destroy the freedom of the press; but if he publishes what is improper, mischievous, or illegal, he must take the consequence of his own temerity. To subject the press to the restrictive power of a licenser, as was formely done, both before and since the revolution, is to subject all freedom of sentiment to the prejudices of one man, and make him the arbitrary and infallible judge in all controverted points in learning, religion and government. But to punish (as the law does at present) any dangerous or offensive writings, which, when published, shall on a fair and impartial trial be adjudged of a pernicious tendency, is necessary for the preservation of peace and good order, of government and religion, the only solid foundation of civil liberty. Thus the will of the individuals is still left free; the abuse only of the free will is the object of legal punishment. Neither is any restraint hereby laid upon freedom of thought or inquiry; liberty of private sentiment is still left; the disseminating, or making public, of bad sentiments, destructive to the ends of society, is the crime which society corrects." [136]

This was the common law in Blackstone's time. The framers of the first amendment were devoid of any intent to change the common law in this respect. Mr. Justice Frankfurter provides an excellent lesson in his opinion in *Dennis*.[164]

"The historic antecedents of the First Amendment preclude the notion that its purpose was to give unqualified immunity to every expression that touched on matters within the range of political interest. The Massachusetts Constitution of 1780 guaranteed free speech; yet there are records of at least three convictions for political libels obtained between 1799 and 1803. The Pennsylvania Constitution of 1790 and the Delaware Constitution of 1792 expressly imposed liability for abuse of the right of free speech. Madison's own State put on its books in 1792 a statute confining the abusive exercise of the right of utterance. And it deserves to be noted that in writing to John Adams's wife, Jefferson did not rest his condemnation of the Sedition Act of 1798 on his belief on unrestrained utterance as to political matter. The First Amendment, he argued, reflected a limitation upon Federal power, leaving the right to enforce restrictions on speech to the States. * * * [165] 'The law is perfectly well settled,' this Court said over fifty years ago, 'that the first ten amendments to the Constitution, commonly known as the Bill of Rights, were not intended to lay down any novel principles of government, but simply to embody certain guarantees and immunities which we had inherited from our English ancestors, and which had from time immemorial, been subject to certain well-recognized exceptions, arising from the necessities of teh case. In incorporating these principles into the fundamental law, there was no intention of disregarding the exceptions, which continued to be recognized as if they had been formally expressed.' [166] That this represents the authentic view of the Bill of Rights and the spirit in which it must be construed has been recognized again and again in cases that have come here within the last fifty years." [167]

This situation was not even thought to have been altered by the fourteenth amendment until relatively recently. Speaking for the Court in 1907, Mr. Justice Holmes stated:

"We leave undecided the question whether there is to be found in the Fourteenth Amendment a prohibition similar to that in the 1st. But even if we were to assume that freedom of speech and freedom of the press were protected from abridgment on the part not only of the United States but also of the states, still we should be far from the conclusion that the plaintiff in error would have us reach. In the first place, the main purpose of such constitutional provisions is "to prevent all such *previous restraints* upon publications as had been practiced by other governments," and they do not prevent the subsequent punishment of such as may be deemed contrary to the public welfare. Commonwealth v. Blanding, 3 Pick, 304, 313, 314; Republica v. Oswald, 1 Dall. 319, 325, 1 L.Ed. 155. The preliminary freedom extends as well to the false as to the true; the subsequent punishment may extend as well to the true as to the false. This was the law of criminal libel apart from statute in most cases, if not in all. Commonwealth v. Blanding, *ubi supra;* 4 Bl. Com. 150." [168]

This would appear to be an unqualified endorsement of the views espoused by Blackstone. However, Justice Homes remarked in the same opinion, "There is no constitutional right to have all general propositions of law once adopted remain unchanged." [169] As late as 1922, the Court, speaking through Mr. Justice Pitney, stated: "[N]either the Fourteenth Amendment nor any other provision of the Constitution of the United States imposes upon the States any restriction about 'freedom of speech' or the 'liberty of silence'. . . " [170]

Eventually the citizens of this country were given those long sought protections for substantive personal rights. This was achieved by identifying these rights with "liberty" which States were without power to abridge without due process of law. This disclosure was made quite casually by the Supreme Court in the landmark decision of Gitlow v. New York.[171] "For present purposes we may and do assume that freedom of speech and of the press—which are protected by the First Amendment from abridgment by Congress—are among the fundamental principle rights and "liberties" protected by the due process clause of the Fourteenth Amendment from impairment by the States." [172] Within two years this *dictum* became accepted doctrine as to freedom of speech. [173] Four years later freedom of the press was incorporated.[174]

2. Censorship

Let us also consider the first amendment and the concept of censorship—an implicit issue in this case.

Footnotes at end of article.

Mr. Justice Murphy asserted in Chaplinsky v. New Hampshire: [175]

"There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem. These include the lewd and obscense, the profane, the libelous, and the insulting or "fighting" words—those which by their very utterance inflict injury or tend to incite an immediate breach of the peace. It has been well observed that such utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may by the social interest in order and morality.[176]

Similarly, in West Virginia State Board of Education v. Barnette [177] Mr. Justice Jackson established it as "a commonplace that censorship or suppression of expression of opinion is tolerated by our Constitution only when the expression presents a clear and present danger of action of a kind the State is empowered to prevent and punish." [178]

Significantly, those cases which have sanctioned previous restraints of the utterances of specific individuals have not involved restraints by administrative action, but rather judicial restraints. It was a prime objective of those seeking to ban previous restraints to outlaw censorship which could be accomplished through licensing. It was in this setting that John Milton directed his offensive in his *Appeal for the Liberty of Unlicensed Printing*. Freedom of the press was, in the beginning, a right to publish "'*without* a license what formerly could be published only with one.'" [179] Today, as well, nothing is more likely to give rise to judicial condemnation than a licensing requirement. Only in those cases in which the licensing officer's authority is so limited as to make discrimination against utterances which he disapproves of impossible [180] will the court refrain from interfering. The Supreme Court has even gone so far as to strike down licensing ordinance with respect to forms of communications which are totally forbidden.[181] More pertinently to the case at bar, in the area of radio broadcasting, where the very physical limitations of the medium make this form of communication unavailable to all who would utilize it, the Court has sanctioned the Commission's power of selective licensing.[182] On the other hand, it had been the Court's position until recently, with regard to motion pictures, that the state's power to license, and therefore, to censor, films to be shown locally was unrestricted as "a business pure and simple, originated and conducted for profit," and "not to be regarded, . . . as part of the press of the country, or as organs of public opinion." [183] This doctrine, established in 1915, was altered by the Court in 1948. Mr. Justice Douglas stated that the Court's position had become a very different one. "We have no doubt that moving pictures, like newspapers and radio, are included in the press whose freedom is guaranteed by the First Amendment." [184]

It would be remiss for us to move on without noting that there are areas where the Federal government has, at one time or another, placed restraints on both freedoms of speech and press. These areas include, or have included, censorship of the mails, *e.g.*, fraud orders and obscenity; regulation of business and labor activities; regulation of political activities by federal employees; legislation to protect the armed forces and the war power; loyalty regulations; the Smith Act; and the regulation of subversive organizations.

B. The First Amendment and Red Lion

The rights of free speech and free press coupled with the fairness doctrine and the Supreme Court's *Red Lion* decision, is one of the most written-about areas in the law today.[185] The first amendment issue was dealt with by the Supreme Court in part three of the *Red Lion* decision.[186] The Court explained the broadcaster's contentions as follows:

"Their contention is that the First Amendment protects their desire to use their allotted frequencies continuously to broadcast whatever they choose, and to exclude whomever they choose from ever using that frequency. No man may be prevented from saying or publishing what he thinks, or from refusing in his speech or other utterances to give equal weight to the views of his opponents. This right, they say, applies equally to broadcasters." [187]

These first amendment challenges were rejected by the Court unanimously.[188] In fact, Mr. Justice White found that the Commission's application of the fairness doctrine enhances rather than abridges the freedoms of speech and press.[189] As we noted previously, one of these points emphasized by the Court was "the scarcity of broadcast frequencies, the Government's role in allocating those frequencies, and the legitimate claims of those unable without governmental assistance to gain access to those frequencies for expression of their views. . . ." [190]

In direct response to the first amendment claims raised by the broadcasters the Court stated:

"Where there are substantially more individuals who want to broadcast than there are frequencies to allocate, 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 the purpose of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail, rather than to countenance monopolization of that market, whether it be by the Government itself or a private licensee. . . . It is the right of the public to receive suitable access to social, political, esthetic, moral, and other ideas and experiences which is crucial here." [191]

The Court found, and of course we agree, that it would be "a serious matter" if the requirements imposed by the Commission would in effect induce the licensee to censor themselves thereby making their coverage of controversial public issues "ineffective." However, the Court deemed this to be merely a speculative possibility. In fact the Court determined that if licensees should suddenly prove timorous, the Commission is not powerless to insist that they give adequate and fair attention to public issues. It does not violate the First Amendment to treat licensees given the privilege of using scarce radio frequencies as proxies for the entire community, obligated to give suitable time and attention to matters of great public concern.[192]

The Court was careful to point out that its rejection of the broadcaster's claim was not an absolute one. The Court found that there could be instances in which more substantial first amendment questions were raised than in *Red Lion*. For example, the Court found no evidence of Commission "refusal to permit the broadcaster to carry a particular program," or "of the official government view dominating public broadcasting." [193]

C. The Post Red Lion Era

In the short time that has passed since the *Red Lion* case, there has been an ever growing number of cases decided concerning the fairness doctrine, broadcasting, and the first amendment. We have already considered many of these cases during the course of our discussion of the fairness doctrine. Thus, a lengthy exposition here is unwarranted and unnecessary. For the most part these cases have relied primarily, as they must, on *Red Lion* and have added little to the shape of the law.

One opinion which did provide instructional enlightenment in the first amendment area is Judge Wright's scholarly opinion in Business Executives' Move for Vietnam Peace v. F. C. C.[194] Judge Wright addressed the issue of the uncertainty of the scope of the first amendment's impact on the broadcast media:

It has always been clear that the broadcast media—so vital to communication in our society—are affected by strong First Amendment interests.[195] Yet the nature of those interests has not been so clear; and evolution of constitutional principles in this area is still very much in progress. . . . [*Red Lion*] justified the Commission's interference with broadcaster's free speech by invoking specifically constitutional rights of the general public which, it said, underlie and support the fairness doctrine rules at issue. Issuing what must become a clarion call for a new public concern and activism regarding the broadcast media, the Court stated that "the people as a whole retain their . . . collective right to have the medium function consistently with the ends and purposes of the First Amendment." [196] It went on to say:

". . . The right of free speech of a broadcaster . . . does not embrace a right to snuff out the free speech of others. . . .

* * * * *

. . . [A] licensee has no constitutional right . . . to monopolize a radio frequency to the exclusion of his fellow citizens. . . .

* * * * *

. . . It is the right of the viewers and listeners, not the right of the broadcasters, which is paramount." [197]

Even in light of the later cases *Red Lion* remains the definitive opinion in the area. Therefore, we can only stress, once again, the Court's language in that case. As we said in Democratic National Committee v. F.C.C..: [198]

According to the Court in [*Red Lion*], the primary concern in the broadcast industry is "the First Amendment goal of producing an informed public capable of conducting its own affairs." [199]

We expressed this same view in the following terms:

"In our view, the essential basis for any fairness doctrine, no matter with what specificity the standards are defined, is that *the American public must not be left uninformed.*" [200]

Anything else on this point would be superfluous.

D. The Prohibition Against Censorship

It was John Stuart Mill who wrote:

"[Censorship] is as noxious, or more noxious, when exerted in accordance with public opinion, than when in opposition to it. If all mankind minus one were of one opinion, and only one person were of a contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind." [201]

These views are central to the thoughts of all who hold dear our fundamental liberties. Wisely, therefore, Congress has specifically forbidden the Commission from engaging in any actions which would constitute censorship.

§ *326. Censorship.*

Nothing in this chapter shall be understood or construed to give the Commission the power of censorship over the radio communications or signals transmitted by any radio station, and no regulation or condition shall be promulgated or fixed by the Commission which shall interfere with the right of free speech by means of radio communication.[202]

It has been held that this section denied the power to censor to the states in the same terms as it denied the power to censor to the federal government,[203] and similarly

Footnotes at end of article.

that the licensee shall have the sole power in choosing programs.[204] However, this court has held that the Commission's public interest rulings, with reference to specific program content, do not invariably constitute "censorship" within the confines of § 326.[205] We have also held that not every condition imposed by the Commission on a licensee constitutes interference with free speech.[206]

The deep seated commitment which the courts and commission share for this concept can hardly be classified as ephemeral. The prohibition from censorship has been and will continue to be carefully guarded by those charged with the responsibility of protecting our basic freedoms. Yet, despite the guarantees there are those who fear government licensing of broadcasting and believe that it constitutes a threat to freedom of information. One such person is media commentator Walter Cronkite:

"That brings me to what I consider the greatest threat to freedom of information: the Government licensing of broadcasting. Broadcast news today is not free. Because it is operated by an industry that is beholden to the Government for its right to exist, its freedom has been curtailed by fiat, by assumption, and by intimidation and harassment.

"Broadcasting's freedom has been curtailed by fiat through rulings of the Supreme Court. The Court has stated that as long as we are licensed by the Government we are not as free as the printed press and therefore not eligible in the same manner for the first amendment guarantees. The father of all such restrictive rulings is the decision in National Broadcasting Co. v. United States where the Court found that freedom of utterance was abridged to anyone who wanted to use the limited facilities of radio. The Court went on to find that radio was unlike other modes of expression in that it was not available to all. It was this unique characteristic that distinguished the radio from other forms of expression and made it a subject of government regulation. More recently, the Supreme Court's ruling in Red Lion Broadcasting Co. v. FCC upheld the "personal attack rule" and found that where substantially more individuals wish to broadcast than there are frequencies available to allocate, it is idle to attempt to establish an unabridgeable first amendment right to broadcast comparable to the right of each individual to speak, write, or publish.

"Stripped of this constitutional protection, broadcast news stands naked before those in power, now or in the future, who, for whatever motive, would like to see its freedom restrained." [207]

While we do not agree with Mr. Cronkite's conclusions, we do share his concern. Journalists and broadcasters have no monopoly over concern with censorship. The courts, and indeed the American public as a whole, have a tremendous stake in a free press and an informed citizenry. Yet, how can the citizenry remain informed if broadcasters are permitted to espouse their own views only without attempting to fully inform the public? This is the issue of good faith which, unfortunately, a small number of broadcasters refuse to exercise.

E. Brandywine and the First Amendment

[22] Under the state of the law as it exists today, we can find no infirmity with the Commission's findings or conclusions in light of the first amendment. Commission findings in this area are in a relatively narrow sphere. The alleged violations of fairness and personal attack rules are fully documented. The abuses are flagrant. The sanctions borne of the litigation were based on continuous refusals by the licensee to meet its obligations. This is not a case in which the Commission is acting on an isolated mistake, or two, in the course of a three year license period. This is a case of deliberate and continuing disregard in a short time period spanning only several months. The Commission has made no attempt to influence WXUR's programming or censor its programming in general or specifically. Had the licensee met the obligations required of it we have no reason to believe that Brandywine would have met with any difficulty. The law places requirements on licensees as fiduciaries. Failure to live up to the trust placed in the hands of fiduciary requires that a more responsible trustee be found. This is not the public's attempt to silence the trustee—it is the trustee's attempt to silence the public. This is not the public censoring the trustee—it is the trustee censoring the public. Attempting to impose the blame on the Commission for its own shortcomings can only be likened to the spoiled child's tantrum at being refused a reqeust by an otherwise overly-benevolent parent.

As in the *Red Lion* case, we note that other questions in this area could pose more serious first amendment problems. Since such questions are not at issue here there is no need to hypothecate upon them.

VI. SANCTIONS

In light of the extensive violations found by the Commission in the areas of the fairness doctrine, the personal attack rules, and misrepresentation of program plans, the Commission refused to renew Brandywine's license. The Commission, while finding that its action would have been justified when based on any of these areas, chose to base its opinion on a consideration of Brandywine's total performance.

[23, 24] As the Commission stated in Letter to Honorable Oren Harris,[208] the question of whether the licensee is operating in the public interest, the established standard for license renewal,[209] is determined at the time of renewal. At this time the Commission must take the licensee's total performance into account, including its adherence to the fairness doctrine. Of course, the prime consideration must come back to the effectiveness of the licensee in his role as trustee for the public.

[25] As Judge Wright points out in Citizens Communications Center v. F.C.C.: [210]

"The policy of the Act is clear that no person is to have anything in the nature of a property right as a result of the granting of a license. Licenses are limited to a maximum of three years' duration, may be revoked, and need not be renewed. Thus the channels presently occupied remain free for a new assignment to another licensee in the interest of the listening public.

"Plainly it is not the purpose of the Act to protect a licensee against competition but to protect the public."

Cf. Greater Boston Television Corp. v. F.C.C.,[211] "[The Federal Communications Act] does not reflect the same concern for 'security of certificate' that appears in other laws." [212] Both *Greater Boston* and *Citizens Communications* make it clear that the Commission can act to provide assurances of better broadcasting by taking licenses from those who fail to provide for the public interest.

"The Commission need not be confined to the technique of exercising regulatory surveillance to assure that licensees will discharge duties imposed on them, perhaps grudgingly and perhaps to the minimum required. It may also seek in the public interest to certify as licensees those who would speak out with fresh voice, would most naturally initiate, encourage and expand diversity of approach and viewpoint.[213]

Judge Leventhal recently enunciated the standard for reviewing decisions of regulatory agencies in these terms:

"We recognized the tension between the doctrine of judicial restraint, which requires of us considerable deference to agency decisions, and the practical necessities of judicial review, which require a minimum standard of articulation, so that we may discern the path which the Commission took on the way to its result. We acknowledged the impossibility of framing a universally applicable formula 'for deciding when an agency . . . has crossed the line from the tolerably terse to the intolerably mute. . . .'" [214]

[26] The Commission's opinion in this case exemplifies the type of findings which this court would like to see in all its cases. The opinion is complete, thorough and carefully based on the law. The sanction imposed by the Commission is fully supported by the record. We can find no justification for upsetting a sanction so well substantiated by the record and the findings of the Commission.

[27] Of course, as we have previously pointed out, these sanctions did not befall Brandywine by surprise. The *Borst Decision* contained a warning to the licensee designed to alert him to the Commission's expectations; this warning was acknowledged by the licensee. The Commission can only inform and advise as to the law; it cannot coerce a licensee to comply.

VII. CONCLUSION

Finally, we come to the end of our long journey. Yet, we take a brief moment to comment on the path we have travelled. Appellants requested at oral argument that the court not rely alone on the cold submissions in the pleadings, but that we carefully review the entire record in this case. We have left no corner unturned; no fact has gone unconsidered. What we found teaches many lessons.

Appellants have blazed a trail marked by empty promises and valueless verbiage. They have attempted to prevail by wearing down both Commission and court. However, those charged with protecting the precious rights of the public will not, and cannot, be exhausted by a group of recalcitrants who attempt to cajole and bully. Freedom of speech is not an empty slogan or a rallying cry—nor can it be snatched from the hands of the American people by an outpouring of emotional indignation. Freedom of speech is a truth that we have long held to be self-evident; we refuse to sit by idly and watch that truth snuffed out by a group of overly-zealous men whose sole interest is filling the airwaves with their own views to the exclusion of the views of all others. Dr. McIntire and his followers have every right to air their views; but so do the balance of our two-hundred-and-ten-million people.

Brandywine was given every opportunity to succeed in the broadcast endeavor on which it set out. The Commission fulfilled its duty in granting the initial license although it may have proven more popular and expedient to bow to the protestations of Brandywine's detractors. The Commission forewarned Brandywine about its fairness doctrine and its personal attack rules and made every effort to explain them. Despite the Commission's sanguine outlook it was soon evident that Brandywine refused to comply with those requirements, which are designed to serve the public interest and the broadcast audience. Commission good faith was interpreted as an act of weakness.

The first amendment was never intended to protect the few while providing them with a sacrosanct sword and shield with which they could injure the many. Censorship and press inhibition do not sit well with this court when engaged in by either the Commission or by a defiant licensee. The most serious wrong in this case was the denial of an open and free airwave to the people of Philadelphia and its environs.

Consequently, the opinion of the Federal Communications Commission is

Affirmed.

Footnotes at end of article.

FOOTNOTES

[1] J. Mill, on Liberty, *quoted in* Buckley v. Meng, 35 Misc. 2d 467, 474, 230 N.Y.S. 2d 924, 932 (Sup. Ct. 1962).

[2] Despite the fact that two stations WXUR and WXUR–FM, are involved in this suit, any reference to "WXUR" will be employed to designate both the AM and FM frequencies, unless otherwise indicated.

[3] Dr. McIntire testified at the hearing for license renewal that:

"I received notice [from WVCH] informing me the program would be terminated and we made a very great issue of it publicly here and committees were organized to see if it couldn't be continued. The reason given for [cancellation], as given to us, was that it was the advice of the attorneys in Washington in connection with their FCC problems that led them to put me off." When asked how he had obtained this information, McIntire continued:

"It was obtained by a committee that went by the pressure [*sic*] that were built up as to just what was the reason Dr. McIntire was being removed and when we found this difficulty with the FCC or with its attorneys in connection with the FCC, the same problem confronted me as I sought to get on the other stations in the community. When we found that we were virtually blacked out and that our views, our opinions were not going to be aired in the community, we became interested in purchasing a station or being a part of a purchase in some way so that a program such as mine could be aired in the community."

J.A. Vol. V, 4236–37.

[4] Faith Theological Seminary is located in Elkins Park, Pennsylvania, near Philadelphia. Reverend McIntire presided over the Seminary's Board of Directors at the time the offer to purchase Brandywine was tendered.

[5] These two programs were *Missionary Hour* and *Gospel Hour*.

[6] The Sunday morning programs were entitled: *It's Sunday Morning, Dedication, The Church at Work, Men's Hour, Church Service* and *Sunday U.S.A.*

[7] The following groups and individuals were among those opposed to the transfer application: the Greater Philadelphia Area Committee for UNICEF, the National Association for the Advancement of Colored People, the Anti-Defamation League of B'nai B'rith, the Pennsylvania Southeast Conference of the United Church of Christ, the Presbytery of Philadelphia, the National Urban League, the Greater Philadelphia Council of Churches, the Jewish Community Relations Council, the New Jersey Council of Churches, the Philadelphia Council of the AFL–CIO, the American Baptist Convention, the Eastern Pennsylvania Synod of the Lutheran Church in America, the Philadelphia Baptist Association, and the Executive Committee of the Catholic Interracial Council of New York.

[8] In re Application of George E. Borst, et al., 4 P & F Radio Reg. 2d 697, 698 (March 19, 1965) (hereinafter "Borst Decision").

[9] *Id.* at ¶ 2.

[10] J.A. Vol. II. 120–27.

[11] The amendment described *Interfaith Forum* as a program in which ministers or representatives of different faiths will be invited to participate in roundtable discussions of religious principles and tenets as related to current social problems. Every effort will be made to obtain varied participation from week to week to assure the greatest possible balance of views on the subjects of discussion.

J.A. Vol. II, 127.

[12] *Supra*, note 8.

[13] The Commission was not unanimous in its action. Commissioner Hyde concurred in the result only. Commissioner Cox dissented in the belief that the application should have been designated for a hearing. Commissioner Loevinger concurred, especially expressing his displeasure with the Commission's action in concerning itself with McIntire's views.

[14] *See* text at note 9, *supra*.

[15] Borst Decision, *supra*, at ¶ 3. Citations omitted.

[16] *See* letter of Carl McIntire to E. William Henry, Chairman of the Federal Communications Commission. In this letter Rev. McIntire stated:

"It is constantly being alleged that I am buying the station. You know, of course, that it is the corporation of the Seminary of which I am a member and am presently the president of the corporation. . . . I want you to know that I have no financial interest in any way in this sale. Moreover, I own no radio station and have no financial interest in any radio station in the country or anywhere else."

J.A. Vol. II, 140. While Rev. McIntire was not the president of the Seminary he did list a large number of other associations on the transfer application. He is listed as Pastor of the Bible Presbyterian Church of Collingswood, New Jersey; President of the Board of Trustees of Shelton College, Cape May, New Jersey; Vice-President of Independent Board of Presbyterian Foreign Missions; President, Christian Beacon Press, Inc., Collingswood, New Jersey; President and editor of the Christian Beacon; and member of the Board of Directors of Highland College, Pasadena, Calif.

Borst Decision, *supra*, at fn. 2.

[17] The fairness doctrine has been codified at 47 U.S.C. § 315 (1970).

[18] Question 7 of the Broadcast Application (Statement of Program Service of Broadcast Applicant) requires the applicant to make

". . . a narrative statement on the policy to be pursued with respect to making time available for the discussion of public issues, including illustrations of the types of programs to be broadcast and the methods of selection of subjects and participants."

Faith Theological Seminary responded in the following terms: "Equal opportunity will be afforded to opposing viewpoints on controversial public issues." J.A. Vol. II, 111.

In the Commission Statement of AM or FM Program Service question 16 inquires:

"In connection with the applicant's proposed public affairs programming describe its policy with respect to making time available for the discussion of public issues and the method of selecting subjects and participants."

The Seminary replied by stating:

"Opportunity on equal terms to opposing viewpoints on controversial public issues. Subjects will not be selected by station but will be those either presented by sponsors or by members of listening audience calling in on "Freedom of Speech" program. Replies to controversial views expressed on sponsored programs will be by spokesmen equally qualified as spokesmen on sponsored program.

J.A. Vol. II, 138.

Finally, consider the following from the above form:

"29. State the methods by which applicant undertakes to keep informed of the requirements of the Communications Act and the Commission's Rules and Regulations, and a description of the procedures established to acquaint applicant's employees and agents with such requirements and to ensure their compliance.

"Employees are required to be familiar with FCC rules applicable to their duties. Copies of FCC rules are kept at station. FCC notices are posted on bulletin board. Washington counsel is consulted on doubtful questions."

J.A. Vol. II, 139a.

[19] *Id.* at 138.

[20] Borst Decision, *supra*, at ¶ 8, fn. 2a.

[21] *Id.* at ¶ 8, fn. 3, *citing* Report on "Living Should Be Fun" Inquiry, 33 F.C.C. 101, 107 (1962).

[22] *Id.* at ¶ 9.

[23] *Id.* at ¶ 10.

[24] In re Applications of Brandywine-Main Line Radio, Inc. for renewal of licenses of Stations WXUR and WXUR–FM, Media, Pennsylvania, 9 P & F Radio Reg.2d 126 (1967) (hereinafter "Designation Order").

[25] With reference to *Interfaith Dialogue* the Commission made the following observation:

"Not only was the program not put on at all for almost seven months, but when it was, Brandywine patently failed to carry out the important promise to 'make every effort' to get a varied participation. The moderator of the first broadcast was Norris himself. His guests were his pastor from New York, Pennsylvania, the Reverend Albany, and George McDonald, a fellow trustee of the American Patriotic News organization. (Tr. 3635–3636.) From the second broadcast on December 5, 1965, through April 1966, the moderator was Seminary faculty member Dr. Gary Cohen. (Tr. 5480–5596.) On the second (December 5, 1965) broadcast of Inter-faith Dialogue, Dr. Cohen interviewed William Broadwick, an engineer at WXUR and a Seminary student. (WXUR Exh. 49A, Tr. 5514–5519.) Cohen interviewed Broadwick again on the third (December 12, 1965) broadcast. (*Ibid.*) On the fourth (December 19, 1965) broadcast, Cohen interviewed Donald Carpenter, another Seminary student (*Ibid.*), and on the fifth broadcast Cohen interviewed the Reverend A. Franklin Faucett, the Seminary's Registrar. (*Ibid.*) None of these broadcasts complied with the Seminary transfer application representation that the program would consist of 'roundtable' discussions by representatives of 'different faith.' (Appendix D; Bur.Exh. 5.) From that time on, although not as completely taken up by Seminary people, the program clearly did not live up to its promise. The Examiner found it woefully inadequate, and we agree."

In Re Applications of Brandywine-Main Line Radio, Inc. for Renewal of Licenses of Stations WXUR and WXUR–FM, Media, Pennsylvania, 24 F.C.C.2d 18, 29 (1970) (hereinafter "July Decision").

[26] *Id.* at ¶ 30. The Commission continued by stating:

"These programs, covering controversial issues as they do, are not merely changes in title from the programs deleted from the schedule, which mainly included programs classified as of the 'entertainment' type. We may assume that the applicant failed to include these programs because of the opposition to its application, erroneously believing that the inclusions would have affected our action. *What is important to us is the willingness to withhold from us the Seminary's intentions with respect to a substantial amount of programming, for it is clear that the intention to carry the programs predated the acquisition of control and we were never informed of it.*"

Id. (emphasis added, footnote omitted).

[27] Tr. 3727–28. This is despite the directly contradictory evidence offered by Norris some five weeks earlier to the effect that the new programs, which he termed the "Nine Hate Clubs" of the air, were added by him *in anticipation* of a sponsors' boycott. This was not the only inconsistency of the record and is, in fact, one of the less serious discrepancies before us. July Decision, *supra*, at 31.

[28] *See generally* Initial Decision of Hearing Examiner, 24 F.C.C. 2d 42, 106 (1970) (hereinafter "Initial Decision").

[29] The Minutes of a meeting held on November 18, 1965, of the Media Borough Council, reflect the following:

"Mrs. Austin protested to Council about a program on WXUR, which she feels promotes hate and dissension by attacking minority groups. This program is called 'Freedom of Speech.'

"She considers this a malicious act and a disgrace to the citizens of Media."

Mr. Reed stated that a letter should be written to the Federal Communications Commission.

"On motion of Mr. Baker, seconded by Mr. Loughran, a letter be written to the F.C.C. about this allegedly biased program of radio station WXUR. So ordered."

J.A. Vol. II, 145e.

The program which caused this furor was entitled *Freedom of Speech*, moderated by Thomas Livezey. *Freedom of Speech* was a telephone call-in show where Livezey would begin the program by reading a newspaper article or an editorial or by making a short statement and then opening the microphones to people calling in. Livezey frequently made "race baiting" comments on the air and was particularly livid in his comments regarding minority groups. Livezey often cut callers off abruptly when they opposed a position which he espoused. On November 24, 1965, Howard F. Reed, Jr., Solicitor, Borough of Media, sent a communique to Commission Chairman Henry on behalf of the Borough Council. In this letter he expressed the concern of the Council with regard to *Freedom of Speech* and commended:

"Within the context of free speech, we do, . . . believe that any radio program inviting the general public to respond by telephone should receive *with equal treatment* all calls placed. We do believe that without some regulation by the Commission, this type of radio program, which is somewhat widespread in its use, can become deceptive, in fact tend to invite controversy unnecessarily, and derogate free speech; most of all, because any program of this type must necessarily involve controls and limitations not inherent in other media of communications, nor so open to public hearing."

J.A. Vol. II, 145f.

On November 19, 1965, one day after the Media Borough Council resolution was passed. Livezey was removed from his position as moderator of *Freedom of Speech*. At a meeting of the Council held on January 20, 1966, a motion was made, following a presentation by representatives of WXUR, stating that "a letter be sent to the F.C.C. stating that the objectionable features of [*Freedom of Speech*] have been largely eliminated." J.A. Vol. II, 145g. A letter to that effect was sent to the F.C.C. by Solicitor Reed on February 2, 1966.

J.A. Vol. II, 145h.

[30] The matter of WXUR's broadcasting policy was brought before the House of Representatives of the Pennsylvania General Assembly in the form of House Resolution 160 on December 14, 1965. In pertinent part the Resolution stated that—

"[t]he only issue is whether the Reverend McIntire exercises the degree of social and public responsibility which the law demands of a broadcast licensee. There is a serious question whether Radio Station WXUR, under the operational control of Reverend McIntire, is giving the balanced presentation of opposing viewpoints required of broadcast licensees: therefore be it

"Resolved, That the House of Representatives of the Commonwealth of Pennsylvania requests the Federal Communications Commission to investigate Radio Station WXUR, in Media, Pennsylvania to determine whether or not it is complying with the requirements of a broadcast licensee: and be it further

"Resolved, That a copy of this resolution be sent to the Federal Communications Commission."

J.A. Vol. II, 145a & b.

[31] *See* note 29, *supra*.

[32] J.A. Vol. II, 209.

[33] J.A. Vol. II, 207–33.

[34] The challengers were the AFL–CIO of Pennsylvania, the American Baptist Convention Division of Evangelism, the Delaware Valley Council of the American Jewish Congress, the Anti-Defamation League of B'nai B'rith, the Board of Social Ministry of the Lutheran Symbol of Eastern Pennsylvania, B'rith Sholom, the Catholic Community Relations Council, the Catholic Star Herald, the Fellowship Commission, the Greater Philadelphia Council of Churches, the Jewish Community Relations Council of Greater Philadelphia, the Jewish Labor Committee, the Media Fellowship House, the Media Chapter of the NAACP, the New Jersey Council of Churches, the Philadelphia Urban League, the U.S. Section of the Women's International League for Peace and Freedom, the American Jewish Committee, and the Rev. Donald G. Huston, Pastor, First Presbyterian Church of Lower Marion.

In addition, various persons and organizations, *viz.*, the Greater Philadelphia Branch of the American Civil Liberties Union, the House of Representatives of the General Assembly of Pennsylvania, the Unitarian Church of Delaware County, the Pennsylvania Council of Churches and the Media Borough Council, wrote the Commission "requesting an investigation of, or hearing on Brandywine's programming," July Decision, *supra* at ¶ 1, fn. 3.

[35] Designation Order, *supra*, at ¶ 4.

[36] *Id*

[37] *Id*.

[38] The transcript reveals that WXUR undertook additional palliative measures on this date by introducing a new program entitled *Right, Left and Center* on its FM frequency. The program, which was designed to show left, right and middle-of-the-road philosophies, lasted only a short time. The Commission did not consider the program, nor will this court, since it did not commence for more than a year after the license renewal issue arose and was thus *totally* outside the license period. *See* J.A. Vol. V. 2529–32.

[39] The court must comment on the conduct of Brandywine's counsel, Mr. Cottone, during the course of the hearing. We comment because his behavior, on more than one occasion during the course of the hearing, was injudicious, rude, impudent and directly obstructive to the proceedings before the examiner. The record before the court is replete with one instance after another of obstreperous behavior on Mr. Cottone's part. A few examples from the record will suffice.

"By Mr. SCHATTENFIELD.

"Q: I will show you what has been marked for identification as Intervenor's Exhibits 77 and 78 and ask you if they embody the positions you have taken with respect to UNICEF.

"Mr. COTTONE. Object. Let him identify them first. I object to the question.

"Mr. SCHATTENFEILD. Can I finish the question?

"Presiding EXAMINER. Mr. Cottone, let him finish. We can move along faster if you stop the useless interruptions.

"Mr. COTTONE. I resent you stating "useless interruptions"; I have a right to raise evidentiary objections as I see fit. If you do not understand the objections, that is another point.

"Presiding EXAMINER. I can't rule on them unless I know what the question is."

J.A. Vol. V, tr. 4383–84.

"Mr. COTTONE. Let the record show when that remark was made by the Hearing Examiner, there was a moan from the audience.

"Presiding EXAMINER. I am trying to get along without these perpetual interruptions. The witness has been handling himself well in giving a lucid account of everything and a forthright account. Could we go forward with the questions and answers. I sustain the objection. Let us not go over the pamphlets again.

Mr. COTTONE. Now may I look at them?

"Mr. SCHATTENFIELD. What?

"Mr. COTTONE. May I look at them now?

"Mr. SCHATTENFIELD. Are you implying I didn't give them to you before?

"Mr. COTTONE. No; I said, before, I didn't want to look at them, but now may I look at them?"

J.A. Vol. V. tr. 4387–88.

Mr. SCHATTENFIELD. Did you ever take any position with respect to the Panamanian Treaty?

"Mr. COTTONE. Pandemonium treaty?

"Mr. SCHATTENFIELD. I was not referring to you, Mr. Cottone.

"Mr. COTTONE. That is clever, but please tell me what you said."

J.A. Vol. V, tr. 4396.

Perhaps Mr. Cottone's actions can be explained as "performing" for the hometown crowd. However, the court will not mute itself to such popcorn and peanuts antics, designed to create a circus-like atmosphere, which would permeate the proceedings. The attitude displayed by counsel borders on the contemptuous and we therefore refuse to let it go unnoticed.

[40] The *Initial Decision* was 97 pages long. It contained 275 paragraphs of findings and 54 paragraphs of conclusions.

[41] Brief for Intervenors at 12.

[42] Green v. F.C.C., 144 U.S.App.D.C. 353, 447 F.2d 323 (1971), wherein this court stated: "that a licensee charged with violation of the Fairness Doctrine may [not] seek absolution by reference to compliance with it by other licensees." Through some stroke of the imagination Brandywine cites the *Green* decision to the court for exactly the opposite proposition.

[43] Initial Decision, *supra*, 24 F.C.C.2d at 139.

[44] Section 1.277 of the Commission's Rules and Regulations requires that exceptions be taken from adverse findings to preserve any objections on appeal.

"(a) Each exception to an initial decision or to any part of the record or proceeding in any case, including rulings upon motions or objections, shall point out with particularity alleged errors in the decision or ruling and shall contain specific references to the page or pages . . . on which the exception is based. *Any objection not saved by exception pursuant to this section is waived. . . .*" 47 C.F.R. § 1.277(a) (1972) (emphasis supplied).

[45] July Decision, supra, at ¶¶ 8–14.

[46] *Id*. at ¶¶ 18–22.

[47] *Id*. at ¶¶ 23–32.

[48] *See* pp. 22–23, *supra*.

[49] July Decision, *supra*, at ¶ 8.

[50] After receiving a large number of complaints from listeners about alleged programming abuses, the Broadcast Bureau monitored broadcasts on WXUR for eight consecutive days in the middle of the license period. The intervenors taped seven other consecutive days, also during the license period.

[51] July Decision, *supra* at ¶ 9.

[52] *Id*. *See also* Appendix A to the July Decision, *supra*.

[53] We believe that remedial action subsequent to the time when Brandywine's renewal was put in doubt is not entitled to weight. See Immaculate Conception Church of Los Angeles v. Federal Communications Commission, 116 U.S. App. D.C. 73, 320 F.2d 795, cert. denied, 375 U.S. 904, 84 S.Ct. 196, 11 L.Ed.2d 145. Footnote renumbered).

[54] July Decision, *supra*, at ¶ 10.

[55] July Decision, *supra*, at ¶ 11. *See* particularly fn. 9 for the reasons that these invitations were viewed as being inadequate.

[56] *Id*.

[57] *Id*.

[58] See p. 24, *supra*.

[59] July Decision, *supra*, at ¶ 11.

[60] A daily interview program which lasted from 30 to 45 minutes a day.

[61] July Decision, *supra*, at ¶ 12. The Commission specifically rejected the Examiner's contention that WXUR should be given credit toward balance for invitations ex-

tended on this program, but refused, by those fearing to be "roughed up." *Id.*

[62] This program commenced in May 1966 and appeared twice each week. Brandywine has failed, however, to indicate when relevant views were broadcast.

[63] The moderator of this program was of no significant assistance at the hearing. He was uncertain as to what matters were discussed. There was no identification by any other party as to the content, time, or relevance of material broadcast on this program. July Decision, *supra*, at ¶ 13.

[64] We also note that brief references to what someone had said (usually based upon a press report), used as the basis of an attack upon the statement (see, *e.g.*, Bureau Exh. 1–B, pp. 23–25), do not constitute a fair opportunity for the presentation of an opposing view.

Id. at ¶ 15 (footnote renumbered).

[65] *Id.* at ¶ 16.

[66] *Id.*

[67] *Id.*

[68] *Id.* at ¶ 17.

[69] *Id.* at ¶ 18.

[70] *See* Appendix B to the July Decision wherein the Commission enumerates the personal attacks made while discussing controversial public issues, *viz.*, the Vietnam War, issues relating to civil liberties, and issues relating to the loyalty of federal officials.

[71] July Decision, *supra*, at ¶ 19.

[72] Procedures in the Event of a Personal Attack, 12 F.C.C. 2d 250 (1968).

[73] July Decision, *supra*, at ¶ 20.

[74] *Id.*

This leads to one of the fundamental difficulties with this case, *i.e.*, Brandywine's apparent refusal to undertake the necessary steps to insure compliance in the personal attack area. We reprint the following transcript excerpt to exemplify this point. Mr. Schattenfield is examining Mr. Norris, the station manager.

"Q. Do you have someone listen to the tape prior to its being run?

"A. I mentioned previously that we don't censor the broadcast.

"Q. I didn't say censor. I said listen.

"A. That would be censoring.

* * * * *

"Q. You don't listen to each tape before it is broadcast as a standard, do you?

"A. No, that is impossible. I am only one individual.

"Q. Do you have procedures at the station so that somebody listens to the tapes?

"A. On Pastor Bob and some of the local ones. I believe Pastor Bob is on only one station, WXUR. There are other broadcasters that are on just this station.

"Q. But he doesn't have a tape?

"A. He doesn't have a tape. It is done live.

"Q. On those programs you receive on tape, is it a standard operating procedure for you or someone under your direction to listen to them?

"A. Not standard, we take it like we would on a network.

"Q. Is it standard procedure for you to have someone monitor it while they are on the air?

"Mr. COTTONE. That question has been asked and answered.

"PRESIDING EXAMINER. I don't believe that precise question was asked. If it was I don't remember.

"The WITNESS. While it is on the air we didn't say to the announcers or the person on the air, "You must listen to that." I believe most of our help do listen to the programs.

* * * * *

"Q. Is it standard operating procedure for the station to assign someone to listen to each program as it is broadcast, each taped program as it is broadcast over WXUR, to determine whether positions are taken with respect to controversial issues and/or whether statements have been made which may be construed as attacks on individuals or groups?

"A. Not in every case."

Tr. 1699–1701.

Thus the record is clear. Norris openly admitted that he either was physically incapable of personally dealing with personal attack problems or that the station was incapable of dealing with them. In addition, and of greater moment to this proceeding, was Norris' attitude that attempts at compliance would be tantamount to censorship. This obstinate and obdurate approach is indicative of a schematic design to frustrate compliance in this critical area.

[75] July Decision, *supra*, at ¶ 21; 13 F.C.C. at 1249 and Red Lion Broadcasting Co., Inc. v. F.C.C., 395 U.S. 367, 89 S.Ct. 1794, 23 L.Ed.2d 371 (1969).

[76] *Id.* at ¶ 22.

[77] For a description of this program see p. 21, *supra*.

[78] July Decision, *supra*, at ¶ 25.

[79] *Id.* at ¶¶ 26–28.

[80] In order of appearance the new programs were entitled: *Lifeline; Manion Forum; Behind the Headlines; Howard Kershner's Commentary; Independent Americans; The Dan Smoot Report;* and *Church League of America.*

[81] J.A. Vol. II, 99.

[82] July Decision, *supra*, at ¶ 31.

[83] *Id.* at ¶ 32. The Commission also considered the attention Brandywine had given to community needs and interests. However, since this ground for denial was deleted in the Commission's opinion on reconsideration, we do not discuss those findings here. Interested parties are directed to ¶¶ 33–38 of the July Decision, *supra*.

[84] *Id.* at ¶ 39 (emphasis supplied).

[85] In Re Applications of Brandywine-Main Line Radio, Inc. For Renewal of Licenses of Stations WXUR and WXUR–FM, Media, Pa., 27 F.C.C.2d 565 (1971) (hereinafter the "February Decision").

[86] *Id.* at ¶ 4.

[87] 395 U.S. 367, 89 S.Ct. 1794, 23 L.Ed. 2d 371 (1969).

[88] 395 U.S. at 391, 89 S.Ct. at 1807.

[89] February Decision, *supra*, at ¶ 4, fn. 1. The Commission continued by stating:

"We do not agree with Brandywine that our finding that fairness could not be achieved in a one-sidedly hostile setting was unfairly considered in the absence of a "warning" ruling. We have recently enunciated the same position in another case. Butte Broadcasting Co., 22 FCC2d 7 (1970), and we cannot accept the view that it is the sort of ruling which a licensee could not be expected to anticipate in the absence of a prior precedent."

Id.

[90] *Id.* at ¶ 5.

[91] *Id.* at ¶ 6.

[92] *Id.*

[93] *Id.* at ¶ 7.

[94] *Id.*

[95] Brandywine sought to base this argument, which the Commission rejected, on Madalyn Murray, 40 F.C.C. 647 (1965).

[96] February Decision, *supra*, at ¶ 11.

[97] *Id.*

[98] *Id.* at ¶ 12.

[99] *Id.* at ¶ 13. The Commission, in response to an allegation that the same reasoning applies to networks, stated:

"[I]f the network presents both sides of a controversial issue, the affiliates which carry these broadcasts are not obligated to do more; but if the network fails to present opposing views, the affiliate is not thereby excused from its obligation to do so."

Id.

[100] *Id.* at ¶ 7, fn. 6.

[101] *Id.*

[102] *Id.* at ¶ 14.

[103] Brandywine sought to draw an analogy to the case of In re Complaint by Mrs. Dorothy Healey, 24 F.C.C. 2d 487 (1970) which involved an exemption for a bona fide newscast or to the case of Station WAVA, 14 P & F Radio Reg. 2d 180 (1968) wherein the Commission held there was no attack upon "honesty, integrity, character, or like personal qualities" to say: "as the field is now drawn, only Hubert Humphrey, a product of New Deal thinking, and Richard Nixon, a product of the Eisenhower years, probably are incapable of establishing any meaningful liaison with this generation."

February Decision, *supra*, at ¶ 15.

[104] *Id.* at ¶ 16.

[105] *Id.* at ¶ 17.

[106] *Id.* at ¶ 18.

[107] *Id.* at ¶¶ 18–19.

[108] *Id.* at ¶ 18.

[109] *Id.* at ¶¶ 20–27. In his statement concurring in part and dissenting in part, Commissioner Nicholas Johnson dissented from this finding. He stated:

"There is little question in my mind that Brandywine has failed, and failed dismally, in its duty under the standards set out above to ascertain its community's needs for broadcast service."

He continued:

"In sum, I see no good reason in this case to suddenly retreat from our earlier more sensible analysis of the Fairness and Ascertainment issues—even given the fact that we could still revoke the WXUR licenses on other well-founded grounds."

February Decision, *supra*, 27 F.C.C. 2d at 579 (Johnson, concurring in part, dissenting in part).

[110] *Id.* at ¶27.

[111] Communications Act of 1934, Tit. III. 48 Stat. 1081, as amended, 47 U.S.C. § 301 et seq. Section 315 now reads:

"315. Candidate for public office; facilities; rules

"(a) If any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcasting station: *Provided*, That such licensee shall have no power of censorship over the material broadcast under the provisions of this section. No obligation is imposed upon any licensee to allow the use of its station by any such candidate. Appearance by a legally qualified candidate on any—

"(1) bona fide newscast.

"(2) bona fide news interview.

"(3) bona fide news documentary (if the appearance of the candidate is incidential to the presentation of the subject or subjects covered by the news documentary), or

"(4) on-the-spot coverage of bona fide news events (including but not limited to political conventions and activities incidental thereto), shall not be deemed to be use of a broadcasting station within the meaning of this subsection. Nothing in the foregoing sentence shall be construed as relieving broadcasters, in connection with the presentation of newscasts, news interviews, news documentaries, and on-the-spot coverage of news events, from the obligation imposed upon them under this chapter to operate in the public interest and to afford reasonable opportunity for the discussion of conflicting views on issues of public importance.

"(b) The charges made for the use of any broadcasting station for any of the purposes set forth in this section shall not exceed the charges made for comparable use of such station for other purposes.

"(c) The Commission shall prescribe appropriate rules and regulations to carry out the provisions of this section."

Red Lion Broadcasting Co., Inc. v. F.C.C., *supra*, 395 U.S. at 370, 89 S. Ct. 1794, 23 L. Ed. 2d 371 (footnote renumbered).

[113] *Id.*, 395 U.S. at 369–370, 89 S.Ct. at 1796.

[113] Shortly after the original *Red Lion* litigation commenced the Commission published its Notice of Proposed Rule Making, 31 Fed.Reg. 5710, in which it sought to make

its personal attack doctrine more precise and more readily enforceable. In addition, the Commission sought to clarify the rules relating to political editorializing by licensees. These rules were adopted, 32 Fed.Reg. 10303, and have been amended several times. They currently read as follows:

"73.123 Personal attacks; political editorials.

"(a) When, during the presentation of views on a controversial issue of public importance, an attack is made upon the honesty, character, integrity or like personal qualities of an identified person or group, the licensee shall, within a reasonable time and in no event later than 1 week after the attack, transmit to the person or group attacked (1) notification of the broadcast; (2) a script or tape (or an accurate summary if a script or tape is not available) of the attack; and (3) an offer of a reasonable opportunity to respond over the licensee's facilities.

"(b) The provisions of paragraph (a) of this section shall not be applicable (1) to attacks on foreign groups or foreign public figures; (2) to personal attacks which are made by legally qualified candidates, their authorized spokesmen, or those associated with them in the campaign, on other such candidates, their authorized spokesmen, or persons associated with the candidates in the campaign; and (3) to bona fide newscasts, bona fide news interviews, and on-the-spot coverage of a bona fide news event (including commentary or analysis contained in the foregoing programs, but the provisions of paragraph (a) of this section shall be applicable to editorials of the licensee).

"Note: The fairness doctrine is applicable to situations coming within (b)(3), above, and, in a specific factual situation, may be applicable in the general area of political broadcasts (b)(2), above. See, section 315 (a) of the Act, 47 U.S.C. § 315(a); Public Notice: Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance. 29 F.R. 10415. The categories listed in (b)(3) are the same as those specified in section 315(a) of the Act.

"(c) Where a licensee, in an editorial, (i) endorses or (ii) opposes a legally qualified candidate or candidates, the licensee shall, within 24 hours after the editorial, transmit to respectively (1) the other qualified candidate or candidates for the same office or (ii) the candidate opposed in the editorial (1) notification of the date and the time of the editorial; (2) a script or tape of the editorial; and (3) an offer of a reasonable opportunity for a candidate or a spokesman of the candidate to respond over the licensee's facilities: *Provided, however,* That where such editorials are broadcast within 72 hours prior to the day of the election, the licensee shall comply with the provisions of this paragraph sufficiently far in advance of the broadcast to enable the candidate or candidates to have a reasonable opportunity to prepare a response and to present it in a timely fashion."

[32 F.R. 10305, July 13, 1967, as amended at 33 F.R. 5364, Apr. 4, 1968]

47 C.F.R. §§ 73.123, 73.300, 73.598, 73.679 (1972).

[114] Because of this chaos, a series of National Radio Conferences was held between 1922 and 1925, at which is was resolved that regulation of the radio spectrum by the Federal Government was essential and that regulatory power should be utilized to ensure that allocation of this limited resource would be made only to those who would serve the public interest. The 1923 Conference expressed the opinion that the Radio Communications Act of 1912, 37 Stat. 302, conferred upon the Secretary of Commerce the power to regulate frequencies and hours of operation, but when Secretary Hoover sought to implement this claimed power by penalizing the Zenith Radio Corporation for operating on an unauthorized frequency, the 1912 Act was held not to permit enforcement. United States v. Zenith Radio Corporation, 12 F.2d 614 (D.C. N.D. Ill. 1926). Cf. Hoover v. Intercity Radio Co., 52 App. D.C. 339, 286 F. 1003 (1923) (Secretary had no power to deny licenses, but was empowered to assign frequencies). An opinion issued by the Attorney General at Hoover's request confirmed the impotence of the Secretary under the 1912 Act. 35 Op. Atty. Gen. 126 (1926). Hoover thereafter appealed to the radio industry to regulate itself, but his appeal went largely unheeded. See generally L. Schmeckebier, The Federal Radio Commission 1–14 (1932). Red Lion Broadcasting Co. v. F.C.C., *supra,* 395 at 375–376, fn. 4, 89 S. Ct. at 1799.

[115] Congressman White, a sponsor of the bill enacted as the Radio Act of 1927, commented upon the need for new legislation:

"We have reached the definite conclusion that the right of all our people to enjoy this means of communication can be preserved only by the repudiation of the idea underlying the 1912 law that anyone who will may transmit and by the assertion in its stead of the doctrine that the right of the public to service is superior to the right of any individual. . . . The recent radio conference met this issue squarely. It recognized that in the present state of scientific development there must be a limitation upon the number of broadcasting stations and it recommended that licenses should be issued only to those stations whose operation would render a benefit to the public, are necessary in the public interest, or would contribute to the development of the art. This principle was approved by every witness before your committee. We have written it into the bill. If enacted into law, the broadcasting privilege will not be a right of selfishness. It will rest upon an assurance of public interest to be served." 67 Cong. Rec. 5479.

395 U.S. at 376, fn. 5, 89 S. Ct. at 1799.

[116] Radio Act of 1927, § 4, 44 Stat. 1163. See generally Davis, The Radio Act of 1927, 13 Va. L. Rev. 611 (1927).

395 U.S. at 377, fn. 6, 89 S. Ct. 1794 (footnote renumbered).

[117] 395 U.S. at 377–278, 89 S. Ct. at 1799, 23 L. Ed. 2d 371.

[118] Hearings on S.J.Res. 209 before the Subcom. on Communications of the Senate Committee on Commerce, 91st Cong., 2d Sess. 155 (1970) (Statement of Commissioner Nicholas Johnson).

[119] *See, e.g.,* M. Goldseker Real Estate Co. v. F.C.C., 456 F.2d 919 (4th Cir. 1972): Healey v. F.C.C., 148 U.S.App. D.C. 409, 460 F.2d 917 (1972); Democratic National Committee v. F.C.C., 148 U.S.App.D.C. 383, 460 F.2d 891 (1972); Columbia Broadcasting System, Inc. v. F.C.C., 147 U.S.App.D.C. 175, 454 F.2d 1018 (1971); Larus & Brother Company v. F.C.C., 447 F.2d 876 (4th Cir. 1971); Green v. F.C.C., 155 U.S.App.D.C. 353, 447 F.2d 323 (1971); Neckritz v. F.C.C., 446 F.2d 501 (9th Cir. 1971).

[120] 23 F.C.C.2d 27 (1970).

[121] *Id.,* 23 F.C.C.2d at 28.

[122] *Supra,* 148 U.S.App.D.C. at 392, 460 F.2d at 900, *citing* Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance, 29 Fed.Reg. 10416, 10418, 40 F.C.C. 598, 604 (1964). *See also* Letter to Cullman Broadcasting Co., 40 F.C.C. 576 (1963).

[123] S.Rep.No.562, 86th Cong. 1st Sess. 9 (1959), U.S.Code Cong. & Admin.News 1959, p. 2571.

[124] On June 9, 1971 the Commission adopted a Notice of Inquiry In the Matter of The Handling of Public Issues Under the Fairness Doctrine and the Public Interest Standards of the Communications Act, 30 F.C.C.2d 26 (1971). In the words of the Commission:

"The purpose of this Notice is to institute a broad-ranging inquiry into the efficacy of the fairness doctrine and other Commission public interest policies, in light of current demands for access to the broadcast media to consider issues of public concern. It is important to stress that we are not hereby disparanging any of the *ad hoc* rulings that we have made in these areas. Rather, we feel the time has come for an overview to determine whether the policies derived largely from these rulings should be retained intact or, in lesser or greater degree, modified . . . Interested parties may address [any aspect of the problem.]"

Thus, it is clear that the Commission is seeking to maintain the efficacy of the doctrine while guaranteeing adequate access to the public on controversial issues. It is encouraging to note that the Commission has sought widespread in-put in formulating its thinking in this crucially important areas.

Democratic National Committee v. F.C.C., *supra* at 392, 460 F.2d at 900 (footnote renumbered).

[125] Applicability of the Fairness Doctrine, *supra,* 29 Fed. Reg. at 10416, 40 F.C.C. at 599.

[126] *Id.* This same general theme was espoused by the Commission much earlier in Editorializing by Broadcast Licensee, 13 F.C.C. 1246 (1949):

"It should be recognized that there can be no one all embracing formula which licensees can hope to apply to insure the fair and balanced representation of all public issues. Different issues will inevitably require different techniques of presentation and production. The licensee will in each instance be called upon to exercise his best judgment and good sense in determining what subjects should be considered, the particular format of the programs to be devoted to each subject, the different shades of opinion to be presented, and the spokesman for each point of view."

Id. at 1251.

[127] Loevinger, Free Speech, Fairness and Fiduciary Duty in Broadcasting, 34 Law and Contemp. Prob. 278, 285 (1969).

[128] Red Lion, *supra,* 395 U.S. at 377–378, 89 St.Ct. at 1800, 23 L.Ed. 2d 371.

[129] 24 P & F Radio Reg. 404 (1962).

[130] 127 U.S. App. D.C. 129, 381 F. 2d 908 (1967).

[131] *Supra,* note 119.

[132] Democratic National Committee, *supra,* 395, 460 F. 2d at 903.

[133] Committee for the Fair Broadcasting of Controversial Issues, 25 F.C.C. 2d 283, 291 (1970) (emphasis in the original). In Committee for Fair Broadcasting, *supra,* 25 F.C.C. 2d at 292, the Commission explained its reasons for supporting the doctrine:

"We do not believe that any extended discussion is needed as to why the licensee is afforded so much discretion under the fairness doctrine. In our judgment, based on decades of experience in this field, this is the only sound way to proceed as a general policy. A contrary approach of equal opportunities, applying to controversial issues generally the specific equal opportunities requirements for political candidates would in practice not be workable. It would inhibit, rather than promote, the discussion and presentation of controversial issues in the various broadcast program formats (e.g., newscasts; interviews, documentaries). For it is just not practicable to require equality with respect to the large number of issues dealt with in a great variety of programs on a daily and continuing basis. Further, it would involve this Commission much too deeply in broadcast journalism; we would indeed become virtually a part of the broadcasting 'fourth estate,' overseeing thousands of complaints that some issue had not been given 'equal treatment.' We do not believe that the profound national commitment to the principle that debate on public issues should be 'uninhibited, robust, wide-open' (New York Times Co. v. Sullivan, 376 U.S. 254, 270 [84 St.Ct. 710, 11 L.Ed. 2d 686]) would be promoted by a general policy of requiring equal treatment

on all such issues, with governmental intervention to insure such mathematical equality."

[134] *Id.* at 293 (emphasis in original). *See generally* 67 Cong. Rec. 12502–04.

[135] *Id.* at 295.

[136] Larus & Brother Company v. F.C.C., *supra*, 447 F. 2d at 879.

[137] J. A. Vol. IV, 812.

[138] J. A. Vol. IV, 813–14 (emphasis supplied).

[139] We consider appellant's first amendment contentions in Section V, *infra*.

[140] A. Hamilton, The Federalist Papers, No. 1.

[141] W. Shakespeare, Julius Caesar, Act 1, Sc. 2, line 134.

[142] 47 C.F.R. § 73.123 (1972).

[143] 395 U.S. at 378–379, 89 S. Ct. at 1800, 23 L. Ed. 2d 371.

[144] *Id.* at 379–386, 89 S. Ct. 1794.

[145] 47 U.S.C. §§ 303, 303(r) (1970).

[146] 47 U.S.C. §§ 307(a), 309(a) (1970).

[147] 47 U.S.C.A. § 307 (1970).

[148] *Id.*

[149] 47 U.S.C. § 307(d) (1970).

[150] 395 U.S. at 380, 89 S.Ct. at 1801.

[151] *Id.* at 386, 89 S.Ct. at 1804.

[152] For a description of the Commission's factual findings see pp. 37, 38, *supra*.

[153] See, *e. g.*, J.A. Vol. II, 236a.

[154] July Decision, *supra*, at 18.

[155] *Id.*

[156] *Id.* at 22.

[157] *See* footnote 74, *supra*.

[158] For a discussion of the pertinent facts *see* pp. 33, 34 and 38, *supra*.

[159] *See* note 15, *supra*.

[160] This program is described at p. 23, supra.

[161] F.C.C. v. WOKO, Inc., 329 U.S. 223, 227, 67 S.Ct. 213, 215, 91 L.Ed. 204 (1946).

[162] A Hamilton, Federalist Papers, No. 84.

[163] 4 W. Blackstone, Commentaries, *151–52 (emphasis in original) (footnote omitted.)

[164] Dennis v. United States, 341 U.S. 494, 71 S.Ct. 857, 95 L.Ed. 1137 (1951).

[165] *Id.* 341 U.S. at 521–522, 71 S.Ct. at 873 (footnotes omitted).

[166] *Id.*, 341 U.S. at 524, 71 S.Ct. at 874, *citing* Robertson v. Baldwin, 165 U.S. 275, 281, 17 S. Ct. 326, 41 L.Ed. 715 (1897).

[167] *Id.*, *citing* Gompers v. United States, 233 U.S. 604, 610, 34 Ct. 693, 58 L.Ed. 1115 (1914).

"While the courts have from an early date taken a hand in crystallizing American conceptions of freedom of speech and press into law, it is scarcely in the manner or to the extent which they are frequently assumed to have done. The great initial problem in this realm of constitutional liberty was to get rid of the common law of "seditious libel" which operated to put persons in authority beyond the reach of public criticism. The first step in this direction was taken in the famous or infamous, Sedition Act of 1798, which admitted the defense of truth in prosecution brought under it, and submitted the general issue of defendant's guilt to the jury. But the substantive doctrine of "seditious libel" the Act of 1798 still retained, a circumstance which put several critics of President Adams in jail and thereby considerably aided Jefferson's election as President in 1800. Once in office, nevertheless, Jefferson himself appealed to the discredited principle against partisan critics. Writing his friend Governor McKean of Pennsylvania in 1803 [about] such critics, Jefferson said: "The federalists having failed in destroying freedom of the press by their gag-law, seem to have attacked it in an opposite direction; that is by pushing its licentiousness and its lying to such a degree of prostitution as to deprive it of all credit. * * * This is a dangerous state of things, and the press ought to be restored to its credibility if possible. The restraints provided by the laws of the States are sufficient for this, if applied. And I have therefore, long thought that a few prosecutions of the most prominent offenders would have a wholesome effect in restoring the integrity of the presses. Not a general prosecution, for that would look like persecution; but a selected one." Works (Ford ed., IX 451–52.

"In the *Memorial Edition* of Jefferson's works this letter is not included; nor apparently was it known to the Honorable Josephus Daniels, whose enthusiastic introduction to one of these volumes makes Jefferson out to have been the father of freedom of speech and press in this country, if not throughout the world. The sober truth is that it was that arch enemy of Jefferson and of democracy, Alexander Hamilton, who made the greatest single contribution toward rescuing this particular freedom as a political weapon from the coils and toils of the common law, and that in connection with one of Jefferson's "selected prosecutions." I refer to Hamilton's manytimes quoted formula in the Croswell case in 1804: "The liberty of the press is the right to publish with impunity, truth, with good motives, for justifiable ends though reflecting on government, magistracy, or individuals." People v. Crosswell [Croswell], 3 Johns. [Cas.] (N.Y.) 337. Equipped with this brocard our State courts working in co-operation with juries, whose attitude usually reflected the robustiousness of American political discussion before the Civil War, gradually wrote into the common law of the States the principles of "qualified privilege," which is a notification to plaintiffs in libel suits that if they are unlucky enough to be office-holders or office seekers, they must be prepared to shoulder the almost impossible burden of showing defendant's "special malice." Cooley, Constitutional Limitations, Chap. XII: Dawson, Freedom of the Press, A Study of the Doctrine of "Qualified Privilege" (1924)."

Corwin, Liberty Against Government, 157–59 n. 65 (1948).

[168] Patterson v. Colorado, 205 U.S. 454, 462, 27 S.Ct. 556, 557, 51 L.Ed. 879 (1907) (emphasis in the original).

[169] *Id.*, 205 U.S. at 461, 27 S.Ct. at 557.

[170] Prudential Insurance Co. of America v. Cheek, 259 U.S. 530, 543, 42 S. Ct. 516, 522, 66 L.Ed. 1044 (1922).

[171] 268 U.S. 652, 45 S.Ct. 625, 59 L.Ed. 1138 (1925). In this case the Court affirmed Gitlow's conviction for violating a New York statute which prohibited advocating criminal anarchy.

[172] *Id.*, 268 U.S. at 666, 45 S.Ct. at 630.

[173] Fiske v. Kansas, 274 U.S. 380, 47 S.Ct. 655, 71 L.Ed. 1108 (1927).

[174] Near v. Minnesota, 283 U.S. 697, 51 S.Ct. 625, 75 L.Ed. 1357 (1931).

The fourteenth amendment has also been extended to the first amendment guarantees of freedom of religion, Cantwell v. Connecticut, 310 U.S. 296, 60 S.Ct. 900, 84 L.Ed. 1213 (1940), and the right of peaceable assembly, DeJonge v. Oregon, 299 U.S. 353, 57 S.Ct. 255, 81 L.Ed. 278 (1937).

[175] 315 U.S. 568, 62 S.Ct. 766, 86 L.Ed. 1031 (1942).

[176] *Id.*, 315 U.S. at 571–572, 62 S. Ct. at 769 (footnotes omitted).

[177] 319 U.S. 624, 63 S.Ct. 1178, 87 L.Ed. 1628 (1943).

[178] *Id.*, 319 U.S. at 633, 63 S.Ct. at 1183.

[179] Lovell v. Griffin, 303 U.S. 444, 451, 58 S.Ct. 666, 669, 82 L.Ed. 949 (1938) (emphasis in the original) (footnote omitted).

[180] Chaplinsky v. New Hampshire, *supra;* Cox v. New Hampshire, 312 U.S. 569, 61 S.Ct. 762, 85 L.Ed. 1049 (1941).

[181] Lovell v. Griffin *supra;* Hague v. C.I.O., 307 U.S. 496, 516, 59 S.Ct. 954, 83 L.Ed. 1423 (1939); Schneider v. State, 308 U.S. 147, 60 S.Ct. 146, 84 L.Ed. 155 (1939); Cantwell v. Connecticut, *supra;* Largent v. Texas, 318 U.S. 418, 63 S.Ct. 667, 87 L.Ed. 873 (1943); Thomas v. Collins, 323 U.S. 516, 538, 65 S.Ct. 315, 89 L.Ed. 430 (1945); Saia v. New York, 334 U.S. 558, 68 S.Ct. 1148, 92 L.Ed. 1574 (1948).

[182] Federal Radio Commission v. Nelson Bros. Bond & Mortgage Co., 289 U.S. 266, 53 S.Ct. 627, 77 L.Ed. 1166 (1933); Federal Communications Commission v. N.B.C., 319 U.S. 239, 63 S.Ct. 1035, 87 L.Ed 1374 (1943).

[183] Mutual Film Corp. v. Ohio Indus'l Comm., 236 U.S. 230, 244, 35 S.Ct. 387, 391, 59 L.Ed. 552 (1915).

[184] United States v. Paramount Pictures, 334 U.S. 131, 166, 68 S.Ct. 915, 92 L.Ed. 1260 (1948).

[185] It would be impossible to provide a complete bibliography of law review materials in the space available here. At the risk of omitting far more than we can include we call the reader's attention to the following: Symposium, Media and the First Amendment in a Free Society, 60 Geo.L.J. 871–1099, particularly, 1031–44 (1972); Johnson & Western, A Twentieth Century Soapbox: The Right to Purchase Radio and Television Time, 57 Va.L.Rev. 574 (1971); Note, Fairness Doctrine; Television as a Marketplace of Ideas, 45 N.Y.U.L.Rev. 1222 (1970); Cahill, "Fairness" and the FCC, 21 Fed.Comm.B.J. 17 (1967); Lynd, Banzhaf v. FCC: Public Interest and the Fairness Doctrine, 23 Fed. Comm.B.J. 39 (1969); Note, Concepts of the Broadcast Media Under the First Amendment: A Reevaluation and a Proposal, 47 N.Y.U.L. Rev. 83 (1972); Note, We Pick 'Em, You Watch 'Em: First Amendment Rights of Television Viewers, 43 S.Cal.L.Rev. 826 (1970); Note, Free Speech and the Mass Media, 57 Va.L.Rev. 636 (1971).

[186] 395 U.S. at 386–401, 89 S.Ct. 1794, 23 L.Ed.2d 371.

[187] *Id.*, at 386, 89 S.Ct. at 1804.

[188] Mr. Justice Douglas did not participate in the disposition of the case.

[189] 395 U.S. at 393–394, 89 S.Ct. 1794.

[190] *Id.*, 395 U.S. at 400, 89 S.Ct. at 1812.

[191] *Id.*, 395 U.S. at 388–390, 89 S.Ct. at 1806.

[192] *Id.*, 395 U.S. at 393–394, 89 S.Ct. at 1808.

[193] *Id.*, 395 U.S at 396, 89 S.Ct. at 1809.

[194] 146 U.S.App.D.C. 181, 450 F.2d 642 (1971).

[195] *See, e.g.*, United States v. Paramount Pictures, Inc., 334 U.S. 131, 166, 68 S.Ct. 915, 92 L.Ed. 1260 (1948). Congress itself has prohibited any interference by the Commission with "the right of free speech by means of radio communication." 47 U.S.C. § 326 (1964).

Id., 146 U.S.App.D.C. at 188, 450 F.2d at 649 (footnote renumbered).

[196] *Id.*, 146 U.S.App.D.C. at 188–189, 450 F.2d at 649–650, *citing* 395 U.S. at 390, 89 S.Ct. 1794 (footnote renumbered).

[197] *Id.*, 146 U.S.App.D.C. at 189, 450 F.2d F.2d at 650, *citing* 395 U.S. at 387, 390, 89 S.Ct. 1794.

[198] *Supra.*

[199] *Id.*, 148 U.S. App. D.C. at 401, 460 F. 2d at 909, *citing* 395 U.S. at 392, 89 S.Ct. 1794.

[200] Green v. F.C.C., *supra*, 144 U.S.App. D.C. at 359, 447 F.2d at 329 (emphasis in the original).

[201] J. Mill, On Liberty 274.

[202] 47 U.S.C. § 326 (1970).

[203] Allen B. Dumont Laboratories v. Carroll, 184 F.2d. 153 (3rd Cir. 1950), cert. denied; 340 U.S. 929, 71 S.Ct. 490, 95 L.Ed. 670 (1951).

[204] McIntire v. Wm. Penn Broadcasting Co. of Philadelphia, 151 F.2d 597 (3rd Cir. 1945), cert. denied, 327 U.S. 779, 66 S.Ct. 530, 90 L.Ed. 1007 (1946).

[205] Banzhaf v. F.C.C., 132 US.App.D.C. 14; 405 F.2d 1082 (1968), cert. denied, American Broadcasting Companies v. F.C.C., 396 U.S. 842, 90 S.Ct. 50, 24 L.Ed.2d 93 (1969); Carter Mountain Transmission Corp. v. F.C.C., 116 U.S. App.D.C. 93, 321 F.2d 359 (1963), cert. denied. 375 U.S. 951, 84 S.Ct. 442, 11 L.Ed.2d 312 (1964).

[206] Idaho Microwave, Inc. v. F.C.C., 122 U.S. App.D.C. 253, 352 F.2d 729 (1965).

[207] Cronkite, Introduction to Part III: Points of Conflict—Legal Issues Confronting Media Today, 60 Geo.L.J. 1001, 1003–04 (1972).

[208] 40 F.C.C. 582 (1963).
[209] 47 U.S.C. § 307(a), (d) (1970).
[210] 145 U.S.App.D.C. 32, 40 fn. 23, 447 F.2d 1201, 1209 fn. 23 (1971), *quoting* F.C.C. v. Sanders Bros. Radio Station, 309 U.S. 470, 475 (1940).
[211] 143 U.S.App.D.C. 383, 444 F.2d 841 (1970).
[212] *Id.*, 143 U.S.App.D.C. at 396, 444 F.2d at 854.
[213] *Id.*, 143 U.S.App.D.C. at 402, 444 F.2d at 860.
[214] WAIT Radio v. F.C.C., 148 U.S.App.D.C. 148, at 179, 459 F.2d 1203, at 1204 (1972).

J. SKELLY WRIGHT, Circuit Judge, concurring:

Judge Tamm's opinion contains a careful articulation of the facts of this case and an excellent exposition of the applicable law. While I am not necessarily in agreement with all his appraisals of the actions of the people concerned with this litigation, including counsel and the hearing examiner, I concur in his decision affirming the Commission on the ground that substantial evidence supports the Commission's finding that appellant misrepresented its program plans and thus consciously deceived the Commission. This finding was a separate ground for denial of renewal by the Commission.

If this case did not involve an unpopular fundamentalist preacher, for me it would be an easy one indeed. The application to transfer the WXUR license was granted on specific representations of appellant as to programming and with a special warning that appellant must comply with its responsibilities under the law as a public licensee. The Commission felt that a special warning was required because opponents of the transfer, representing a substantial segment of the public served by the license, strongly argued that appellant, if granted the license, would not comply with the law. In spite of the warning and the circumstances surrounding the transfer generally, appellant proceeded to treat its public license as though it were its private property unencumbered by public obligations. It not only deceived the Commission as to its programming, but it ignored the Commission's warning with respect to fairness in the operation of the station. In effect it simply defied the Commission. Under the circumstances the Commission's action unquestionably has substantial support in the record. Universal Camera Corp. v. N.L.R.B., 340 U.S. 474, 71 S.Ct. 456, 95 L.Ed. 456 (1951).

But because the Commission's ruling has the possible effect of suppressing the ventilation of views with which there might be substantial disagreement, its action in denying renewal of the license requires particularly careful scrutiny. As Judge Tamm's opinion makes clear, in such a case it is not enough simply to find that substantial evidence in the record taken as a whole supports the Commission and there was no abuse of discretion. In these circumstances the court itself should make its own evaluation of the evidence to insure that First Amendment freedoms of the licensee and the public are fully and fairly taken into account in the decision making process. *See* Jacobellis v. Ohio, 378 U.S. 184, 187–190, 84 S.Ct. 1676, 12 L. Ed.2d 793 (1964); New York Times Co. v. Sullivan, 376 U.S. 254, 285, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964); Niemotko v. Maryland, 340 U.S. 268, 271, 71 S.Ct. 325, 328, 95 L.Ed. 267, 280 (1951); Bridges v. California, 314 U.S. 252, 271, 62 S.Ct. 190, 86 L.Ed. 192 (1941). So doing, I cannot say that the Commission erred in denying the renewal application in this case.

Chief Judge BAZELON concurs in affirming the decision of the FCC solely on the ground that the licensee deliberately withheld information about its programming plans. A full statement of his views will issue at a later date.

PER CURIAM:

On September 25, 1972, the judgment of this court was filed affirming the action of the Commission in this case on the ground of deception in the acquisition of a broadcasting license. Chief Judge Bazelon also concurred "in affirming the decision of the FCC solely on the ground that the licensee deliberately withheld information about its programming plans." He stated further that "[a] full statement of his views will issue at a later date."

Chief Judge Bazelon now files a dissenting opinion. That opinion follows immediately on p. 63. Circuit Judge J. SKELLY WRIGHT files a response, with the concurrence of Circuit Judge TAMM, which follows on p. 80.

BAZELON, Chief Judge, dissenting:

In this case I am faced with a *prima facie* violation of the First Amendment. The Federal Communications Commission has subjected Brandywine to the supreme penalty: it may no longer operate as a radio broadcast station. In silencing WXUR, the Commission has dealt a death blow to the licensee's freedoms of speech and press. Furthermore, it has denied the listening public access to the expression of many controversial views. Yet, the Commission would have us approve this action in the name of the fairness doctrine, the constitutional validity of which is premised on the argument that its enforcement will *enhance* public access to a marketplace of ideas without serious infringement of the First Amendment rights of individual broadcasters.

This paradoxical result is sustained only by a faith in the argument that, despite some short-term casualties along the way, long-term enforcement of the fairness doctrine's obligations is the only means to achieve the marketplace ideal. But if we are to go after gnats with a sledgehammer like the fairness doctrine, we ought at least to look at what else is smashed beneath our blow.

Our perception of the need for broadcasting regulations has not, in Judge Tamm's words, "seriously been questioned in over fifty years." A re-examination of the value, purposes and effects of the fairness doctrine raises for me such serious doubts about the constitutionality of its application here that I am compelled to withhold my affirmance.

Instead, I would remand to the FCC for a searching inquiry into the factual issues and alternative policies[1] raised within the constitutional framework outlined below, before we can even begin to answer the question: does silencing WXUR in the name of the fairness doctrine violate the First Amendment?

The entire field of governmental regulation of broadcast communication is so fraught with competing interests and uncertain results, and the shifting balance of First Amendment freedoms offers so few definite guidelines in this area, that there is no easy answer to this question. My Brother Tamm has written a lengthy, detailed opinion which carefully applies Commission regulations to the facts of this case; there was perhaps a time when I could concur fully with his conclusions. But I fear that ancient assumptions and crystallized rules have blinded all of us to the depth of the First Amendment issues involved here. In affirming the Commission, Judge Tamm relied on its application of the fairness doctrine and the Supreme Court's decision in *WOKO*. Judge Wright, on the other hand, relied only on *WOKO*. But I must dissent on both counts. My purpose in writing a separate opinion is to try to come to grips with the conceptual underpinnings which have led the Commission to such ironic consequences in the case before me.

I.

I begin with a discussion of the standards according to which regulation of broadcasting by the federal government must be judged. And I say "judged", because it is the particular duty and function of this court to test all federal regulation of speech and press against the mandates of our Constitution. The "public interest", the standard under which the FCC operates, cannot be divorced from our contemporary understanding and interpretation of the First Amendment.

The purpose of the First Amendment is to preserve an "uninhibited marketplace of ideas." [2] Its language presupposes the general concept that the marketplace is best preserved by protecting the right of each *individual* to speak freely; that "the fitting remedy for evil counsels is good ones",[3] rather than coerced silence, or governmentally directed discussion. Thus, "the First Amendment does not speak equivocally. It prohibits any law 'abridging the freedom of speech, or of the press.' " [4]

Such has always been the logic behind our strict protection of the freedom of the press to disseminate news and views on public issues from the imposition of governmental burdens or regulations.[5] The First Amendment's mandate that freedom for the individual is the only means to achieve the marketplace ideal of an informed American public "[t]o many . . . is, and always will be, folly; but we have staked upon it our all." [6]

Of course, there have been exceptions to this general proposition. There is a need to accommodate other societal interests: as Mr. Justice Holmes said in Schenck v. United States, "[t]he most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic." [7] The government may also act affirmatively to regulate behavior which directly threatens the free speech of others.[8] New types of regulation which promote effective communication may be required: "the various forms of modern so-called 'mass communications' raise issues that were not implied in the meaning of communication known to Franklin and Jefferson and Madison." [9]

Regulations which are designed to make the system function effectively may have an adverse impact on a particular individual's rights. But abridgement of individual rights may be tolerated only when in the long run it enhances the right of the public to receive access to the marketplace of diverse views. Obviously this requires a delicate balancing: any harm to private rights must be outweighed by benefit to the public.[10]

This balancing process has been applied to regulation of the broadcast industry,[11] although in its infancy radio enjoyed the same freedom as the printed press: that is, "anyone who will may transmit." [12] The 1912 Radio Act gave no discretion to the Secretary of Commerce in the granting of broadcast licenses.[13] But by the 1920s the number of broadcasters had increased so dramatically that every "channel" was occupied by at least one station, some by several. The resulting chaos "shook the broadcasting world and left an indelible impression of the dangers of nonregulation." [14]

By 1927 it had become clear that private over-use of the airwaves threatened the public's right to listen to what was being said. "With everybody on the air, nobody could be heard." [15] Some conditions had to be set by Congress to restrict use of the broadcast medium—conditions which *created* the scarcity of the resource which has come to be the outstanding characteristic of the industry.[16]

Unlike other modes of expression, radio inherently is not available to all. That is its unique characteristic, and that is why, unlike other modes of expression, it is subject to governmental regulation. Because it cannot be used by all, some who wish to use it must be denied.[17]

Only because *private* rights of access to the air had to be limited, was it feared that

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Footnotes at end of article.

the *public's* right of access to a robust marketplace of ideas would be endangered.[18] Congress authorized the newly-created Commission to insure that broadcasters operate "in the public interest"—a duty which had never been imposed on the printed media. But Congress did "not license the Commission to scan the airwaves for offensive material with no more discriminating a lens than the 'public interest'." [19] Each new form of regulation which departed from the strict "hands-off" policy ordered by the First Amendment required a careful balancing of private vs. public rights in light of the paramount goal of a marketplace of ideas.

Many reasons have been given for the regulation of broadcasting.[20] But behind all formulations lies the simple fact that a broadcast license is a scarce resource. Regulation by government cannot, under the First Amendment, be divorced from the threat to the marketplace posed by the *unique* characteristic of scarcity. The temptation is, however, to rely on familiar formulas to justify new regulations, even where they may not be justified by the First Amendment test.

For instance, it is often stated as a foregone conclusion that a "broadcast license is a public trust subject to termination for breach of duty", [21] and thus that the public may attach whatever conditions it believes necessary to protect its interest. Certainly government might claim ownership of the airwaves, just as it has claimed ownership of parks and streets and postal facilities, for the public good. But it cannot, unlike a private owner, place restraints upon the First Amendment rights of those who use this property simply by declaring "I own it." The very fact of public ownership or control brings into play the First Amendment, which requires that governmental authority may not be used in and of itself to justify deprivation of freedoms of speech and press.[22] Were it otherwise, these constitutional protections would fall to the caprice of governments.

There is some usefulness in the "public trust" terminology only if it is understood to be derived from technical scarcity in the broadcast industry. To the extent that government can and must impose restrictions upon licensees in order to deal with the problems posed by scarcity, a broadcast licensee is a trustee. But the scope of the trust duties cannot be extended beyond what is required to preserve the marketplace of ideas from the dangers which scarcity may threaten. Thus the term "public trust" expresses the result of a complicated process of constitutional reasoning by a deceptively simple formula. It is a conclusory label dangerously applied without reference to its history or derivation, and has no constitutional weight of its own.

As we have stated before:

First Amendment complaints against FCC regulation of content are not adequately answered by mere recitation of the technically imposed necessity for some regulation of broadcasting and the conclusory propositions that "the public owns the airwaves" and the broadcast license is a "revocable privilege". It may well be that some venerable FCC policies cannot withstand constitutional scrutiny in the light of contemporary understanding of the First Amendment and the modern proliferation of broadcasting outlets.[23]

II.

Brandywine's First Amendment complaints require that the fairness doctrine be subjected to constitutional scrutiny far more searching than either the Commission or my Brother Tamm provides. The FCC, fresh from its vindication in *Red Lion*, focused only on whether WXUR had in fact violated certain fairness obligations.[24] Judge Tamm also relied on *Red Lion* to set the constitutional balance in favor of a fairness doctrine: if fairness obligations *could* constitutionally be imposed, the imposition *must* be constitutional in this case.[25]

But the facts cry out otherwise. WXUR was no doubt devoted to a particular religious and political philosophy; but it was also a radio station devoted to speaking out and stirring debate on controversial issues.[26] The station was purchased by Faith Theological Seminary to propagate a viewpoint which was not being heard in the greater Philadelphia area. The record is clear that through its interview and call-in shows it *did* offer a variety of opinions on a broad range of public issues; and that it never refused to lend its broadcast facilities to spokesmen of conflicting viewpoints.[27]

The Commission's strict rendering of fairness requirements, as developed in its decision,[28] has removed WXUR from the air. This has deprived the listening public not only of a viewpoint but also of robust debate on innumberable controversial issues. It is beyond dispute that the public has lost access to information and ideas. This is not a loss to be taken lightly, however unpopular or disruptive we might judge those ideas to be.

Furthermore, even if WXUR had not been removed from the air but simply ordered to comply with the FCC's ruling, the effect would have been strangulation. There was testimony that the monitoring procedures which the FCC required for identification of controversial issues are beyond the capacity of a small staff, or a shoestring operation.[29] The ratio of "reply time" required for every issue discussed would have forced WXUR to censor its views—to decrease the number of issues it discussed, or to decrease the intensity of its presentation. The ramifications of this chilling effect will be felt by every broadcaster who simply has a lot to say.[30] Thus the result in this case, and the rules it establishes, seem to move us a step backwards, away from the First Amendment's marketplace ideal, in the name of the fairness doctrine.

When we see what is being lost as the result of a single blow of this doctrinal sledgehammer, I can only assume that the FCC must be relying on the assumption that the public interest will be served in the *long run* through strict enforcement of the doctrine.

What troubles me most is that the FCC and Judge Tamm apparently see no need to question this underlying assumption. The FCC is perhaps too busy applying and enforcing what it sees to be the necessities of the fairness doctrine theory. But I think the time is overripe to take our blinders off and look further toward First Amendment goals than the next regulatory step which the FCC urges us to take in the name of fairness. Ease of administration is of no weight in this field where precious constitutional freedoms hang in the balance.

Nor can we simply hang our hats on *Red Lion* and relax. The Supreme Court deliberately withheld its approval of all other aspects of the fairness doctrine, and even of further applications of the very rules it was in general approving.[31] The constitutional validity of each and every application of the doctrine must be tested on its own, on a case-by-case basis.[32] We must not be guilty of pouring concrete around foundation of a doctrine which enhances the public's right of access in some circumstances but abridges that right in others.

The theory of the fairness doctrine—that the paramount right of the public under the First Amendment can only be achieved by limiting the rights of individuals so that everybody talks about everything from every point of view—has rested for so long on so many assumptions that any alternative is now hard to imagine.[33] But the logic which alone can justify silencing WXUR requires that this theory be re-examined in light of the narrow constitutional test outlined in Part I above.

III.

The fairness doctrine is a venerable FCC policy which originated in an era when our fears about the effects of scarcity on the public's right of access far outweighed what we understood would be the doctrine's *minimal* encroachment on private First Amendment freedoms. In fact, our belief that government could beneficently regulate a communications medium within the confines of the First Amendment can only be understood in its historical context.

At the turn of the century, there were doubts about whether the First Amendment even applied to radio. After all, radio came into the world as a magic box analogized to the telegraph.[34] In 1912, broadcasting was an "undisclosed art." [35] By 1927 the magic box was a household word, but it still held no legitimacy as press. Rather, radio was entertainment, and it was then perhaps justifiable to ask what entertainment had to do with the First Amendment. In 1928 the Radio Commission had this to say:

. . . The Commission is unable to see that the guaranty of freedom of speech has anything to do with entertainment programs as such. Since there are only a limited number of channels and since an excessive number of stations desire to broadcast over these channels, the commission believes it is entitled to consider the program service of the various applicants, to compare them and to favor those which render the best service. Second Annual Report of F.R.C. 160 (1928).

The Commission's notion that entertainment was divorced from the First Amendment was not inaccurate in 1928. The Supreme Court had in 1915 upheld a state statute establishing censorship of motion picture films.[36] Not until 1952 did the Court establish that movies were within the protection of the First Amendment.[37] Early court decisions affirming the power of the Commission to regulate on the basis of programming were grounded on the established power of Congress to regulate commerce and gave short shrift to the First Amendment by today's standards.[38]

Broadcasters themselves were viewed as entertainers rather than responsible journalists; certainly they were not "newsmen". The Commission felt justified in imposing upon these neophytes a series of obligations to insure that they would act "responsibly" in the public interest. In 1941 the Federal Communications Commission determined that broadcasters could not editorialize.[39] In 1949 the Commission reversed itself and required that broadcasters *must* editorialize.[40] In each case, of course, the Commission was motivated by a peculiar distrust of broadcast journalists as opposed to those who reported in print. "News" was still the business of newspapers.

Today we have arrived at different constitutional definitions as to what is protected speech.[41] Certainly, broadcasting is included, [42] but perhaps more significant is the fact that most Americans now consider television and radio to be their most important news source.[43] Broadcast journalists have grown up. They see it as in their interest to be guided by the same professional standards of "fairness" as the printed press.[44] There is no factual basis for continuing to distinguish the printed from the electronic press as the true news media.

Our fears of an unregulated broadcast industry in 1927 did focus on the scarcity of the resource. It was argued that the limited facilities would make it a natural monopoly, in distinct contrast with the flourishing competition among printed media.[45] It was feared that the effects of this monopoly would be to silence a diversity of opinion, so the Commission determined that diversity would be enforced by governmental regula-

Footnotes at end of article.

tions. Some of these took the form of ownership and network restrictions, but these efforts remained largely incomplete.[46] So the fairness doctrine focused on the responsibility of each "monopolist" to present views in contrast with his own so that the public would not be misled.[47]

Today, our fears of a broadcasting monopoly seem dated. The number of commercial broadcasting stations on the air as of September, 1972, was 7,458. As of January 1, 1971, daily newspapers totaled only 1,749.[48] Nearly every American city receives a number of different television and radio signals. Radio licensees represent diverse ownership; UHF, local and public broadcasting offer contrast to the three competing networks; neither broadcasting spectrum is completely filled. But out of 1,400 newspaper cities, there are only fifteen left with face-to-face competition.[49]

This is not to say that scarcity is only a problem of the past. In *Red Lion*, the Supreme Court premised its analysis on the reality of the existing limitations of the resource.[50] There are also a variety of new arguments being raised about the lack of access for minority groups which have not yet been dealt with by the Court.[51] But *Red Lion* cannot be read as the final word on scarcity: the cable technology of the future was not even mentioned in the Court's decision.

It is a fact that with *existing equipment and technology* "a single coaxial [tv] cable can carry between 28 and 36 channels of television, plus the entire AM and FM radio bands and a quantity of other non-visual electronic signals."[52] It is predicted that in perhaps 10 years it will be possible to provide to the television viewer 400 channels;[53] that by 1980 half the nation will be on cable television; and that a host of educational and public services will accompany the cable revolution which are simply mindboggling.[54]

Thus, even now we possess the know-how to do away with technical scarcity through CATV.[55] The costs of laying cable may at *some point* be prohibitive, but this is to say no more than that there may be severe economic limitations to obtaining a cable station—economic limitations which affect the printed media equally severely.[56] Is it not a little ironic that we still adhere to our fears of monopoly and limited access? Ought we not instead focus our attention on how we can make the cable medium economically accessible to those who assert a right to use it?[57]

Scarcity raised still another fear in the early days of broadcasting—that of broadcasters, licensed by a Commission of political appointees, who would propogandize political viewpoints and privately censor all opposition.[58] The spur of the fairness doctrine was thus justified as encouraging "fair" discussion of public issues, and the Commission was seen as the even-handed arbiter of "fairness."

Yet we are told today, by highly respected members of the newspaper and broadcasting corps, that governmental regulation of broadcasting has been more pernicious than any group of private censors.[59] Some of the "chilling" effects of the threat of FCC intervention, which the broadcasters say have operated to suppress discussion of controversial views and ambitious journalism, remain hidden from the public eye.[60] *Red Lion* dismissed this issue as speculative,[61] but this cannot be the final word. Facts can change, and so can our perception of them.

Some chilling effects have become quite obvious. In the past years, networks have come under repeated attacks from government spokesmen who did not like the way television reported a variety of hot public issues.[62] These attacks did not focus on inaccuracies, but on the "bias" or lack of "fairness" in the presentation. The history of the FCC is itself replete with examples, including Brandywine itself, of the controversial viewpoint being screened out in favor of the dreary blandness of a more acceptable opinion.[63] In the context of broadcasting today, our democratic reliance on a truly informed American public is threatened if the overall effect of the fairness doctrine is the very censorship of controversy which it was promulgated to overcome.

A final word on the crucial impact of the broadcasting media. Early in the history of regulation the fear was expressed that broadcasting might be dangerous because of its unique potential for influence and control.[64] And Judge Tamm seems to warn that because we are "shifting our emphasis from the printed media to the electronic media" the need for governmental regulation has grown greater. Often it is difficult to unravel this argument from fear of monopoly control. But we must be careful to meet it head on, for rightly or wrongly it has become an unexamined prescription for all sorts of government regulation.

There is no doubt about the unique impact of radio and television.[65] But this fact alone does not justify governmental regulation. In fact, quite the contrary. We should recall that the printed press was the *only* medium of mass communication in the early days of the Republic—and yet this did not deter our predecessors from passing the First Amendment to prohibit abridgment of its freedoms. If, as has been suggested, we are to focus on the newly acquired role of broadcasting as the 20th century version of the 18th century town meeting or political pamphlet, we must be all the more careful to preserve a "free press" in the broadcast media. To argue that a more effective press requires a more regulated press flies in the face of what history has taught us about the values and purposes of protecting the individual's freedom of speech.

IV.

We once stated that "[i]f the fairness doctrine cannot withstand First Amendment scrutiny, the reason is that to insure a *balanced* presentation of controversial issues may be to insure no presentation, or no vigorous presentation, at all."[66] An examination of the facts of this case and the history of regulation which has brought us here raise for me serious doubts about the correctness of continuing to rely primarily on the fairness doctrine as the proper means of insuring First Amendment goals. The plain truth is that to uphold the Commission's fairness ruling, not only must we bless again the road we have travelled in the past, we must go farther; for this will be the first time that the FCC has denied a license renewal because of fairness doctrine obligations.[67]

Whether in this case the Commission has simply taken the doctrine too far or applied it too rigidly, or whether the trouble lies deeper, cannot be determined without a remand. Even now the FCC has begun a long inquiry into a question we face here: Do fairness policies truly promote a marketplace of uninhibited, wide and robust debate?[68] It is proper that this court urge the Commission to reconsider this case in light of its fairness hearings; that we encourage the Commission to draw back and consider whether time and technology have so eroded the necessity for governmental imposition of fairness obligations that the doctrine has come to defeat its purposes in a variety of circumstances; that we ask whether an alternative does not suggest itself—whether, as with printed press, more freedom for the individual broadcaster would enhance, rather than retard, the public's right to a marketplace of ideas.

I originally authorized issuance of the opinions of the court with my concurrence resting on the narrow ledge of Brandywine's misrepresentations under the supreme Court's ruling in F.C.C. v. WOKO, Inc.[69] But it is abundantly clear that the fairness doctrine is the "central aspect" of this case which even touches the core of the applicability of *WOKO*. I have therefore concluded that the great weight of First Amendment considerations cannot rest on so narrow a ledge.

The point to be made is simply that I had originally thought that the alleged misrepresentation could be considered separately from the other issues in the case. But upon closer consideration, it became clear to me that the subject matter of the so-called "deception"[70] is inextricably bound up in the considerations underlying the fairness doctrine. The Commission found one misrepresentation explicitly concerned Brandywine's efforts to comply with the fairness doctrine. The Commission also found that Brandywine "failed to adhere to its program proposals in other respects which are relevant to the fairness questions in this case." 24 F.C.C.2d at 30. Furthermore, in light of my discussion of the changing relationship between the First Amendment and broadcasting, there is some question as to what the FCC may constitutionally ask of applicants with respect to programming plans and adherence to fairness obligations. Thus the application of *WOKO* raises constitutional questions which cannot be neatly separated, as I had originally thought.

Fortunately, Justice Jackson provided some precedent for a change of mind when he quoted Baron Bramwell as saying, " 'The matter does not appear to me now as it appears to have appeared to me then.' " McGrath v. Kristensen, 340 U.S. 162, 178, 71 S.Ct. 224, 233, 95 L.Ed. 173 (1950).

I would remand the entire case to be reviewed in light of the matters discussed in this opinion.

J. SKELLY WRIGHT, Circuit Judge, with whom Circuit Judge TAMM concurs, responding:

Since Judge Bazelon's dissent seems to be an attack on the fairness doctrine, in fairness to the reader he should make clear at the outset of his opinion that the court's judgment in this case is not based on the fairness doctrine.

When this court's judgment affirming the Commission in this case came down September 25, 1972, Judge Bazelon joined in that judgment. Now he would dissent from that judgment, apparently because he questions the Commission's reliance on the fairness doctrine in reaching its decision. But the Commission's decision was based on two grounds: (1) alleged violations of the fairness doctrine by the licensee, and (2) deception and misrepresentations made to the Commission by the licensee in obtaining the license. Judge Bazelon states in his dissent that he originally concurred in affirming the Commission because of appellant's deception and misrepresentations in obtaining the license in the first place. Now he dismisses that ground as too "narrow a ledge" to rest affirmance of the Commission's action.

As shown in my separate opinion, I rested my concurrence in the court's judgment *solely* on the deception ground. Since Judge Tamm would affirm the Commission on that ground also, that ground, and that ground alone, forms the basis of our judgment. I do not agree that it is too "narrow a ledge." Elementary contract principles teach that when a licensee obtains his license by fraud and deception, that license may be voided by the grantor like any other contract may be set at naught for the same reason. I do not believe that a contract is less voidable for deception in its inception simply because the Government is the party deceived. Indeed, since the public is the loser when the Government is deceived, courts should be more, not less, alert in enforcing primary

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contracting concepts, particularly those based on simple honesty.

By resting the court's judgment in this case on the narrow contract ground, we avoid plunging into the constitutional "thicket" that is the fairness doctrine. The fairness doctrine is a tortured constitutional area of the law that, as Judge Bazelon recognizes, is under comprehensive study in rulemaking proceedings now being conducted by the Commission. Because of the pendency of this study and because courts should not reach out to decide difficult constitutional issues when a narrow nonconstitutional ground is available for decision, I voted to affirm the Commission's action in this case without reaching the constitutional issues involved in an application of the fairness doctrine. I do not think that deception in obtaining a Government license is too narrow a ledge for voiding that license. The Supreme Court flatly so held in F.C.C. v. WOKO, Inc., 329 U.S. 223, 67 S.Ct. 213, 91 L.Ed. 204 (1946), and there are no cases holding otherwise.

FOOTNOTES

[1] For a discussion of these policies, *see* notes 46, 51, 57 *infra*.

[2] Red Lion Broadcasting Co. v. F.C.C., 395 U.S. 397, 390, 89 S.Ct. 1794, 23 L. Ed. 2d 371 1969). *See also* Emerson, The System of Freedom of Expression (1970) [hereinafter cited at Emerson].

[3] Whitney v. California, 274 U.S. 357, 375–376, 47 S.Ct. 641, 648, 71 L.Ed. 1095 (1927). In the words of Judge Learned Hand, the First Amendment "presupposes that right conclusions are more likely to be gathered out of a multitude of tongues, than through any kind of authoritative selection." United States v. Associated Press, 52 F.Supp. 362, 372 (S.D. N.Y. 1943).

[4] Bridges v. California, 314 U.S. 252, 263, 62 S.Ct. 190, 194, 86 L.Ed. 192 (1941).

[5] *See* New York Times Co. v. Sullivan, 376 U.S. 254, 270, 84 S.Ct. 710, 11 L.Ed. 2d 686 (1964); N.A.A.C.P. v. Button, 371 U.S. 415, 429, 83 S.Ct. 328, 9 L.Ed.2d 405 (1963); Roth v. United States, 354 U.S. 476, 484, 77 S.Ct. 1304, 1 L.Ed. 2d 1498 (1957).

[6] United States v. Associated Press, *supra*, note 3, 52 F.Supp. at 372.

[7] 249 U.S. 47, 52, 39 S. Ct. 247, 249, 63 L. Ed. 470 (1919). The variety of aspects of American life which are touched by the First Amendment, and the constitutional tests which have evolved, are discussed at length in Emerson. *See also* Hudon, Freedom of Speech and Press in America (1963). There is disagreement over whether a balancing test should apply at all where First Amendment rights are involved. The late Justice Black described this test as having "a freedom-destroying nature," Scales v. United States, 367 U.S. 203, 261, 81 S.Ct. 1469, 6 L.Ed.2d 782 (1961). "Since that 'test' denies that any speech, publication or petition has an 'absolute' right to protection under the First Amendment, strict adherence to it would . . . mean that there would be only a conditional right, not a complete right, for any American to express his views to his neighbors—or for his neighbors to hear those views." Konigsberg v. State Bar of California, 366 U.S. 36, 68, 81 S.Ct. 997, 1016, 6 L.Ed.2d 105 (1961).

But even Justice Black recognized *some* limits to free speech, *e.g.*, Giboney v. Empire Storage & Ice Co., 336 U.S. 490, 69 S.Ct. 684, 93, L.Ed. 834 (1949), which may, in itself, suggest that some balancing is required. *See* Nutting, Is the First Amendment Obsolete?, 30 Geo Wash. L.Rev. 167, 171 (1961). The primary danger of broadly asserting the need to balance interests is that there is a great temptation to reduce a constitutional right to the same weight as every other interest; "moreover, it has a tendency to tip the scales against the individual," particularly where the balance sets the individual against the needs of the nation. Hudon, *supra* at 174.

Regulation of the broadcast industry is designed exclusively to promote *First Amendment goals* rather than any other national need. The public's rights are weighed against the individual's. *See* note 10, *infra*. Justice Black's admonition must be kept in mind, however, when government begins to justify the regulation of broadcast licensees on other than First Amendment grounds. *See* the discussion with regard to the "public trust" theory at pp. 67–68 *infra*.

[8] *See e.g.* Associated Press v. United States, 326 U.S. 1, 65 S.Ct. 1416, 89 L.Ed. 2013 (1945).

[9] Kovacs v. Cooper, 336 U.S. 77, 96, 69 S.Ct. 448, 458, 93 L.Ed. 513 (Frankfurter, concurring) (1949).

[10] The Supreme Court in *Red Lion* stated that while neither interest cancelled out the other, the public's must be paramount. 395 U.S. at 389–390, 89 S.Ct. 1794. Professor Emerson states that in this area of regulation the test "must be framed in terms of accommodation of interests *within* the system . . ." (emphasis added) Emerson at 629.

[11] Red Lion Broadcasting Co. v. F.C.C. 395 U.S. at 375, 386–390, 89 S.Ct. 1794. Congress specifically provided in § 326 that the FCC could not "interfere with the right of free speech by means of radio communication."

"§ 326. Censorship.

"Nothing in this chapter shall be understood or construed to give the Commission the power of censorship over the radio communications or signals transmitted by any radio station, and no regulation or condition shall be promulgated or fixed by the Commission which shall interfere with the right of free speech by means of radio communication."

The Commission recognized this balancing in its 1949 Report on Editorializing by Broadcast Licensees, 13 F.C.C. 1246, 1257:

"Any regulation of radio, especially a system of limited licensees, is in a real sense an abridgement of the inherent freedom of persons to express themselves by means of radio communication. It is, however, a necessary and constitutional abridgement in order to prevent chaotic interference from destroying the great potential of this medium for public enlightenment and entertainment."

[12] Remarks of Congressman White during debates on the Radio Act of 1927. 67 Cong. Rec. 5479 (1926). For the early history of radio regulation, *see* 1 A. Socolow, The Law of Radio Broadcasting 38–61 (1939); H. Warner, Radio & Television Law 757 et seq. (1948); National Broadcasting Co. v. United States, 319 U.S. 190, 210–213, 63 S.Ct. 997, 87 L.Ed. 1344 (1943).

[13] *See* Socolow, *supra* note 12 at 38; Warner, *supra* note 12, at 757 et seq.

[14] Kalven, Broadcasting, Public Policy & The First Amendment, 10 Journal Law & Economics 15, 25 (1967).

[15] National Broadcasting Co. v. F.C.C., 319 U.S. 190, 212, 63 S.Ct. 997, 1008, 87 L.Ed. 1344 (1943).

[16] *Accord*, Red Lion Broadcasting Co. v. F.C.C., 395 U.S. at 388, 89 S.Ct. at 1805:

". . . the chaos which ensued from permitting anyone to use any frequency at whatever power level he wished, . . . made necessary the enactment of the Radio Act of 1927 and the Communications Act of 1934, as the Court has noted at length before. . . . It was this reality which at the very least necessitated first the division of the radio spectrum into portions reserved respectively for public broadcasting and for other important radio uses such as amateur operation, aircraft, police, defense, and navigation; and then the subdivision of each portion, and assignment of specific frequencies to individual users or groups of users. Beyond this, however, because the frequencies reserved for public broadcasting were limited in number, it was essential for the Government to tell some applicants that they could not broadcast at all because there was room for only a few."

[17] National Broadcasting Co. v. F.C.C., 319 U.S. 190, 226, 63 S.Ct. 997, 1014 (1943).

[18] National Broadcasting Co. v. F.C.C., 319 U.S. at 213, 63 S.Ct. at 1008:

"The plight into which radio fell prior to 1927 was attributable to certain basic facts about radio as a means of communication—its facilities are limited: they are not available to all who may wish to use them; the radio spectrum simply is not large enough to accommodate everybody. There is a fixed natural limitation upon the number of stations that can operate without interfering with one another. Regulation of radio was therefore as vital to its development as traffic control was to the development of the automobile."

[19] Banzhaf v. F.C.C., 132 U.S.AppD.C. 14, 31, 405 F.2d 1082, 1099 (1968), cert. denied, American Broadcasting Companies v. F.C.C., 396 U.S. 842, 90 S.Ct. 50, 24 L.Ed.2d 93 (1969).

[20] For a critical discussion of the justifications for regulation of the broadcast industry *see* Robinson, Observations on 40 years of Radio and Television Regulation, 52 Minn. L.Rev. 67 (1967); Note, Concepts of the Broadcast Media Under the First Amendment: A Reevaluation of a Proposal, 47 N.Y. U.L.Rev. 83 (1972); for a contrasting view see Barrow, The Equal Opportunities and Fairness Doctrines: Pillars in the Forum of Democracy, 37 Cin.L.Rev. 447 (1968).

[21] Office of Communication of United Church of Christ v. F.C.C., 123 U.S. App. D.C. 328, 337, 359 F.2d 994; 1003 (1966). *See* The Fairness Doctrine and Other Issues, Report of the Special Subcommittee on Interstate and Foreign Commerce, House of Representatives, p. 1, May 9, 1969:

"Broadcast regulation has, from its inception, been based on the premise that the airwaves belong to the people, licensed to be used in the public interest, convenience and necessity."

Robinson, *supra* note 20, comments at p. 152:

"Little effort has ever been made to look beneath the superficiality of the concept of public ownership of the broadcast spectrum to determine whether it has any practical logic or meaning. Logically the concept is meaningless. To say that the airways or spectrum can be owned by anyone is simply to indulge in fantasy. Surely no one seriously supposes that the airways are a thing of nature which can be possessed, occupied, or used in any normal sense of the words. In actuality, "airways" is merely convenient shorthand, an abstraction for a phenomenon created as a result of the use of privately owned transmission facilities. The "spectrum" is a purely artificial construct of the Commission itself. To give this construct an independent nature and then attempt to justify the regulation itself in those terms is entirely circular. It is like saying that the Commission owns the frequencies because it has the power to regulate their use, and that it has the power to regulate their use because it owns them."

[22] Banzhaf v. F.C.C., *supra note* 19, 132. U.S. App. D.C. at 42, 405 F.2d at 1100.

It has often been argued that the government *could have* assumed total control of the broadcasting medium, but this theory "fails to come to grips with the real issues. It could equally be said that the public "owns" the streets and parks, and that consequently individuals have no right to use them for purposes of expression except on the government's own terms. Moreover, the problem is not solved simply by bringing into the picture the doctrine of unconstitutional conditions—that if the government extends the privilege of using the airways to private individuals or groups it cannot attach conditions that violate the First Amendment. Surely the affirmative power of the First

Amendment demands that the government make available for general use, as a constitutional right, the most significant medium in our whole system of freedom of expression. The government cannot maintain a monopoly of the airways any more than it can maintain a monopoly of the streets, or of printing presses. Starting from this point, then, the First Amendment issues begin to grow far more complex than the 'public ownership' theory envisages." Emerson at 660–61.

[23] Banzhaf v. F.C.C., *supra* note 19, 132 U.S. App. D.C. at 32, 402, F.2d at 1100.

[24] In its July Decision the Commission noted: "At the heart of this proceeding is the question of compliance with the Fairness Doctrine." 24 F.C.C.2d 18, 21 (1970). In the February Decision, the Commission carried its analysis of Brandywine's constitutional claims no further than *Red Lion*. The FCC sidestepped the issue of whether its action carried an adverse First Amendment impact by stating that since its "decision was based solely upon fairness concepts whose constitutional validity has been sustained by the Supreme Court . . . [t]here is no constitutional infirmity." 27 F.C.C.2d 565, 566 (1971).

[25] Judge Tamm noted, of course, that the Supreme Court "found that the Commission's application of the fairness doctrine" was constitutional because it "enhances rather than abridges the freedoms of speech and press." 153 U.S.App.D.C. at —, 473 F.2d at 57. But this conclusion was not supported by an analysis of whether the result in this case actually enhanced these freedoms. There was only a bare assertion that WXUR was guilty of attempting to silence and censor the public—a verdict which did not originate with the FCC.

[26] The Hearing Examiner in this case concluded that WXUR "has presented such discussion in about the same degree as most stations offer entertainment." 24 F.C.C.2d 42, 131 (1970) (Issued Dec. 10, 1968).

[27] As the Hearing Examiner noted, "[t]here was an attempt, however inept, to allow wide-swinging utterance of all shades of thought. This met the first mandate of the Fairness Doctrine calling for broadcast of divergent viewpoints but it ran head-on into the second commandment of protecting persons and groups against attacks." 24 F.C.C.2d at 135. He also concluded:

"With so many viewpoints having been expressed over WXUR on so many different issues, it would be futile to attempt any conclusion in terms of equating the time given to each. Fortunately the Fairness Doctrine does not demand this kind of approach. What it does demand is an honest and good faith effort by the licensee to air contrasting, conflicting and varying attitudes towards subjects of important controversy. In the broad perspective of this record, it is almost inconceivable that any station could have broadcast more variegated opinions upon so many issues than WXUR." 24 F.C.C.2d at 130.

[28] The FCC re-examined tapes of two weeks of Brandywine's programming and found that these established a *prima facie* violation of the fairness doctrine, since while Brandywine presented one side of numerous issues, it presented opposing views on only one issue. To override this *prima facie* showing, Brandywine was required to prove that it had established an acceptable procedure for complying with the doctrine. *See* Office of Communication of United Church of Christ v. F.C.C. 138 U.S. App. D.C. 112, 425 F. 2d 543 (1969). The Commission narrowly defined what would be acceptable—a regular procedure for previewing, monitoring or reviewing its broadcasts; a showing of public announcements inviting the presentation of contrasting views; or other adequate action to encourage response to specific broadcasts.

Brandywine's methods of compliance—call-in and interview shows—were unacceptable to the Commission by their very nature, since callers or speakers were not pre-selected or requested to speak on specific and isolated issues.

Brandywine did show in its petition for rehearing that conflicting and contrasting views had been aired, albeit fortuitously, on its programs outside of the two-week taped period. But the FCC countered this showing with the argument that since the Commissioners had no way of knowing how *often* Brandywine's own views were expressed outside the two-week period, they could not determine whether a "reasonable ratio" of Brandywine's time had been devoted to opposing views. The Commission concluded that the station must have failed to "carry opposing views in any fair ratio" on the basis of the two weeks of tapes.

It may well be that Brandywine did not meet the stringent standards set by the Commission for this case. But whether these standards find any support in judicial discussion of justifications for the fairness doctrine is entirely another matter.

[29] If shoestring operations cannot afford to operate under FCC rules, we face very critical First Amendment questions indeed.

[30] The FCC expects each licensee to catalogue each issue it discusses, and requires that it offer a "fair" ratio of opposing views on every issue. 24 F.C.C. 2d at 567–69. *See* note 28, *supra*. Silencing WXUR because of infractions of these requirements could, in the words of the Hearing Examiner, "result in silencing all controversial discussion on American radio and television . . . or . . . that discussion would henceforth be a diluted parlor chat in which such restraint was exercised that the outcome would be insufferably dull and totally unenlightening." Hearing Examiner Opinion, 24 F.C.C. 2d at 134.

The broadcaster who makes the greater effort to serve the public interest by stimulating robust discussion incurs the further burden of presenting the countering views of his fellow broadcasters who have refused to speak out. All of this places an inordinate burden on the small off-beat broadcaster whose every opinion requires contrasting viewponts from all quarters.

[31] 395 U.S. at 396, 89 S.Ct. 1794, 1810. The precise holding of *Red Lion* is as follows: "The Congress and the Commission do not violate the First Amendment when they require a radio or television station to give reply time to answer personal attacks and political editorials." *Ibid.* What seems to be forgotten is that both the *Red Lion* and *RTNDA* litigations involved application of principles by the Commission; that in neither case were sanctions imposed or even threatened. *In neither case was there an evidentiary hearing.* As the Hearing Examiner recognized, "[t]here is a valid distinction between a broad statement of principle and its specific application to a factual situation. To apply the principle in such a way as to defeat its very purpose would manifestly be an injustice. . . ." at F.C.C.2d at 133–34.

[32] As we said in Banzhaf v. F.C.C., *supra* note 19, 132 U.S.App.D.C. at 43, 405 F.2d at 1101:

"[W]e are not obliged to "invalidate the entire course of broadcasting development" with no inquiry into the particulars of the ruling before us. Rather, we think the proper approach to the difficult First Amendment issues petitioners raise is to consider them in the context of individual regulatory policies and practices on a case-by-case basis."

For examle, in Green v. F.C.C. 144 U.S.App. D.C. 353, 359, 447 F.2d 323, 329 (1971), we found that strict adherence to fairness obligations might not be necessary if the issue involved was one over which there was already intense debate in all forms of media:

"In our view, the essential basis for any fairness doctrine, no matter with what specificity the standards are defined, is that the *American public must not be left uninformed*. On the record of this case, no matter how the issue is taken, we cannot conceive that any live American has been left uninformed about the desirability of undesirability of military service, the draft, or the Vietnam war."

[33] That alternatives to fairness obligations may once have enjoyed a fierce vitality is discussed in note 46, *infra*. That alternatives may be open for current exploration is discussed *infra*.

[34] *See* Warner, *supra* note 12, at 757. Remarks of Senator Dill during debates on Radio Act of 1927. 67 Cong.Rec. 12502 (1926):

"Mr. Dill. I will say to the Senator that I think Congress has a right to act and control these stations, even though the broadcasting of entertainment programs is not in itself interstate commerce, for the reason that undoubtedly wireless telegraph messages are interstate commerce, and in order to protect the broadcasting of the point-to-point telegrams, of the shore stations to the ships, and other uses, such as transoceanic, the Government must also control the broadcasting of matter that might not per se be interstate commerce."

[35] Warner, *supra* note 12, at 758. Davis, Law of Radio Communication 33–34 (1927):

"Something of the opinion as to the value of radio at that time may be gathered from the testimony of a high naval officer before the House Committee who said: "Generally speaking, however, the department believes that wireless communication should be limited as far as possible to its legitimate field: that is, communication between the shore and vessels at sea.' "

[36] Mutual Film Corp. v. Industrial Commission of Ohio, 236 U.S. 230, 35 S.Ct. 387, 59 L.Ed. 552 (1915).

[37] Burstyn, Inc. v. Wilson, 343 U.S. 495, 72 S.Ct. 777, 96 L.Ed. 1098 (1958).

[38] *See, e.g.*, Trinity Methodist Church v. F.R.C., 61 App.D.C. 311, 62 F.2d 850.

"If it be considered that one in possession of a permit to broadcast in interstate commerce may, without let or hindrance from any source, use these facilities, reaching out, as they do, from one corner of the country to the other, to obstruct the administration of justice, offend the religious susceptibilities of thousands, inspire political distrust and civic discord, or offend youth and innocence by the free use of words suggestive of sexual immorality, and be answerable for slander only at the instance of the one offended, then this great science, instead of a boon, will become a scourge, and the nation a theater for the display of individnal passions and the collision of personal interests. This is neither censorship nor previous restraint, nor is it a whittling away of the rights guaranteed by the First Amendment, or an impairment of their free exercise!"

[39] Mayflower Broadcasting Corp., 8 F.C.C. 333, 339–340 (1941):

". . . under the American system of broadcasting it is clear that responsibility for the conduct of a broadcast station must rest initially with the broadcaster. It is equally clear that with the limitations in frequencies inherent in the nature of radio, the public interest can never be served by a dedication of any broadcast facility to the support of his own partisan ends. Radio can serve as an instrument of democracy only when devoted to the communication of information and exchange of ideas fairly and objectively presented. A truly free radio cannot be used to advocate the causes of the licensee. It cannot be used to support the candidacies of his friends. It cannot be devoted to the support of principles he happens to regard most favorably. In brief, the broadcaster cannot be an advocate."

[40] *See* In Re Matter of Editorializing by Broadcast Licensees, 13 F.C.C. 1246 (1949),

where the Commission set forth dual obligations for broadcast licensees; to speak out on controversial issues while giving the opportunity for contrasting views. "There is a two-fold duty laid down by the FCC's decisions and described by the 1949 Report on Editorializing by Broadcast Licensees, . . . The broadcaster must give adequate coverage to public issues, United Broadcasting Co. . . . and coverage must be fair in that it accurately reflects the opposing views." Red Lion Broadcasting Co. v. F.C.C., 395 U.S. 367, 377, 89 S.Ct. 1794, 1800, 23 LEd.2d 371 (1969).

[41] *See, e.g.*, New York Times Co. v. Sullivan, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d. 686 (1964).

[42] Red Lion Broadcasting Co. v. F.C.C., 395 U.S. at 386, 89 S.Ct. 1794; United States v. Paramount Pictures, Inc., 334 U.S. 131, 166, 66 S.Ct. 915, 92 L.Ed. 1260 (1948).

[43] An Extended View of Public Attitudes Toward Television and Other Mass Media, 1959–1971, Report by the Roper Organization, Inc., p. 2, June, 1971.

[44] Testimony of Bill Monroe, Correspondent, NBC News, Feb. 2, 1972, before the Subcommittee on Constitutional Rights of the Committee on the Judiciary of the United States Senate:

"The fantastic new technology and sudden impact of television may have misled us about its most vital function. Seeking to fit it into familiar categories, some of us have been impressed with the size and wealth of television, and have put it down simply as big business. Some of us have been impressed with its evening parades of singers, dancers, actors, and comedians, and have put it down as the new vaudeville. But those nervous pictures that bring the White House, Capitol Hill, Vietnam and London into our living rooms don't strike us immediately as the new front page. So we have missed the main fact about television: it *is* press. And if television and radio spend more time on entertainment and commercials than on news, so, in fact, do many newspapers with their acres of advertising, their sports pages, gossips, astrologists, advice to the loveless and fat Sunday editions with the news tucked inside the colors of Dick Tracy and Peanuts. Radio and television are, at bottom, instantaneous, warm-blooded press. Like the printed press, they carry the flesh of commerce and entertainment on a hard skeleton of news. And, like the printed press, they are massively engaged in exactly that kind of communications which the First Amendment was written to protect."

Address by Julian Goodman, President, National Broadcasting Company at "Great Issues Forum, "University of Southern California, Oct. 11, 1972:

"For fairness is a proper journalistic standard, and responsible journalists—in broadcasting and in print—follow it. But when it becomes a government standard, it moves government officials into newsrooms and seats them as judges of how broadcast news and information should be presented."

[45] *See, e. g.*, Remarks of Senator Howell, during debates on Radio Act of 1927. 67 Cong.Rec. at 12503 (1926):

"Are we to consent to the building up of a great publicity vehicle and allow it to be controlled by a few men, and empower those men to determine what the public shall hear. . . .

It may be urged that we do that with the newspapers. Yes, but anyone is at liberty to start a newspaper and reply. Not so with a broadcasting station. However, there are only about 500 who are allowed the privilege of conducting broadcasting stations, and there are not as many broadcasting stations as there are fingers on one of my hands—not more than that—that have the privilege of covering the entire United States."

[46] *E. g.*, the Commission's Chain Broadcasting Regulations which undertook to regulate the relations of individual broadcasting stations to the networks. *See* National Broadcasting Co. v. F.C.C., 319 U.S. 190, 63 S.Ct. 997, 87 L.Ed. 1344 (1943). Other FCC rules limit the number of stations one enterprise may own under common ownership or under common control. *See, e. g.*, 47 C.F.R. § 73.35 (AM), .240 (FM), .638 (TV) (1967). Clarksburg Pub. Co. v. F.C.C., 96 U.S.App.D.C. 211, 225 F.2d 511 (1955). For a brief discussion of some of these rules *see* Robinson, *supra* note 20, at 73 et seq.

These and other policies such as the antitrust laws sought to promote a diversity in broadcasting by preventing monopoly control. But economic concentration has always remained a problem in the radio and television industries. See Barrow Report, House Comm. on Interstate and Foreign Commerce, Report on Network Broadcasting, H.R.Rep. No.1297, 85 Cong., 1st Sess. (1958).

The Commission's acquiescence in trafficking in licenses reveals the extent to which the private marketplace prevailed over the terminology of "public trust" or concern for the public interest. We did not follow the logic of this economic theory of regulation to its limits. We allowed newspapers to acquire broadcast stations; we allowed networks to expand as much as they have. Whether or not serious pursuit of an open economic marketplace would have enhanced sufficiently the marketplace of ideas cannot today be resolved; certainly it would have been a step in the right direction. And it may yet be an option we should consider for the future. It suggests, as well, that, unless checked, cable T.V. will suffer the same consequences. "Newspapers and other communications media also began to buy in so that half of the cable systems in the United States are now owned by other media and communications interests." Smith, The Wired Nation 22 (1972).

[47] This, according to *Red Lion*, is the primary purpose of the fairness doctrine. 395 U.S. at 377, 89 S.Ct. 1794. The FCC's Editorializing Report of 1949, 13 F.C.C. 1246, 1249, expressed the same point:

"It is axiomatic that one of the most vital questions of mass communication in a democracy is the development of an informed public opinion through the public dissemination of news and ideas concerning the vital public issues of the day. Basically, it is in recognition of the great contribution which radio can make in the advancement of this purpose that portions of the radio spectrum are allocated to that form of radio communications known as radiobroadcasting. Unquestionably, then, the standard of public interest, convenience and necessity as applied to radiobroadcasting must be interpreted in the light of this basic purpose. The Commission has consequently recognized the necessity for licensees to devote a reasonable percentage of their broadcast time to the presentation of news and programs devoted to the consideration and discussion of public issues of interest in the community served by the particular station. And we have recognized, with respect to such programs, the paramount right of the public in a free society to be informed and to have presented to it for acceptance or rejection the different attitudes and viewpoints concerning these vital and often controversial issues which are held by the various groups which make up the community. It is this right of the public to be informed, rather than any right on the part of the Government, any broadcast licensee or any individual member of the public to broadcast his own particular views on any matter, which is the foundation stone of the American system of broadcasting."

[48] Office of Information, Federal Communications Commission, News Release, Oct. 10, 1972; Editor and Publisher Year Book-1972.

[49] B. Bagdikian, The Effete Conspiracy and Other Crimes of the Press 11 (1972).

[50] Red Lion Broadcasting Co. v. F.C.C., 395 U.S. 397, 396–401, 89 S. Ct. 1794, 23 L. Ed. 2d 371 (1969).

[51] Access of minority groups to the microphones of mass communication is indeed a serious problem; it is one which exists with respect to newspapers as well as the broadcast media. But the right to hear a countering view does not solve the problem of control of stations or newspapers. In upholding the promulgation of fairness rules in *Red Lion*, "Justice White found the forces of the First Amendment to lie in the right of the public to learn, and he ignored the right of the ordinary citizen to use broadcasting facilities to speak." Emerson at 664. The fairness doctrine does not *necessarily* speak to minority rights of access.

Recently, this court determined that broadcast licensees may not, as a general policy, refuse to sell any of its advertising time to groups or individuals wishing to speak out on controversial public issues. Business Executives' Move For Vietnam Peace v. F.C.C., 146 U.S. App. D.C. 181, 450 F. 2d 642 (1971), cer. granted Columbia Broadcasting System, Inc. v. Democratic Nat. Committee, 405 U.S. 953, 92. S. Ct. 1174, 31 L. Ed. 2d 230 (1972). This case is now before the Supreme Court. While my opinion today might raise some First Amendment questions with respect to *Business Executives' Move For Vietnam Peace*, it may be well to note Judge Wright's statement for this court:

"It is particularly important that these cases deal only with the public's First Amendment interests in broadcasters' allocation of advertising time. They deal only with time relinquished by broadcasters to others; petitioners argue only that, in relinquishing that time, broadcasters must not discriminate against protected expression. In normal programming time, closely controlled and edited by broadcasters, the constellation or constitutional interests would be substantially different. In news and documentary presentations, for example, the broadcasters' own interests in free speech are very, very strong. . . . The Commission's fairness doctrine properly leaves licensees broad leeway for professional judgment in that area. But in the allocation of advertising time, the broadcasters have no such strong First Amendment interests. *Their* speech is not at issue; rather, all that is at issue is their decision as to which other parties will be given an opportunity to speak."

Supra, 146 U.S. App. D.C. at 198, 450 F. 2d at 654.

It also might well be argued that the economic status of the owners of broadcast stations, or the influence of advertisers, make it unlikely that certain opinions will ever be aired. The fairness doctrine approaches this problem from the perspective of regulating how and what the licensee broadcasts. An alternative approach would be the allocation of access time. *See* Red Lion Broadcasting Co. v. F.C.C., 395 U.S. at 390–391, 89 S. Ct. 1794; Emerson at 663.

[52] Smith, The Wired Nation 7 (1972).

[53] *Id.*

[54] *Id.* at 5. *See also* Industrial Electronics Division of the Electronics Industries Association. The Future of Broadband Communications, Oct. 28, 1969. Some of the public services—beyond traditional television—which are predicted include data services, mail delivery, two-way television communication, and a home library service:

"This may be called the *electronic home library service* (designated BCNL). With such a service available a reader can request a book or periodical from a large central library, using a narrow-band channel to the library (a phone circuit or the BCN network itself.) The desired book is then "transmitted" from microfiche, microfilm, or video tape, page by page, and received via the BCN network on a dedicated wide-band channel.

"Several modes of operation are possible.

In one, the entire book or selected article is transmitted at the maximum reception speed of the user's facsimile recorder. Several hundred simultaneous transmissions in time-division multiplex are possible with 6-MHz BCN channels and reasonable recorder speed.

"As an alternative, a soft-copy display can be used. Each page is transmitted and stored at the receiver for reading. When the reader has finished one page, he signals for the next page, and this is transmitted in a small fraction of a second with no perceptible delay. This is another form of time sharing of the broad-band channel.

"To get a feeling for the capacity of a broad-band channel, it is of interest to note that in the demonstration described in Reference 5, the entire text of "Gone With the Wind" was transmitted in facsimile over a television microwave circuit in slightly over two minutes."

[55] "If more channels are wanted, a second cable can be laid, and a third, and a fourth . . ." Smith, The Wired Nation 7 (1972). *See also* Botein, Access to Cable Television, 57 Corn.L.Rev. 419, 424 (1972); 22 P. & F. Radio Reg.2d 1759, 1961–65 (1971), (Letter from Dean Burch, Chairman, F.C.C., to Subcomm. on Communication of the Senate Comm. on Commerce, p. 1771, August 5, 1971).

[56] It appears today that *economic*, not technical, limitations in reality restrict entry into the broadcast market. And as to these, "the economic barriers to entry into radio broadcasting are . . . far less restrictive than in the case of media such as newspapers." Robinson, *supra* note 20, at 88. But of course, the economic basis of scarcity does not yet justify regulation of the content of printed press although anti-trust regulation is accepted, Associated Press v. United States, 326 U.S. 1, 65 S.Ct. 1416, 89 L.Ed. 2013 (1945).

[57] In light of the tremendous potential of cable television as a source of information concerning controversial public issues, and in view of its potential for so increasing access to the broadcast media, it is ironic to note that the FCC activity in this area has been characterized as focused, until recently, on protecting the commercial broadcast systems. *See* Robinson, *supra* note 20, at 78–83; Smith, The Wired Nation 45 et seq., (1972). *See generally* Botein, Access to Cable Television, 57 Corn.L.Rev. 419 (1972). Botein, CATV Regulation: A Jumble of Jurisdictions, 45 N.Y.U.L.Rev. 816 (1970); 79 Harv.L.Rev. 366 (1965). There are a wide variety of economic measures which might be taken to promote the ability of groups and individuals to gain assess to both wired and printed media. *See, e. g., Emerson* at 669; Note, Concepts of the Broadcast Media Under the First Amendment: A Reevaluation and a Proposal, *supra* note 20.

[58] Senator Howell stated during the Congressional debates on the Radio Act of 1927:

"Mr. President, to perpetuate in the hands of a comparatively few interests the opportunity of reaching the public by radio and allowing them alone to determine what the public shall and shall not hear is a tremendously dangerous course for Congress to pursue. . . . Are we to consent to the building up of a great publicity vehicle and allow it to be controlled by a few men, and empower those few men to determine what the public shall hear? . . .

"Facts were brought out before the committee to show that already plans were on foot to buy up and monopolize stations in various areas of the country, and that as high as $100,000 had been paid for the transfer of a broadcasting license; in fact, if I remember correctly, it was intimated that $250,000 was paid in one case. If any public question is to be discussed over the radio, if the affirmative is to be offered, the negative should be allowed upon request also, or neither the affirmative nor the negative should be presented." 67 Cong.Rec. 12503–12504 (1926).

The Congress did not accept proposed provisions regarding the presentation of public issues. Apparently it was thought that the words "public questions" were so vague as to raise more difficulties than the regulation could solve. *Id.*

[59] Cronkite, Introduction to Part III: Points of Conflict—Legal Issues Confronting Media Today, 60 Geo.L.J. 1001, 1003–04 (1972); Statement of Bill Monroe, Correspondent, NBC News, Before the Subcommittee on Constitutional Rights of the Committee on the Judiciary of the United States Senate, February 2, 1972; Address by Julian Goodman, President, National Broadcasting Company at "Great Issues Forum", University of Southern California, October 11, 1972.

[60] The effect of government's "lifted eyebrow" is discussed by both Goodman and Monroe, *supra* note 59. The problem was noted 15 years ago by Mr. Richard Salant in a speech before the National Association of Broadcasters. Salant explained that following CBS's interview in 1957 with Premier Khrushchev, the station was deluged with government criticisms and inquiry.

"This puts us on the spot before we even get started. No matter what the laws may say about immunity from censorship and about our entitlement to the guarantees of the First Amendment there is always the brooding omnipresence that a broadcaster is a licensee and if he is not a licensee, he cannot be a broadcaster.

"We are reminded of this basic dilemma with rather frightening regularity. Time and time again we are called to account by those who have, directly or indirectly, power of life and death over us. Every time we deal in our news or public affairs broadcasts with a public controversy concerning which there are strongly contending views, we can at least expect letters from legislators, public officials and private citizens representing important organizations who accuse us of partiality and call on us for an accounting—line by line and second by second."

Speech by Richard Salant, Broadcast Licensees and the Freedom of the Press, before National Association of Broadcasters, 1957.

Professor Harry Kalven, after studying CBS's complete file of FCC complaints covering the period from 1960 to 1964, has said about "regulation by dossier":

"Think of the outcry if some great daily newspaper were requested by government, and so peremptorily requested, to furnish a justification for printing the views of Walter Lippmann! To answer a letter is, to be sure, no great burden. But freedom has in no small part depended on awareness of the difference between doing something as a matter of grace and doing it as a matter of obligation. In the end there are two important aspects of the FCC dossier technique. First, it serves to extend the appearance of control far beyond what rulemaking or formal decisions would suggest, and it does so by a process which is really not public and which is awkward to challenge. Second, as Mr. Salant has pointed up, it serves to create psychologically an atmosphere of surveillance which is destructive of the morale of a free press."

Comments Goodman,

"A timid broadcaster who has gone through one or two of these experiences may think twice before he tackles a subject of strong controversy—the kind that the public needs most to know about. It is not that he wants to avoid the obligation to be fair. But he knows that where there is controversy, there are advocates who will turn to the FCC, under the umbrella of the Fairness Doctrine, to obtain a broadcasting voice that may bear no relationship to the interest or newsworthiness of their cause. And once they invoke the government process, the broadcaster knows that he must defend himself from second-guessing that will come not from a specialist in journalism, but by a generalist in the government bureaucracy."

Goodman, *supra* note 59.

[61] Red Lion Broadcasting Co. v. F.C.C. 395 U.S. at 392–394, S.Ct. 1794.

[62] *See* Press Freedoms Under Pressure, Report of the Twentieth Century Fund Task Force on the Government and the Press (1972). The experience of CBS News and its documentary, "The Selling of the Pentagon", is a case in point. The Chairman of the House Committee on Interstate and Foreign Commerce subpoenaed the president of CBS, directing him to submit "all film, work prints, outtakes, and sound tape recordings, written scripts and/or transcripts utilized in whole or part by CBS in connection with" the documentary. *See also* Address by Vice President Agnew, Midwest Regional Republican Committee Meeting, Des Moines, Iowa, Nov. 13, 1969.

Such criticism and inquiries are not limited to one party or one political philosophy. During the 1972 Presidential campaign, charges of political bias have come from all sides. Goodman, *supra* note 59. What this suggests is that the potential to subject the "fairness" theory to political abuse is inherent in the operation of the doctrine.

Professor Emerson clearly expresses the potentially harmful effects of trying to solve the problems of scarcity and access through government policies like the fairness doctrine:

[A]ny effort to solve the broader problems of a monopoly press by forcing newspapers to cover all "newsworthy" events and print all viewpoints, under the watchful eyes of petty public officials, is likely to undermine such independence as the press now shows without achieving any real diversity." Emerson at 671.

His conclusion that such efforts will or *can* work vis a vis radio and television is based solely on the argument of tradition—that government is involved with radio and TV so it must be all right. *Id.* at 665, 668. With all respect to Professor Emerson, this is a distinction without a difference.

[63] *See, e.g.*, Lamar Life Broadcasting Co., 38 F.C.C. 143 (1965), reversed for hearing, United Church of Christ v. F.C.C. 123 U.S. App.D.C. 328, 359 F.2d 994 (1966); Palmetto Broadcasting Co., 23 P. & F. Radio Reg. 483 (1962), aff'd sub nom. Robinson v. F.C.C., 118 U.S.App.D.C. 144, 334 F.2d 534 (1964); Trinity Methodist Church v. F. R. C., 61 App.D.C. 311, 62 F.2d 850 (1932).

[64] *See, e.g.*, comment of Senator Howell, *supra* note 58.

[65] It has been said that the average family has its television turned on for nearly six hours out of every day. National Association of Broadcasters, Television and the Wired City, A Study of the Implications of a Change in the Mode of Transmission 113 (1968). Clearly the impact, and audience, of the nightly news is far greater than any one paper or magazine. Furthermore, most Americans are apt to believe a story they get from television or radio over magazines or newspapers. An Extended View of Public Attitudes Toward Television and Other Mass Media 1959–1971, A Report by The Roper Organization, Inc. 1971.

[66] Banzhaf v. F.C.C., *supra* note 19, 132 U.S.App.D.C. at 34–35, 405 F.2d at 1102–1103.

[67] Cox, Does the FCC Really Do Anything? 11 J. Broadcasting 97, 104 (1967); Note, The Fairness Doctrine and Broadcast License Renewals: Brandywine-Main Line Radio, Inc., 71 Col.L.Rev. 452, 458 (1971).

[68] In re The Handling of Public Issues Under the Fairness Doctrine and the Public Interest Standards of the Communications Act, 30 F.C.C.2d 26 (1971).

[69] 329 U.S. 223, 227, 67 S.Ct. 213, 91 L.Ed. 204 (1946).

[70] Unlike my Brothers, the FCC *never* characterizes Brandywine's actions as "fraud and deception." Instead the Commission found "there was a substantial failure to inform the Commission fully concerning program

plans, and also a significant departure from an express representation concerning the fair treatment of all religious faiths." 24 F.C.C.2d at 32. The Commission drew the *inference* that these failures were a "conscious course of conduct", in distinct contrast to the explicitly and continuously fraudulent action at issue in *WOKO*.

United States of America v. Thomas E. McClure, Appellant. No. 71-1048

United States Court of Appeals, District of Columbia Circuit.

Argued Sept. 25, 1972.

Decided Nov. 16, 1972.

By a judgment of the United States District Court for the District of Columbia, William B. Bryant, J., the defendant was convicted of crimes of embezzlement of funds and collateral belonging to a federal credit union and with participation in a fraudulent loan scheme and he appealed. The Court of Appeals held there was no actual prejudice resulting from long delay in prosecution where Government evidence was largely documentary, defendant was furnished in advance of trial with copies of documents and was not surprised by the prosecution since he knew when he was separated from his job with credit union that his actions were under criminal investigation.

Affirmed.

1. Criminal Law—573

Speedy trial clause of Sixth Amendment is activated only when criminal prosecution has begun and extends only to those persons who have been accused in the course of that prosecution. U.S. C.A.Const. Amend. 6.

OUR "WATCHDOG" AGENCIES: THE NEED FOR OVERSIGHT

Mr. PERCY. Mr. President, Thomas Jefferson wrote that "the God who gave us life gave us liberty," but today we find our liberties as Americans eroded by an excessively large Government that seems increasingly insensitive to our basic freedoms.

On June 20 the Government Operations Committee completed hearings on a bill I introduced with Senator ERVIN to establish every American's right to keep personal information private and to safeguard that right with criminal and civil protections.

As we draft this vital legislation, we should also begin the long overdue examination of a problem which, though separate, is equally vital to the security of our personal freedoms. We must act now to gain control over the Government's dangerously proliferating police, investigative, and intelligence activities.

In September 1972, Attorney General Kleindienst submitted the First Annual Report to Congress on Federal Law Enforcement and Criminal Justice Activities. The report undertook the massive task of analyzing the crime reducing programs of 37 different departments and agencies within the Federal Government. The report was instrumental in describing many of our Federal law enforcement and criminal justice assistance programs, with an emphasis on crime control activities. However the report did not include any of the programs of the Defense Department that relate to intelligence activity, nor did it include the Central Intelligence Agency. It also includes many programs related to crime prevention—for example VISTA programs to assist ex-offenders—which would not properly be included in a study of Federal police, investigative, or intelligence activities. In addition, the method of presentation of the material, and the fact that it contains incomplete and now dated budget data, make it unwieldly and inappropriate as the basis of congressional overview and oversight activity, though it will be very valuable in providing descriptive background on a great many of the Federal Government's varied law enforcement activities.

A list compiled by the Library of Congress in 1973 showed that over 60 units within the Federal Government are involved in police, investigative, or intelligence work. Information about many of these units remains secret.

On April 9 of this year I requested a further report on Federal Law Enforcement Forces from the Congressional Research Service. The report found that the collective cost of 14 law enforcement groups was over $1 billion annually. However, the library was not able to include those departments and Federal agencies whose records are not available, even to an agent of Congress.

Though we know the FBI spent $357 million last year, we do not know the exact expenditures of other massive agencies—the CIA, Army Intelligence, Air Force Intelligence, and the National Security Agency—whose records are cloaked in secrecy. One estimate places the cost of all U.S. police, investigative, and intelligence units at over $6.2 billion annually.* The exact number of personnel employed remains unknown.

The massive size of our intelligence community, and its duplicative, overlapping nature is exemplified by the membership of the U.S. Intelligence Board, an interdepartmental body representing the major U.S. agencies having information gathering responsibilities. The Board includes members of the CIA, the State Department's division of Intelligence and Research, the Defense Intelligence Agency, the National Security Agency, the Atomic Energy Commission, the FBI, and the intelligence organizations of the Army, Navy, and Air Force.

In addition, divisions of domestic agencies such as the Treasury, Agriculture, the Interior, and the Civil Service Commission gather information relating to their employees, and to cases involving criminal violations.

The Government also supports police units such as the Border Patrol, the U.S. Customs Service, and the U.S. Marshals Service, which enforce Federal laws on the domestic and foreign level.

Much of the work carried out by these units is necessary, to be sure. For example, the Bureau of Narcotics and Dangerous Drugs plays a key role in stopping domestic and international drug trafficking. The Customs Service combats smuggling and frauds. Even the Postal Service does investigative work—conducting internal audits and postal inspections. The bulk of this work is legitimate and necessary to the national interest. But we have no comprehensive overview of the relationship of these agencies to each other. Moreover, we have shocking examples of abuse.

Information gathering on the domestic level has been coupled with improper intrusions by agencies normally involved in foreign intelligence. The case of the Army's investigation of the political activities of American civilians in Western Europe has been well documented.

The Federal Government units that do police, investigative, and intelligence work are proliferating. We find ourselves threatened by the specter of a "watchdog" Government, breeding a Nation of snoopers.

We are threatened because we do not know the facts about our intelligence community. Billions are appropriated each year, but we do not know enough about which agencies spend this money and what they spend it for.

There is an immediate, urgent need for a comprehensive accounting of the U.S. funds and Federal Government personnel devoted to police, investigative, and intelligence work. Congress is simply not performing the oversight functions our citizens expect of us.

As ranking minority member of the Senate Government Operations Committee, I am requesting the General Accounting Office to conduct a thorough investigation into the capabilities and demands of all units, departments, and agencies in the Federal Government charged with police, investigative and/or intelligence responsibilities. This comprehensive inquiry will attempt objectively to identify those units which receive Federal funds, and it will attempt to break down the annual budgetary requirements of all divisions and subdivisions within them. If the GAO is able to do its job, we will know for the first time the functions of these units, as well as the number of personnel employed or assigned to them.

In implementing this request the GAO will use the reports of the Attorney General and the Library of Congress to which I have referred above. These, in particular the report of the Attorney General, will be an extremely valuable basis from which the GAO can work in gathering, updating, and further quantifying the activities of all the Federal agencies in these fields.

When this basic compilation is completed, our committee can begin the necessary hearings and oversight activity. Our purpose should be to determine what Federal police and related activity is duplicative, what is excessive and unnecessary, what should be abandoned, and to recommend procedures for more adequate congressional control of these units. Particularly, costs can be cut substantially and efficiently greatly increased.

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* The figure is excerpted from *The CIA and the Cult of Intelligence* by Victor Marchetti and John D. Marks, (New York, A. Knopf, 1974), p. 80. On appeal, this information, which is an estimate of the authors, was reinstated in the book, after it had been deleted by Federal District Judge Albert Bryan in May, 1972.

There is a reasonable concern that the disclosure of such organizational information might threaten the national security of the United States. But we cannot allow the cloak of national security to cover up practices abusive to the civil rights of our citizens, as well as expenditures which are fiscally irresponsible.

A careful, tight definition of national security is needed, but I do not believe that disclosure of certain organizational information about our intelligence community would be harmful to our interests. Rather, such a disclosure would, for the first time, subject that community to comprehensive oversight which is the constitutional mandate of Congress.

Mr. President, I ask unanimous consent that the report of the Library of Congress and my letter to the GAO be printed in the RECORD at this point.

FEDERAL POLICE, INVESTIGATIVE, AND INTELLIGENCE AGENCIES

I. Federal Investigative Agencies; Compiled September, 1973, by the Library of Congress:

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service (Marketing Services, Perishable Agricultural Commodities Act Fund)
Animal and Plant Health Inspection Service.
Commodity Exchange Authority
Inspector General.
Packers and Stockyards Administration.

DEPARTMENT OF DEFENSE

Defense Intelligence Agency.
Defense Investigative Service.
National Security Agency.

DEPARTMENT OF THE AIR FORCE

Inspection and Safety Center.
Inspector General.
Office of Special Investigations.
Security Service.

DEPARTMENT OF THE ARMY

Criminal Investigation Command
Inspector General.
Military Policy Corps.

DEPARTMENT OF THE NAVY

Inspector General.
U.S. Marine Corps, Inspector General.
Naval Intelligence Command.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration.
Office of Civil Rights.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Assistant Secretary for Equal Opportunity.
Inspector General.

DEPARTMENT OF THE INTERIOR

Bureau of Mines.

DEPARTMENT OF JUSTICE

Antitrust Division.
Bureau of Narcotics and Dangerous Drugs.
Federal Bureau of Investigation.
Immigration and Naturalization Service.

DEPARTMENT OF LABOR

Labor-Management Services Administration.
Occupational Safety and Health Administration.
Office of Federal Contract Compliance.
Employment Standards Administration.

DEPARTMENT OF STATE

Bureau of Intelligence and Research.

DEPARTMENT OF TRANSPORTATION

Coast Guard.
Federal Highway Administration.
Federal Railroad Administration.
National Transportation Safety Board.

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms.
Bureau of Customs.
Bureau of Accounts.
Internal Revenue Service.
Office of the Comptroller of the Currency.
Secret Service.

ATOMIC ENERGY COMMISSION (REGULATION ACTIVITIES, SECURITY INVESTIGATIONS)

CABINET COMMITTEE ON OPPORTUNITIES FOR SPANISH SPEAKING PEOPLE

CIVIL AERONAUTICS BOARD

CIVIL SERVICE COMMISSION

Appeals Examining Office.
Bureau of Personnel Investigations.

COMMISSION ON CIVIL RIGHTS

ENVIRONMENTAL PROTECTION AGENCY

Assistant Administrator for Enforcement and General Counsel.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

EXECUTIVE OFFICE OF THE PRESIDENT

Office of Consumer Affairs.
Office of Economic Opportunity.

FEDERAL COMMUNICATIONS COMMISSION

Field Engineering Bureau.

FEDERAL MARITIME COMMISSION

FEDERAL POWER COMMISSION

FEDERAL RESERVE BOARD

FEDERAL TRADE COMMISSION

GENERAL ACCOUNTING OFFICE

GENERAL SERVICES ADMINISTRATION

Public Buildings Service.

INTERSTATE COMMERCE COMMISSION

NATIONAL LABOR RELATIONS BOARD

NATIONAL SECURITY COUNCIL

Central Intelligence Agency.

U.S. POSTAL SERVICE

Inspection Service.

PRICE COMMISSION

Now defunct.

SECURITIES AND EXCHANGE COMMISSION

U.S. TARIFF COMMISSION

II. Federal Law Enforcement Forces Compiled April, 1974 by the Library of Congress.

"Because of the varied nature of Federal activities it has been necessary over time to establish a number of organizations with protective and law enforcement responsibilities. The following is a brief survey of Federal law enforcement groups currently operating under statute or administrative order. A description of each group's responsibilities and, when possible information on size and budget is included."

FEDERAL BUREAU OF INVESTIGATION—DEPARTMENT OF JUSTICE

Budget

1973 actual, $357,516,000; 1974 estimate, $391,724,000; 1975 estimate, $435,600,000.

THE DRUG ENFORCEMENT ADMINISTRATION—DEPARTMENT OF JUSTICE

Budget

Law Enforcement Activity—Criminal Enforcement.

1973 actual, $59,787,000; 1974 estimate, $80,383,000; 1975 estimate, $104,109,000.

BORDER PATROL—IMMIGRATION AND NATURALIZATION SERVICE—DEPARTMENT OF JUSTICE

Budget

1973 actual, $39,336,000; 1974 estimate, $42,765,000; 1975 estimate, $50,908,000.

U.S. MARSHALS SERVICE—DEPARTMENT OF JUSTICE

Budget

1973 actual, $38,112,000; 1974 estimate, $45,244,000; 1975 estimate, $52,588,000.

U.S. SECRET SERVICE—DEPARTMENT OF THE TREASURY

Budget

1973 actual, $64,573,000; 1974 estimate, $66,588,000; 1975 estimate, $79,500,000.

U.S. CUSTOMS SERVICE—DEPARTMENT OF THE TREASURY

Budget

Investigations and Law Enforcement program.

1973 actual, $53,904,000; 1974 estimate, $54,343,000; 1975 estimate, $57,530,000.

NATIONAL PARK SERVICE—DEPARTMENT OF THE INTERIOR

Budget

Park Management Program.

1973 actual, $150,676,000; 1974 estimate, $187,493,000; 1975 estimate, $203,976,000.

FEDERAL PROTECTIVE SERVICE—GENERAL SERVICE ADMINISTRATION

Budget

Public Buildings Service.

Buildings Management—Operations and Protection of Government-Owned Spaced.

1973 actual, $247,655,000; 1974 estimate, $266,663,000.

Buildings Management—Rental, Operation and Protection of Leased Space.

1973 actual, $313,089,000; 1974 estimate, $362,656,000.

Security and Special Guarding.

1973 actual, $15,052,000; 1974 estimate, $15,900,000.

Federal Buildings Fund—Real Property Management and Operations.

1975 estimate, $417,651,000.

(Protection: 1975 estimate, $38,000,000).

SMITHSONIAN INSTITUTION

Budget

Science Information Exchange—Protection, general Administration, and Support (Salaries and Expenses).

1973 actual, $7,330,000; 1974 estimate, $8,240,000; 1975 estimate, $10,523,000.

National Gallery of Art—Management and Operation (Salaries and Expenses).

1973 actual, $5,545,000; 1974 estimate, $6,140,000; 1975 estimate, $6,631,000.

U.S. POSTAL SERVICE

Budget

Law Enforcement.

1973 actual, $80,703,000; 1974 estimate, $94,129,000; 1975 estimate, $111,129,000.

U.S. CAPITOL POLICE

Budget

Capitol Police General Expenses (Budget Request).

1973, $236,450; 1974, $394,295; 1975, $474,900.

Capitol Police Board (Budget Request).

1973, $1,009,865; 1974, $1,214,255; 1975, $1,214,255.

SUPREME COURT

SKY MARSHALS

OTHER

United States Coast Guard—Department of Transportation.

Federal Aviation Administration—Department of Transportation.

Metropolitan Police Department of the District of Columbia.

Military Police within the Armed Servies.

U.S. SENATE,
Washington, D.C.

HON. ELMER B. STAATS,
Comptroller General of the United States, GAO Building, Washington, D.C.

DEAR MR. STAATS: As Ranking Minority Member of the Government Operations Committee, I am concerned with the apparent proliferation of policing, investigative, and intelligence units within the United States

Government. This situation, more than ever before, threatens the basic liberties of Americans.

On April 9 of this year I requested a report on Federal Law Enforcement Forces from the Congressional Research Service. The report found that the collective cost of 14 law enforcement groups was over $1 billion annually. However, the report did not include those investigative departments and Federal agencies whose records are not available to the Library of Congress. Though we know that the FBI spent $357 million last year, we do not know the exact expenditures of such massive agencies as the CIA, NSA, DIA, Air Force Intelligence, and Army Intelligence, whose records are cloaked in secrecy. I am alarmed to learn that the cost of all U.S. intelligence units is estimated to be over $6.2 billion annually.

Another list compiled by the Library of Congress showed that over 60 units in the Federal Government are involved in investigative work. The spectre of proliferating government "watchdog" agencies is a concern for every American citizen.

The facts about our intelligence community have been hidden too long from comprehensive oversight, which is a mandate of the Government Operations Committee. I am therefore requesting that the GAO conduct a thorough investigation into the capabilities and the demands of all units, departments, and agencies in the Federal Government charged with police, investigative, and/or intelligence responsibilities. This comprehensive objective overview is necessary so that the relevant Congressional committees can begin effective oversight work on this critically important, sadly neglected area of government operations.

Your investigation should attempt to identify the following:

(1) All Federal police, investigative and intelligence units, departments and agencies.

(2) The annual budgets of such units, departments, and agencies, and a breakdown of the budgetary requirements of all divisions and subdivisions within them.

(3) Number of personnel employed or assigned to such units, departments, and agencies, and all divisions and subdivisions.

(4) The functions of all units, departments, and agencies and of their divisions and subdivisions, with particular reference to the covert capabitities of each.

I would appreciate your prompt action on this request.

Sincerely,

CHARLES H. PERCY,
U.S. Senator.

THE TRANSPORTATION BUDGET AND THE COAST GUARD

Mr. HATFIELD. Mr. President, last Friday, during the debate on the appropriations bill for the Department of Transportation, the Coast Guard, the FAA, and other related agencies, the Senate debated and passed an across-the-board cut in the bill by 3½ percent. The amendment passed by a vote of 58 to 15.

During the debate on the floor, I was involved in an Appropriations Committee markup of their Interior Appropriations bill. As a result, I was not able to speak about the effect of this kind of a cut on programs such as the Coast Guard. On Thursday, during debate on the Public Works Appropriations bill, where I serve as the ranking Republican, I had made quite clear my opposition to these broad across-the-board cuts, using the meat ax instead of the scalpel.

A cut of 3½ percent may not appear large until an examination is made of the Coast Guard budget. As a resident of the Oregon coastal town of Newport, I have a firsthand opportunity to view the Coast Guard at work every time I return home. Anyone who has seen a search and rescue operation knows the kind of unglamorous work that the Coast Guard does every day in saving lives and property along the Oregon Coast. I recall from earlier hearings about how the Coast Guard personnel in Oregon and Washington was working overtime—some very high weekly and monthly totals—because of manpower shortages. To think about cutting funds for this critical phase of Coast Guard operations is to ignore the lifesaving aspect of their work.

Foreign fishing surveillance along our coast by the Coast Guard has not been as effective as some of us would like, and has been hindered by lack of funding. Foreign fleets operate close to Oregon shores, and vacuum up every available fish, ruining the basic fish resource, and threatening the extinction of the Northwest fishery resource. If we cut Coast Guard funding, we risk curtailing this important task even more.

Along with this aspect of Coast Guard activities is the proposed extension of our coast limits to the 200-mile limit. As my colleagues are aware, the United States recently expressed its support for a 200-mile economic zone. If the Coast Guard undertakes to patrol this extended area, its funding would be strained even more. While I would hope that, if this were undertaken, the Coast Guard would seek added funds, it provides an idea of the dimensions of what the Coast Guard is trying to do.

I found out that the Coast Guard plans to spend about $11.7 million on its activities in Oregon under the 1975 budget. Some $9.1 million of this is for operating expenses. These funds are critical for the needs of the Coast Guard in Oregon. For example, about $1.5 million will be for the new Coast Guard Air Station at North Bend. Having sponsored the amendment while a member of the Commerce Committee, and then working on the appropriations for the funds for construction of this new station, I know that this $1.5 million is needed along our southern Oregon coast.

For these reasons, Mr. President, I opposed this cut, and I hope the Coast Guard funds are restored in conference.

"LEGEND OF SLEEPY HOLLOW" POSTAGE STAMP

Mr. JAVITS. Mr. President, on October 10, 1974, at Tarrytown, N.Y., the U.S. Postal Service will issue the "Legend of Sleepy Hollow" postage stamp. Washington Irving, the author of this legend, was born in New York City. I am very proud that the stamp will be issued at North Tarrytown, N.Y., the setting of the Sleepy Hollow story, and near Irving's home, "Sunnyside" at Irvington-on-the-Hudson. This is truly timely, in that the village of North Tarrytown is celebrating its centennial this year.

New Yorkers are proud that this stamp will be issued in our State, and I want to share with my colleagues in the Senate the announcement of this issue by the postal authorities.

I ask unanimous consent to have the announcement printed in the RECORD.

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

LEGEND OF SLEEPY HOLLOW STAMP TO BE ISSUED IN OCTOBER

A colorful new 10-cent U. S. postage stamp based upon one of America's best-known folk tales, Washington Irving's "Legend of Sleepy Hollow," will be issued on October 10, the U. S. Postal Service announced today.

The Sleepy Hollow stamp shows the "Headless Horseman" in pursuit of the timid schoolmaster, Ichabod Crane, with both figures silhouetted against a full moon.

Nationwide distribution will be made in time for the stamps to be used with Halloween cards. Letter carriers deliver large numbers of Halloween cards each year.

The stamp will be issued at North Tarrytown, New York, the setting of the Sleepy Hollow story and near Irving's home, "Sunnyside," at Irvington-on-the-Hudson. The village of North Tarrytown is celebrating its centennial this year.

In the opening paragraph of the story, Irving says "Tarry Town," was so called "we are told, in former days by the good housewives of the adjacent country from the inveterate propensity of their husbands to linger about the village tavern on market days."

The stamp is the sixth in the American Folklore Series, which began with the issuance of the Johnny Appleseed stamp in 1966. Other Folklore Series subjects were Davy Crockett in 1967, Daniel Boone in 1968, Grandma Moses in 1969 and Tom Sawyer in 1972.

Leonard Everett Fisher of Westport, Connecticut, designed the Sleepy Hollow stamp. Mr. Fisher also designed the 1972 Bicentennial block of four Colonial Craftsmen stamps. He is well known for illustrating books on colonial crafts and craftsmen.

The two riders on the stamp are shown passing under the menacing tulip tree which figured in ghost stories Ichabod Crane had heard in Tarrytown.

The tree and the figures are in black accented with blue. The moon is bright orange. At the lower left in yellow appear "10c" over "US" and, across the bottom in orange is "Legend of Sleepy Hollow."

Washington Irving, who was born 1783 at New York City, was an essayist, historian and writer of short stories. He was the representative of the polite and imitative tradition in American letters rather than the vigorous pioneer spirit which typified the writings of other American authors like James Fenimore Cooper.

At 17, Irving voyaged up the Hudson River, and the new and wild country had a witching effect upon his young imagination which was to bear fruit in later years as the charming stories he wrote of the region.

"The Legend of Sleepy Hollow" appeared in The Sketch Book, a collection of tales which Irving wrote under the pseudonym Geoffrey Crayon, Gent. His deft and whimsical humor and polished style made the work immediately popular on both sides of the Atlantic. The Sketch Book also contained "Rip Van Winkle," probably Irving's best known story.

The Sleepy Hollow stamps will be printed by offset and Giori presses. The offset colors are yellow, orange, blue, and black. Another black will be added by the Giori press.

The modeler was Peter Cocci and the en-

gravers were John Wallace (vignette) and Robert G. Culin (lettering). All three are with the Bureau of Engraving and Printing. There are 50 stamps to a pane, and there will be one plate number.

The image size is 1.44 x 0.84 inches (39.878 x 25.146 mm).

Requests for first day cancellations should contain the proper remittance and be addressed to "Sleepy Hollow Stamp, Postmaster, North Tarrytown, NY 10591." Requests must be postmarked no later than October 10, 1974.

TRIBUTE TO COL. RICHARD L. HUNT

Mr. JOHNSTON. Mr. President, on Wednesday, May 22, the residents of St. Mary Parish in Louisiana paid tribute to Col. Richard L. Hunt, New Orleans district engineer for the U.S. Army Corps of Engineers, for his tireless efforts in organizing and controlling the flood fight of 1973. I would like to take this opportunity to join in honoring Colonel Hunt without whose aid the record flood levels in the Atchafalaya Basin would have spelled certain disaster. Throughout the crisis period, Colonel Hunt remained easily accessible by all, helped in every way possible to avert the loss of life and property, and demonstrated the concern which did much to reassure the anxious residents of Morgan City, Berwick, and Patterson.

During the appreciation luncheon given by the people of St. Mary Parish, Colonel Hunt was presented a plaque with the following inscription:

Presented to Colonel Richard L. Hunt with sincere appreciation for consistent and successful efforts on behalf of the people of St. Mary Parish.

Signed: C. R. Brownell, Mayor of Morgan City; Ralph Guidry, Mayor of Berwick; Fred Allen Mensman, Mayor of Patterson; and Lee Champagne, President of the St. Mary Parish Police Jury.

Recently Colonel Hunt was named Lieutenant Governor of the Panama Canal Zone. His transfer marks the end of almost 3 distinguished years during which time he was responsible for flood protection in the State of Louisiana and parts of Mississippi, Arkansas, and Texas. Although his leaving will be the loss of everyone in Louisiana, we congratulate him on his new assignment.

IMPEACHMENT

Mr. TAFT. Mr. President, for the first time in over a century, impeachment articles have been voted by the House Judiciary Committee against a President of the United States.

It is now quite possible that we in the Senate may be called upon to sit in judgment of the articles.

It is somewhat difficult, when faced with a highly emotional issue such as this, to explain to constituents, pollsters, and newsmen that in keeping with the guidelines of our Constitution, I can not comment, express an opinion, nor react to every new allegation or comment arising out of the impeachment question.

To some this may seem to be shirking of responsibility to lead, or even hiding from the issue to avoid a confrontation. Nothing is farther from the point. To the contrary, those who would demand my answer now are asking me to abandon my duties and obligations as a U.S. Senator.

I would like to state for the record, for newsmen and constituents alike, that I will continue to adhere closely to a policy of judicial restraint in carrying out the grave responsibilities imposed upon me by the Constitution in judging the question of impeachment.

The Constitution is clear in stating the duties and obligations of a Senator are to maintain strict impartiality as to the merits of any allegations relating to claimed impeachable conduct by the President of the United States. A Senator sits as a judge and as a juror, in the literal sense of those words, if articles of impeachment are proferred by the House of Representatives, and, therefore, it is absolutely necessary that Senators withhold judgment on this issue and on the facts until the entire case is presented.

Therefore, I intend to take no position on impeachment unless and until charges are properly referred to the Senate and litigation of all the issues is completed.

Why should this case be an exception to our constitutional guarantees of due process of law? I wonder if any constituent or newsman would or has ever written to a judge, sitting in a trial, asking him before he has heard any evidence, how he will decide the case. It is somewhat frustrating to explain this analogy to those who "want to know now—definitively." The situation is almost exactly the same. I and my 99 colleagues in the Senate are going to be called upon to act as judges. It would be a dire violation of our responsibilities outlined by the Constitution, and to our whole system of law, to take any other position at this time.

ENERGY PRODUCTION AND ENVIRONMENTAL PROTECTION ARE COMPATIBLE—SENATOR RANDOLPH EXPLAINS NEW COAL CONVERSION AUTHORITY

Mr. RANDOLPH. Mr. President, one of the prominent facts of life of which we have become conscious this year is the permanent nature of the energy shortage. Since 1959, I have stressed that we need to look at our energy production and consumption patterns in a realistic manner. It took last winter's oil shortage, however, to awaken our country to the fact of our escalating dependence on foreign supplies of oil.

If we learned nothing else from that jolt it was that it is essential to develop energy self-sufficiency in the United States. Achieving this goal obviously will mean an increased reliance on coal, for it is by far our most abundant domestic energy source.

The burning of coal raises environmental questions with which we have been concerned for many years. The increased use of oil and natural gas, in fact, is partially attributed to environmental controls to reduce emissions from the combustion of coal. It was easier and, prior to last winter, cheaper to burn oil and natural gas than to invest in pollution control equipment that would allow the use of coal in an environmentally acceptable way. The higher prices for gas and oil plus the prospect of unreliable supplies make it essential that we take advantage of our Nation's vast supplies of coal.

Mr. President, the production of energy in sufficient amounts and the protection of the environment are not conflicting goals. We have the technological capability to burn coal cleanly and we have the financial resources to apply it.

This philosophy guided members of the Senate Committee on Public Works as we developed the Energy Supply and Environmental Coordination Act of 1974 earlier this year. A major feature of this legislation is authority for electric powerplants that have used oil and natural gas as fuel to convert to coal. These provisions were not arrived at hurriedly or in a panic induced by last winter's Arab oil embargo. Rather, they were written carefully with full consideration of all ramifications in our committee and in extensive conference with Members of the House of Representatives. We recognized the need for and included in this act strict safeguards to prohibit the widespread indiscriminate burning of coal without full protection of public health.

I regret that the legislation and its implications have been misunderstood in some instances. An article in the New York Times on July 11 left the impression that the Energy Supply and Environmental Coordination Act was, in effect, an abandonment of our commitment to environmental protection. I subsequently wrote to John R. Quarles, Deputy Administrator of the Environmental Protection Agency, seeking explanation of statements attributed to him in the article. I also asked for information on the agency's plans for implementing the act. Mr. Quarles' reply was fully responsive to my questions. I then wrote to the Times to clarify points made in the July 11 article, so that its readers would not be misled as to the act's intentions or the impact of this legislation.

Mr. President, I ask unanimous consent that the Times article and the letters to which I have referred be printed in the RECORD.

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

[From the New York Times, July 11, 1974]

LIMITED COAL USE IS SEEN FOR UTILITIES—U.S. AIDE SAYS FEW PLANTS MEET RULES

(By Edward Cowan)

WASHINGTON, July 10.—The second-ranking official of the Environmental Protection Agency says that "only a few" East Coast electric utilities will qualify, under new statutory standards to fuel their boilers with coal rather than oil.

John R. Quarles, the Deputy Administrator, acknowledged in an interview last week that one recent analysis by the agency put the number of eligible power stations at two. Mr. Quarles did not endorse that number, saying the question was still under study.

Unler the Energy Supply and Environmental Coordination Act of 1974, signed by President Nixon on June 22, the Environmental Protection Administrator has wide latitude to restrict utility conversions to coal from oil. The bill was a result of the recent oil shortage.

Within the agency, sentiments is against such conversions because the available coal

will be relatively high in sulphur content and few utilities have ordered or installed chemical "scrubbers" to keep sulphur oxides from escaping into the air.

In response to what the agency regards as an intensifying campaign by utilities for the installation of tall chimneys as an alternative to "scrubbers," E.P.A. physicians and scientists have made a new study. It tentatively concludes that "failure to control sulphur oxides emissions will result in thousands of excess deaths and millions of excess illnesses" during the period 1970–80.

"Excess" means deaths in addition to those that would occur if the emission and ambient air standards of the Clean Air Act are met.

However, the study itself acknowledged several "important caveats" and said the findings were "clouded by significant scientific uncertainties involving many key aspects of the sulphur oxides problem."

A copy of the study, labeled "preliminary draft," was made available to The New York Times.

Among the tentative findings were that failure to meet air standards would lead to 6,000 "excess or premature deaths" a year, aggravated heart and lung disorders in elderly persons, more frequent attacks of asthma among persons afflicted with that ailment and 400,000 to 900,000 attacks a year of "acute respiratory disorders like croup, acute bronchitis and pneumonia" among otherwise healthy children.

STANCE OF UTILITIES

The document was made available to rebut arguments by some electric utilities, most notably the American Electric Power Company, that the Clean Air Act should be amended to sanction "tall stacks, monitoring" and "so-called intermittent controls" of sulphur emissions as an alternative to strict emission limitations.

"Intermittent controls" would be a temporary shutdown of a generator or temporary use of stand-by stocks of low-sulphur coal.

A. Joseph Dowd, a vice president and general counsel of American Electric Power, which generates 93 per cent of its electricity from coal, told the Senate Public Works Committee on May 13 that under normal atmospheric conditions "tall stacks disperse emissions so widely in the atmosphere that their ground level concentrations are innocuous to human health."

The E.P.A. view is that such "dispersion" merely shifts the problem because eventually the sulphur oxides are changed into sulphuric acid, which falls as "acid rain."

Mr. Quarles recalled in the interview that during last winter's oil shortage "conversion captured a lot of publicity." In fact, he noted, a number of obstacles have become clear, including the unavailability of reliable supplies of coal, the growing fear of a coal shortage next winter and technical problems of converting to coal.

Federal Energy Administration officials said an initial December estimate that 48 East Coast oil-burning utilities could convert to coal within a year had been scaled back to 14 utilities having 22 generating units. Of the 14, five or six could convert within a few weeks if they could find coal, one expert said.

"The industry hasn't responded with the alacrity expected," Mr. Quarles commented. He acknowledged that his own agency as well as state and local environmental regulators had figured in the hesitation.

BALKING ON CONTRACTS

The utilities, he said, do not want to sign long-term contracts to buy coal until they are sure what air standards are going to be. Without such contracts, the coal companies will not open the new mines necessary to provide additional large volumes of coal.

Mr. Quarles said that "the country does need to use its coal" and that "from my viewpoint, giving heavy emphasis to environmental concerns, it probably would be desirable to have more conversions."

In most cases, that means installation of scrubbers to trap sulphur oxides, Mr. Quarles said. The largest coal-burning utilities, American Electric Power and the Tennessee Valley Authority, oppose scrubbers, he noted.

"Many in the industry believe they should not be required to install continuous reduction technology," Mr. Quarles commented. "There is a widespread belief that this is an unsound thing to do." The opponents have said that the scrubbers are not reliable and that installation costs would be high.

"There is some merit to their position as to the degree of development of the technology," Mr. Quarles said. Consequently, he went on, the E.P.A. would not insist on having scrubbers installed by every plant that failed to meet the Clean Air Act's July 1, 1975, "deadline" for satisfying air standards.

"I hope to avoid a knockdown, drag-out confrontation," Mr. Quarles said. "There has been some tendency within the industry to dig in their heels." He cited newspaper advertisements by American Electric Power saying that scrubbers created great volumes of sludge and that tall stacks would be cheaper and just as good.

"Many power plants can dispose of sludge," Mr. Quarles said. "They might have to buy some land or build some dikes. We already dispose of a lot of sludge in this country."

U.S. SENATE,
Washington, D.C., July 18, 1974.

Hon. JOHN R. QUARLES,
Deputy Administrator, Environmental Protection Agency, Washington, D.C.

DEAR MR. QUARLES: On June 26, 1974, the President signed the Energy Supply and Environmental Coordination Act of 1974. This measure represented a wholesome reconciliation by the Congress between national energy and environmental policies. Its successful implementation will represent a first step towards energy self-sufficiency through the increased use of domestic coal supplies consistent with the protection of public health and long-term environmental goals.

The success of this undertaking depends on the adoption of an affirmative stance towards the realistic implementation of this statute. I have discussed with John Sawhill, the Administrator of the Federal Energy Administration, the need to expeditiously designate those electric power plants that will be considered as potential candidates for conversion from oil and natural gas to coal. I was assured by Administrator Sawhill that his Agency would adopt a positive approach because of the significant contribution that this statute can supply in achieving the goals of Project Independence.

I am concerned by the recent article in the New York Times by Edward Cowan entitled, "Limited Coal Use is Seen for Utilities" (a copy is attached) which reports you as saying "only a few" East Coast electric utilities will qualify for conversion from oil to coal under the criteria contained in the Energy Supply and Environmental Coordination Act. This information does not coincide with the preliminary data furnished to the Committee on Public Works by Roger Strelow, Acting Assistant Administrator for Air and Waste Management, by letter of May 31, 1974. The letter indicated that some twenty-three electric power plants involving forty-two boilers conceivably might be converted provided, in some instances, additional particulate and/or sulfur oxide control systems are installed. It must be noted that a requirement for additional controls can be required by the Administrator of the Environmental Protection Agency as a condition of any conversions ordered by the Administrator of the Federal Energy Administration. This authority was intended to insure the protection of public health.

Thus, I am equally concerned by the statement in the New York Times article alluding to a draft EPA study that tentatively concluded that "failure to control sulfur oxide emissions will result in thousands of excess deaths and thousands of excess illnesses" during the period 1975–80." Even if this is theoretically possible, it cannot occur under the provisions of the Energy Supply and Environmental Coordination Act.

I would appreciate an indication of the plans of the Environmental Protection Agency for the implementation of this Act and whether the Times' article accurately indicates your position or that of your agency.

With best wishes I am,
Truly,

JENNINGS RANDOLPH,
Chairman.

U.S. ENVIRONMENTAL PROTECTION AGENCY,
Washington, D.C., July 30, 1974.

Hon. JENNINGS RANDOLPH,
Chairman, Committee on Public Works, U.S. Senate Washington, D.C.

DEAR MR. CHAIRMAN: Thank you for your letter of July 18 concerning the response of the Environmental Protection Agency to the Energy Supply and Environmental Coordination Act of 1974. We heartily agree with your assessment that this Act provides sound legal guidelines both for increasing the use of coal and for protecting public health and long-term environmental goals. Our plan for implementing this Act is based on a firm intent to comply with both the spirit and letter of its provisions.

An important part of our plan is to continue our close working relationship with those in the Federal Energy Administration responsible for oil-to-coal conversions. Recently, our Assistant Administrator for Air and Waste Management and FEA's Assistant Administrator for Energy Resource Development met to develop procedures that will assure a combined effort to respond promptly and accurately to the Act's requirements.

The twenty-three electric power plants referred to in your letter represent those which EPA and FEA agreed were the most likely candidates for conversion from among some sixty plants jointly considered. As you pointed out, additional particulate and/or sulfur dioxide control must be installed in some instances. Our Agency has given top priority to defining the environmental requirements which the most likely candidates must meet should they convert to coal. Specifically, we are determining which plants fall under the "regional limitations" provision in Section 3 of the Act. As you know, a plant to which this limitation applies cannot convert until it can meet the applicable State emission limit. Our preliminary analysis indicates that only four of the most likely candidates may escape a regional limitation requirement. This may be the basis for the "only a few" comment referred to in the New York Times article. My reference was to the few plants which might be able to convert before complying with State emission limits rather than to the totality of plants which can qualify for conversion. We are determining, consistent with the provisions of Section 4 of the Act, which State plans might be revised to impose less stringent emission limits on power plants and other major fuel burners. First priority for study is being given to convertible plants to which a "regional limitation" applies. High priority is also being given to preparing guidelines for arriving at the "primary standard conditions" applicable to convertible plants under Section 3 of the Act.

The reference in the New York Times article to increased illness and mortality relates to a preliminary study of measured sulfate concentrations and their relation to health. This study was given to the committee of conference which prepared the Energy

Supply and Environmental Coordination Act. We agree that the Act provides our Agency with adequate authority to prevent significant risk to health if conversions should result in unacceptable increases in sulfate concentrations. We are currently preparing guidelines for using this authority.

We believe that our actions described above are fully responsive to the Act and that our priorities are appropriate for the most rapid increase in the use of coal consistent with the required environmental considerations. Thank you for your interest in our program and the opportunity to define our position. I will be pleased to provide any further information which you may require.

Sincerely yours,

JOHN R. QUARLES, Jr.,
Deputy Administrator.

U.S. SENATE,
Washington, D.C. July 31, 1974.

EDITOR,
The New York Times,
New York, N.Y.

DEAR SIR: An article in the *New York Times* on July 11 has presented a distorted view of the contents and potential impact of the Energy Supply and Environmental Coordination Act, which became law on June 26. This legislation was developed by the Congress as a carefully balanced accommodation between energy and environmental realities. Its provisions are intended to ease the pressures of growing reliance on foreign fuel sources but in a manner that does not compromise our commitment to programs of environmental improvement.

A key feature of this measure permits some electric power plants to convert from oil and natural gas to coal as their fuel. This authority can be implemented, however, only under specified conditions.

First, as to energy effects, the Environmental Protection Agency and Federal Energy Administration agree that there are 23 power plants with 42 boilers which are the most likely candidates for conversion to coal. The *Times* story quoted EPA deputy Administrator John R. Quarles, Jr. as saying "only a few" plants would be converted. Mr. Quarles has informed me that this reference was just to the plants capable of conversion to coal without modification to comply with State emission limitations.

The Environmental Protection Agency is now evaluating the plants with potential for conversion and the environmental requirements they must meet under the provisions of the Act. There are numerous safeguards to assure that increased use of coal does not result in excessive environmental degradation.

As to the possibility of increased illness and death because of coal conversion, the preliminary study mentioned in the *Times* story was available to the conference which developed the final version of the legislation. I cannot agree that the Energy Supply and Environmental Coordination Act will bring about such conditions. The increased illness and death may be theoretically possible, but it cannot occur under the provisions which are clear in stating that the protection of public health has the highest priority.

Energy self-sufficiency and environmental protection are not conflicting ambitions. Both can be properly achieved and the new law provides the mechanics for adjusting to changing conditions without abandoning either goal.

Truly,

JENNINGS RANDOLPH,
Chairman,.

PHYSICIAN-EXPANDER PROGRAM

Mr. HUGH SCOTT. Mr. President, in view of the growing concern about the need for qualified medical help in rural areas, I want to bring to the attention of my colleagues an excellent program recently started in western Pennsylvania by Dr. Jan R. J. deVries. Called the physician-expander program, it is designed to maximize the skills and experience of trained physicians by allowing them to carefully train and supervise nurses and physician-assistants to gradually assume some of the doctor's duties.

It is similar to a paramedic program, and while it presents only one solution to this growing problem, I believe it deserves further study. I ask unanimous consent that a brief explanation of how this program works, as described by Dr. deVries in Pennsylvania Medicine, be printed in the RECORD.

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

PHYSICIAN EXPANDER CONCEPT PASSES TEST

(By Jan R. J. deVries, M.D.)

The Medical Associates of Boswell, a rural, two-physician practice, now serves about 12,000 patients in the Laurel Highlads of Western Pennsylvania. The circumstance of a neighboring physician's decision to leave the area precipitated the inclusion of his office as a second office by the associates and the hiring of a physician expander.

The physician expander had been employed as an R.N. at our local hospital for about twelve years; the last ten years she was in charge of the medical floor. She was chosen because of qualities of personality: warmth of human concern, eagerness to learn, and a healthy knowledge of her own capabilities and limitations.

During November 1971, the physician expander accompanied the physician who was making hospital rounds in the morning and received bedside instruction, much as an intern or a preceptee would. Later each day she came to the medical office and was shown practices and routines of work and was introduced to our patients. Figure 1 shows the text, displayed in our office, explaining this idea to our patients.

During this month a protocol of "standing orders" was developed, so that by December she could start seeing her own patients by appointments. In December, when the other office was incorporated into the practice, she stopped going to the hospital and saw office patients only. Starting in February, she no longer was guided "step by step," although she continues to work under supervision. She seeks consultation in all cases not specifically covered by her standing orders. In July 1972 a second physician expander was added who is a graduate of a Physician Assistant Program. She has seen patients in a similar fashion since September. Since then, the two physician expanders spend a few hours each day in the hospital; each of them is now assigned to one of the two offices.

DATA COLLECTION

Data were collected from our books to evaluate the effect of the addition of the physician expander on the total amount of services rendered as well as on the cost of these services. In analyzing the total services rendered, we used the number of patients seen in the office and hospital only, excluding housecalls as well as visits for scheduled treatment by office nurses (injections and physical therapy) or special tests (GTT, BSP, Pro-time). In the cost analysis, we used recorded charges for services performed, with an adjustment to account for a change in prices which became effective during the fiscal year July 1971–June 1972.

This fiscal year is divided into three groups of months because of the changing activity of the physician expander as her role in the practice increased. In July, August, September, and October, the physician expander had no function in the delivery of health care by the associates. The physicians were themselves working at what they perceived as the peak of their capacities. In November, December, and January, the physician expander was gradually "eased" into service, with the physicians doing some overtime duty because of the new office and because of the season of the year. The months of February, March, April, May, and June developed a "steady state" of service by two physicians and one physician expander.

THE PRICE OF LIBERTY

Mr. McGOVERN. Mr. President, the August 2, 1974, issue of the Washington Post contains a letter to the editor written by my 19-year-old daughter, Mary.

She wrote this letter of her own volition and without assistance. With due allowance for paternal prejudice, I think it is worth reprinting in the CONGRESSIONAL RECORD. I therefore ask unanimous consent that the letter be printed in the RECORD.

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

PRICE OF LIBERTY

Inadvertently, President Nixon has done a good thing for the people of this country. Through his overly-ambitious, power consuming White House policies he has brought on Watergate. And it is because of Watergate that the American people woke up and realized the dangerous direction we were headed. Only by having our liberty assaulted by the Nixon administration were we able to see how precious our Constitution really is—and how vulnerable. Like it says on the statue outside the Archives, home of our Constitution and Bill of Rights, "The price of liberty is eternal vigilance."

I think because of these horrifying revelations the American people are truly learning the real meaning and importance behind these words.

Our nation has a long and difficult road ahead—it won't be easy or pleasant. But, just as George McGovern wished, America is at last coming home.

MARY MCGOVERN.

WASHINGTON.

(Mary McGovern is the daughter of Sen. George McGovern, D.-S. Dakota.)

TELEPHONE STRIKE AVERTED

Mr. PERCY. Mr. President, I am gratified that the potentially imminent strike by members of the Communications Workers of America against the Bell Telephone System was averted by a tentative agreement on a new 3-year contract, signed last night.

The tentative contract will cover up to 750,000 telephone workers. Had agreement not been reached, it would have affected operator, repair and installation service and resulted in great inconvenience and some possible hardship to the millions of Americans who depend on quick and efficient telephone service, particularly those who would need a new installation. A strike could have also caused substantial financial loss to both the company and the striking workers.

I commend Mr. Glen Watts, the new president of CWA and Mr. John DeButts, chairman, American Telephone and Telegraph, for their statesmanship in the

national interest as well as in the interest of all AT&T customers and employees.

In addition to all union and management representatives, I believe that special thanks and commendation should go to William Usery, head of the Federal Mediation and Conciliation Service, for his assistance in hammering out an agreement and averting a nationwide strike.

Idle work days caused by strikes ran at the rate of 7,345,000 this June, as compared with 2,173,000 days in June of 1973. The materials and other shortages now plaguing our economy require that industry operate at full capacity. I am hopeful that the settlement between the CWA and the Bell System represents a new spirit of understanding and conciliation between labor and management, and that the recent increase in work days lost will subside substantially.

Let us hope also that wage increases can be offset by productivity increases as has been accomplished so successfully in the past by this great industry.

FAMILY REUNION DAY

Mr. HARRY F. BYRD, JR. Mr. President, I would like to bring to the attention of my colleagues that Sunday, August 11, families in the United States and Canada will again celebrate Family Reunion Day.

The observance was first held 7 years ago following a Family Reunion Day Proclamation by President Johnson. Kiwanis International and Freedoms Foundation at Valley Forge sponsored the observance with the help of many other organizations.

I am proud of the fact that a distinguished Virginian, Dr. William M. Eagles, of Richmond, Va., is serving as president of Kiwanis International.

Family Reunion Day was originated by Kiwanis International and Freedoms Foundation at Valley Forge.

Kiwanis International President William M. Eagles, M.D. said in a recent statement:

No institution is as old or has made such important contributions to the evolution of society as the family. We can be proud of the fact that Kiwanians have been the leaders in initiating the Family Reunion Day idea and all that it stands for—the affirmation of the family as the ultimate influence in teaching good citizenship, morality and personal integrity to our children and to succeeding generations.

Freedoms Foundation president, General Harold K. Johnson, USA Retired, emphasized the importance of the family, saying:

Families are the basic unit of society. They are the wellspring of the nation's values and its moral strength. Our capacity to love our fellowman, our sense of integrity, our regard for the dignity of the other person, and our responsibility for authority are learned first in the family circle.

General Johnson continued:

The emphasis each of us can give to the family on this day is a constructive action. Strong families are our most valuable asset as we work to improve the quality of life in every community.

Strong families are the keystone of a healthy nation. They determine the moral level for the conduct of life for both private and public action. Strong families hold the key for reduced crime, lower divorce rates, control of drug abuse and violence and many of our other serious social ills.

I commend Kiwanis International and Freedoms Foundation for their continuing sponsorship of Family Reunion Day—a worthwhile observance indeed.

CONGRESSIONAL MEDAL OF HONOR PRESENTATIONS

Mr. TOWER. Mr. President, on July 17, at Blair House the Vice President of the United States, the Under Secretary of the Navy and the Under Secretary of the Army participated in a ceremony during which seven American fighting men—who made the ultimate sacrifice—received posthumous Medals of Honor.

I think it appropriate that the remarks made at the ceremony and the citations for each of the men be made available to all of my colleagues. I ask unanimous consent that they be printed in the RECORD.

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

REMARKS BY VICE PRESIDENT GERALD R. FORD

As you travel the circle around the Lincoln Memorial to cross Memorial Bridge, there stand two handsome monuments at the portals of the Bridge. Carved in the stone at the base of one reads the word "Valor" and at the base of the other—the word "Sacrifice."

These magnificent pieces of statuary were presented to the people of the United States by the people of Italy in grateful appreciation of the valor and sacrifice of those Americans who served—and many of whom died—in Italy during World War II.

We assemble here at this historic place, rich with reminders of our Nation's past, to honor and pay tribute to the valor and sacrifice of seven Americans who, in acts of courage and selfless dedication, gave their lives in the service of this country and the people of another nation nearly half a world away.

We also meet here to give our thanks to the families of these men. For we also know they have shared the brunt of battle.

Lincoln, in his simple but eloquent way, would express—in words that have never been surpassed—the tribute of a Nation to its sons who fell in battle. Despite his modest prediction in the Gettysburg Address, the world has surely noted and long remembered what he said there.

Today we assemble here for another historic tribute in our Nation's history. Nor can we further consecrate or dedicate a ceremony that is both solemn and significant.

Solemn through the respect we hold for those we honor here; significant in the meaning this moment has for each of us.

These seven Americans showed not only sacrifice, but valor, to their countrymen. For such conspicuous bravery and selfless devotion there is presented posthumously, on behalf of the Congress of the United States, the Medal of Honor.

A medal whose award was first authorized in 1862 by the Congress. A medal to be given on behalf of the people of this country as their highest award for "Courage above and beyond the call of duty."

Writing to a mother during the Civil War who had lost two sons in the Union Army, Lincoln closed his letter by noting the "solemn pride that must be yours to have laid so costly a sacrifice upon the altar of freedom."

It is in this spirit—on behalf of the President and the Congress of the United States—that I present these Medals of Honor.

[Reader, Under Secretary of the Army Herman R. Straudt]

CITATION

The President of the United States of America, authorized by Act of Congress, has posthumously awarded in the name of Congress the Medal of Honor to the following members of the United States Army for conspicuous gallantry and intrepidity in action at the cost of their lives above and beyond the call of duty.

LIEUTENANT COLONEL ANDRE C. LUCAS

While serving as the commanding officer of the 2nd Battalion, 506th Infantry, 101st Airborne Division, at fire support base Ripcord in the Republic of Vietnam during the period 1 to 23 July 1970.

STAFF SERGEANT HAMMETT L. BOWEN, JR.

While serving as a platoon sergeant in Company C, 2nd Battalion, 14th Infantry, 25th Infantry Division, in Binh Duong Province, Republic of Vietnam on 27 June 1969.

STAFF SERGEANT JOHN G. GERTSCH

While serving as a platoon sergeant and platoon leader in Company 1, 1st Battalion, 327th Infantry, 101st Airborne Division, in A Shau Valley, Republic of Vietnam during the period 15 to 19 June 1969.

SERGEANT MITCHELL W. STOUT

While serving as a member of Battery C, 1st Battalion, 44th Artillery of Khe G Bridge, Republic of Vietnam on 12 March 1970.

SPECIALIST FOUR DANNY J. PETERSEN

While serving as an armored personnel carrier commander in Company B, 4th Battalion, 23rd Infantry, 25th Infantry Division in Tay Ninh Province, Republic of Vietnam on 9 January 1970.

PRIVATE FIRST CLASS DAVID F. WINDER

While serving as senior medical aidman with Company A, 3rd Battalion, 1st Infantry, American Division, in the Republic of Vietnam on 13 May 1970.

[Reader, Under Secretary of the Navy David S. Potter]

From the United States Marine Corps:

PRIVATE FIRST CLASS RALPH E. DIAS

While serving as a rifleman with Company D, First Battalion, Seventh Marines, First Marine Division in the Republic of Vietnam on 12 November 1969.

Their conspicious gallantry, undaunted concern for their comrades, and intrepidity at the risk of their lives above and beyond the call of duty, are in keeping with the highest traditions of the military service, and reflect great credit on themselves, their units, and the Armed Forces of the United States.

PRIVATE FIRST CLASS DAVID F. WINDER

The President of the United States of America, authorized by Act of Congress, March 3, 1863, has posthumously awarded in the name of The Congress the Medal of Honor to Private First Class David F. Winder, United States Army, for conspicuous gallantry and intrepidity in action at the risk of his life above and beyond the call of duty.

Private First Class David F. Winder, Headquarters and Headquarters Company, 3d Battalion, 1st Infantry, 11th Infantry Brigade, Americal Division, distinguished himself on May 13, 1970 while serving in the Republic of Vietnam as a senior medical aidman with Company A, 3d Battalion, 1st Infantry, Americal Division. After moving through

freshly cut rice paddies in search of a suspected company-sized enemy force, the unit started a thorough search of the area. Suddenly they were engaged with intense automatic weapons and rocket propelled grenade fire by a well entrenched enemy force. Several friendly soldiers fell wounded in the initial contact and the unit was pinned down. Responding instantly to the cries of his wounded comrades, Private Winder began maneuvering across approximately 100 meters of open, bullet-swept terrain toward the nearest casualty. Unarmed and crawling most of the distance, he was wounded by enemy fire before reaching his comrades. Despite his wounds and with great effort, Private Winder reached the first casualty and administered medical aid. As he continued to crawl across the open terrain toward a second wounded soldier he was forced to stop when wounded a second time. Aroused by the cries of an injured comrade for aid, Private Winder's great determination and sense of duty impelled him to move forward once again, despite his wounds, in a courageous attempt to reach and assist the injured man. After struggling to within ten meters of the man, Private Winder was mortally wounded. His dedication and sacrifice inspired his unit to initiate an aggressive counterassault which led to the defeat of the enemy. Private First Class Winder's conspicuous gallantry and intrepidity in action at the cost of his life were in keeping with the highest traditions of the military service and reflect great credit on him, his unit and the United States Army.

SERGEANT MITCHELL W. STOUT

The President of the United States of America, authorized by Act of Congress, March 3, 1863, has posthumously awarded in the name of The Congress the Medal of Honor to Sergeant Mitchell W. Stout, United States Army, for conspicuous gallantry and intrepidity in action at the risk of his life above and beyond the call of duty.

Sergeant Mitchell W. Stout, Battery C, 1st Battalion, 44th Artillery, distinguished himself on March 12, 1970 during an attack by a North Vietnamese Army Sapper company on his unit's firing position at Khe Gio Bridge, Republic of Vietnam. Sergeant Stout was in a bunker with members of a searchlight crew when the position came under heavy enemy mortar fire and ground attack. When the intensity of the mortar attack subsided, an enemy grenade was thrown into the bunker. Displaying great courage, Sergeant Stout ran to the grenade, picked it up, and started out of the bunker. As he reached the door, the grenade exploded. By holding the grenade close to his body and shielding its blast, he protected his fellow soldiers in the bunker from further injury or death. Sergeant Stout's conspicuous gallantry and intrepidity in action, at the cost of his own life, are in keeping with the highest traditions of the military service and reflect great credit upon him, his unit and the United States Army.

STAFF SERGEANT JOHN G. GERTSCH

The President of the United States of America, authorized by Act of Congress, March 3, 1863, has posthumously awarded in the name of The Congress the Medal of Honor to Staff Sergeant John G. Gertsch, United States Army, for conspicuous gallantry and intrepidity in action at the risk of his life above and beyond the call of duty.

Staff Sergeant John G. Gertsch, Company E, 1st Battalion, 327th Infantry, 101st Airborne Division, distinguished himself during the period 15 to 19 July 1969 while serving as a platoon sergeant and platoon leader during combat operations in the A Shau Valley, Republic of Vietnam. During the initial phase of an operation to seize a strongly defended enemy position, Sergeant Gertsch's platoon leader was seriously wounded and lay exposed to intense enemy fire. Forsaking his own safety, without hesitation Sergeant Gertsch rushed to aid his fallen leader and dragged him to a sheltered position. He then assumed command of the heavily engaged platoon and led his men in a fierce counterattack that forced the enemy to withdraw. Later, a small element of Sergeant Gertsch's unit was reconnoitering when attacked again by the enemy. Sergeant Gertsch moved forward to his besieged element and immediately charged, firing as he advanced. His determined assault forced the enemy troops to withdraw in confusion and made possible the recovery of two wounded men who had been exposed to heavy enemy fire. Sometime later his platoon came under attack by an enemy force employing automatic weapons, grenade, and rocket fire. Sergeant Gertsch was severely wounded during the onslaught but continued to command his platoon despite his painful wound. While moving under fire and encouraging his men he sighted an aidman treating a wounded officer from an adjacent unit. Realizing that both men were in imminent danger of being killed, he rushed forward and positioned himself between them and the enemy nearby. While the wounded officer was being moved to safety Sergeant Gertsch was mortally wounded by enemy fire. Without Sergeant Gertsch's courage, ability to inspire others, and profound concern for the welfare of his men, the loss of life among his fellow soldiers would have been significantly greater. His conspicuous gallantry, extraordinary heroism, and interpidity at the cost of his life, above and beyond the call of duty, are in the highest traditions of the United States Army and reflect great credit on him and the Armed Forces of his Country.

STAFF SERGEANT HAMMETT L. BOWEN, JR.

The President of the United States of America, authorized by Act of Congress, March 3, 1863, has posthumously awarded in the name of The Congress the Medal of Honor to Staff Sergeant Hammett L. Bowen, Jr., United States Army, for conspicuous gallantry and interpidity in action at the risk of his life above and beyond the call of duty.

Staff Sergeant Hammett L. Bowen, Jr., distinguished himself on 27 June 1969 while serving as a platoon sergeant in Company C, 2d Battalion, 14th Infantry, 25th Infantry Division, during combat operations in Binh Duong Province, Republic of Vietnam. Sergeant Bowen's platoon was advancing on a reconnaissance mission into enemy controlled terrain when it came under the withering cross fire of small arms and grenades from an enemy ambush force. Sergeant Bowen placed heavy suppressive fire on the enemy positions and ordered his men to fall back. As the platoon was moving back, an enemy grenade was thrown amid Sergeant Bowen and three of his men. Sensing the danger to his comrades, Sergeant Bowen shouted a warning to his men and hurled himself on the grenade, absorbing the explosion with his body while saving the lives of his fellow soldiers. Sergeant Bowen's extraordinary courage and concern for his men at the cost of his own life served as an inspiration to his comrades and are in the highest traditions of the military service and the United States Army.

LT. COL. ANDRE C. LUCAS

The President of the United States of America, authorized by Act of Congress, March 3, 1863, has posthumously awarded in the name of Congress the Medal of Honor to Lieutenant Colonel Andre C. Lucas, United States Army, for conspicuous gallantry and intrepidity in action at the risk of his life above and beyond the call of duty:

Lieutenant Colonel Andre C. Lucas, Infantry, distinguished himself by extraordinary heroism during the period July 1 to 23, 1970, while serving as the Commanding Officer, 2nd Battalion, 506th Infantry, 101st Airborne Division, at Fire Support Base Ripcord in the Republic of Vietnam. Although the fire base was constantly subjected to heavy attacks by a numerically superior enemy force throughout this period, Lieutenant Colonel Lucas, forsaking his own safety, performed numerous acts of extraordinary valor in directing the defense of the allied position. On one occasion, he flew in a helicopter at treetop level above an entrenched enemy directing the fire of one of his companies for over three hours. Even though his helicopter was heavily damaged by enemy fire, he remained in an exposed position until the company expended its supply of grenades. He then transferred to another helicopter, dropped critically needed grenades to the troops, and resumed his perilous mission of directing fire on the enemy. These courageous actions by Lieutenant Colonel Lucas prevented the company from being encircled and destroyed by a larger enemy force. On another occasion, Lieutenant Colonel Lucas attempted to rescue a crewman trapped in a burning helicopter. As the flames in the aircraft spread, and enemy fire became intense, Lieutenant Colonel Lucas ordered all members of the rescue party to safety. Then, at great personal risk, he continued the rescue effort amid concentrated enemy mortar fire, intense heat, and exploding ammunition until the aircraft was completely engulfed in flames. Lieutenant Colonel Lucas was mortally wounded while directing the successful withdrawal of his battalion from the fire base. His actions throughout this extended period inspired his men to heroic efforts, and were instrumental in saving the lives of many of his fellow soldiers while inflicting heavy casualties on the enemy. Lieutenant Colonel Lucas' conspicuous gallantry and intrepidity in action, at the cost of his own life, were in keeping with the highest traditions of the military service and reflect great credit on him, his unit and the United States Army.

PFC. RALPH E. DIAS

The President of the United States in the name of The Congress takes pride in presenting the MEDAL OF HONOR posthumously to Private First Class Ralph E. Dias, United States Marine Corps, for service as set forth in the following citation:

For conspicuous gallantry and intrepidity at the risk of his life above and beyond the call of duty, while serving as a Rifleman with Company D, First Battalion, Seventh Marines, First Marine Division in the Republic of Vietnam on 12 November 1969. As a member of a reaction force which was pinned down by enemy fire while assisting a platoon in the same circumstance, Private First Class Dias, observing that both units were sustaining casualties, initiated an aggressive assault against an enemy machine gun bunker which was the principal source of hostile fire. Severely wounded by enemy snipers while charging across the open area, he pulled himself to the shelter of a nearby rock. Braving enemy fire for a second time, Private First Class Dias was again wounded. Unable to walk, he crawled fifteen meters to the protection of a rock located near his objective and, repeatedly exposing himself to intense hostile fire, unsuccessfully threw several hand grenades at the machine gun emplacement. Still determined to destroy the emplacement, Private First Class Dias again moved into the open and was wounded a third time by sniper fire. As he threw a last grenade which destroyed the enemy position, he was mortally wounded by another enemy round. Private First Class Dias' indomitable courage, dynamic initiative, and selfless devotion to duty upheld the highest traditions of the Marine Corps and the United States Naval Service. He gallantly gave his life in service to his country.

CIVIL SERVICE RETIREES

Mr. GURNEY. Mr. President, for some time now, I have been interested in legislation affecting Federal retirees. It seems to me that in our zeal to do what is fair for the largest segment of our retired population—those receiving social security benefits—we forget those smaller retiree groups like our civil service retirees.

A case in point is S. 628. This bill, the Senate version of which would simply eliminate the survivorship reduction in the retiree's benefits during periods of nonmarriage, was introduced on January 31, 1973. We passed it in the Senate on July 31, 1973. It passed the House, amended, in April. The question I keep getting from Federal retirees in Florida and across the Nation is why is it taking so long? If the Senate cannot agree to the more generous House amendment, which appears to be the case, then let us admit it.

Personally, I like the House version of the bill. Under the social security system, a retiree need not take a reduction in the retirement benefit to set aside a widow's benefit for the surviving spouse. Under civil service, he does. If the House version passes, this survivorship benefit would be automatic.

To carry the comparison between civil service and social security a little further, Federal retirees' widows receive an amount equal to 55 percent of the retirees' entitlement. Under social security the wife receives an amount equal to 50 percent of the husband's entitlement when he is still living. No such thing under civil service.

We may not be able to rectify all the inequities, and surely not in this Congress. It does seem to me, however, that S. 628 could correct one of the problems, and I hope we can move on it quickly.

I have a letter here from Mr. Herb Folken, legislative chairman of the Florida Federation of Chapters, National Association of Retired Federal Employees. Mr. Folken sets out what I think are probably the feelings of a large number of Federal retirees, on the question of S. 628. I ask unanimous consent that his letter be printed at the close of my remarks.

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

NATIONAL ASSOCIATION OF
RETIRED FEDERAL EMPLOYEES,
Longwood, Fla., June 26, 1974.

Hon. EDWARD J. GURNEY,
U.S. Senate,
Washington, D.C.

DEAR SENATOR GURNEY: This morning I asked Mrs. Taylor to relay a message to you via the telephone and Ruby Simpson concerning the hiatus in which we find S. 628. This bill, as you will recall, passed both Houses by lopsided margins but in vastly differing versions. On May 28 or 29 Senator McGee got the Senate, "in a minute" to revert the bill to the House. We understand that the House has now appointed conferees but that the Senate has taken no similar action. To kill the bill now by indefinite delay would seem to thwart the will of the Senate favoring the simpler bill as well as the House in their greater generosity. Surely there must be a suitable point of compromise and we urge your good offices to assure that a conference proceeds without further delay.

The House version cannot be all bad when so staunch a conservative as Mr. Gross voted for it in committee and spoke for it "sometime"—as a bill that was needed for comparable treatment of retirees but "we can't afford it now." Further, we have seen repeated reference to the House bill as twice as expensive as the Senate version. In view of the good each would do, if that estimate is correct, the House version is far the better bargain. Nonetheless, far better the Senate version out of this session than deferral of the whole package.

Sincerely,

HERBERT G. FOLKEN,
Chairman, Federal Legislation.

PSRO TROUBLES IN VIRGINIA

Mr. HARRY F. BYRD, JR. Mr. President, in recent weeks I have received a growing flow of mail from physicians and others in the medical profession concerning professional standards review organizations—PSRO's. None of it is complimentary to the program.

In the Monday, July 29, edition of the Harrisonburg, Va. Daily News-Record, an article on PSRO's was printed. I ask unanimous consent that it be printed at this point in the RECORD.

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

IMPOSED REVIEW DISTURBS DOCTORS
(By Steve Beckner)

"Another example of increased bureaucratic control."

"It takes away individual choice."

"It makes us follow a cookbook type of medicine."

"It's going to increase the costs and make it more difficult to treat a patient."

"It will require a lot of time and effort."

"They're not interested in patient care, they're interested in saving costs."

"It" is the Professional Standards Review Organization (PSRO). "They" are officials of the Department of Health, Education and Welfare (HEW) which administers PSRO.

And the above reactions to the program are those of local physicians.

The PSRO idea was presented to Congress "to promote effective, efficient and economical delivery of health care" and enacted as an amendment to the 1972 Social Security Act. Since then, over 100 bills have been introduced to repeal or modify PSRO.

A PSRO is to specify the type, amount and cost of treatment for every patient admitted to hospitals under Medicare or Medicaid. Eventually it will apply to all patients in or out of hospitals and doctors are expected to conform to these norms of treatment.

As described by a Harrisonburg gynecologist, "They have the crazy idea that you can't admit a patient without him going through a screening committee."

He joined many of his colleagues in charging that HEW is interested in cost control, not quality patient care.

Last January, county medical societies were to form PSROs throughout the nation in areas designated by HEW.

On July 11, physicians from an area extending from Winchester to Lexington and from Charlottesville to Covington gathered in Harrisonburg to take the initial steps in forming a PSRO for Area 1, one of five areas in Virginia.

After the group receives a non-profit corporation charter and elects officers, it will receive a grant from HEW to study medical procedures. After demonstrating its competence, it will become a PSRO in good standing—a procedure that may take two or more years.

The action came on the heels of the American Medical Association's national convention in June, where a large block of doctors fought to pass a resolution of noncooperation with the program.

A majority of the AMA decided that it would be better to cooperate and guide the program's direction than to have the HEW enforce its own standards.

"The usual kind of government expertise was used to divide the state," said Dr. George Nipe of Harrisonburg, district counselor in the Virginia Medical Society who led the organization of the Area 1 PSRO. Its boundary "goes down the middle of counties and cities" and some doctors are assigned to areas where they reside, even though they work in another area.

Dr. Donald Callahan noted that the state society's request for one state-wide PSRO was turned down "for no good reason."

"The bad thing is, it tries to make us conform with the standards at the University of Virginia Medical Center and this is not always good," said another local doctor who is a member of a Rockingham Memorial Hospital committee now drawing up the criteria.

"Their situation and ours are two different things," he explained. "We're a community-oriented hospital and they're a teaching institution.

"When you're talking about this large an area, the type of medical practice acceptable in Covington is not the same as at U.Va.," he continued.

Traditionally, he said, malpractice has been defined as practicing sub-par medicine for the area in which you are practicing," but under PSRO differences in available facilities and medical talent are not taken into account.

Because the "criteria" for each illness are set up by each PSRO, they may vary from area to area, he added.

"There is no geographical, cultural, social or any other sort of relationship among these people (in Area 1)," said Dr. Frank Gearing, a radiologist who heads the local committee. "It's really ridiculous."

The criteria for treatment will act as a "two-edged sword," another committee member explained. Doing either more or less than the criteria specify can get a physician into difficulty.

"If you came to me with a bellyache and I put you in the hospital for possible stomach cancer, PSRO says you should have a certain white and red cell count and a certain number of blood tests. If I didn't do this, even though in my opinion it wasn't necessary to stick you that many times, I'd be in trouble," he explained.

On the other hand, "If I put you in with a diagnosis of possible appendicitis and also decide to test for peptic ulcer and run X-rays and they come up negative, PSRO might say, 'Why did you do this? You ran his medical bill up $50.'"

He predicted that the effect of the criteria will be to take away individual choice and professional judgment. "From now on, I'm going to look at the criteria and make sure I follow every one of them so I'm not considered negligent, rather than doing what I feel is needed."

He said that violators will be subject to possible malpractice suits and revocation of licenses.

The system "will work sort of like a computer," he explained. "A secretary will check to see if all the criteria are met. If not, they (the physician's charts on each patient) will be knocked out."

Physicians said another factor against PSROs is that medicine is not an exact

science due to lack of complete knowledge and disparities among individual patients.

"There's so many sides to every question and so many considerations in the treatment of a patient that you can't put on paper or describe," said Dr. Henry Deyerle.

Noting that 4,500 students, each with undergraduate grade averages above 3.0, are competing for 144 places, in the University of Virginia Medical College, one committee member called PSRO "an insult to their intelligence," adding that physicians regulate themselves as a matter of professional pride.

This theme was echoed by J. Nelson Liskey, administrator of Rockingham Memorial Hospital, who noted, "We're doing utilization review now." The hospital's medical audit committee already monitors diagnoses and length of stay in the hospital, he said.

"We police ourselves," a gynecologist said. "We're up to our necks in (review) committees, and we're going to keep them." He cited the Rockingham County Medical Society's tissue committee, which reviews physicians' treatment of body tissues, as one example.

"The safeguards are there. It's just that the government wants to mess with them," he charged.

Another major complaint cited by doctors is the paperwork they expect PSRO to involve.

Mr. Liskey said the hospital already has one secretary working on PSRO and at least one more will have to be hired because the hospital will have to do much of the paperwork for area doctors. "If the hospital doesn't help them on this paperwork, they won't be serving patients, they'll be doing paperwork."

"Any new system has to have people to help run it, and they have to be paid," said Dr. Deyerle. "So instead of cutting down on the cost, it's going to increase it."

He noted that 10 years ago, when he was just as busy as now, he had no secretaries. He now has two to handle paperwork imposed by Medicare, Medicaid and other requirements.

"Who's going to administer it?" asked Dr. Gearing. "If we administer it, we can't treat. We've got to say, 'The hell with patients. We've got to do this paperwork.' "

"It's another big mess," another doctor declared. "It will mean more paperwork, more confusion, more expense."

"If I were a young man now, I don't think I'd go into medicine when you've got this much control," said the gynecologist. "I'm taking a lot of time (administering Medicare and Medicaid and explaining those programs to patients) that I could be spending on my patients or keeping up with medical literature."

Physicians unanimously predicted PSRO would raise medical costs.

"Now they have to pay not only the doctor, but the bureaucrats," said the gynecologist. "I wonder how I can make the bureaucrats happy and still give my patients half-way care."

Uncertainty about the program abounds. Even Dr. Nipe said, "Nobody knows what it means."

"We asked HEW what it is and they don't know either," he added.

HEW has written only seven of 15 proposed PSRO regulations, a source of concern to Dr. Nipe, who said, "We sign a contract and we're bound by regulations we don't know anything about."

Even the regulations that have been written, which fill a large volume, lend little clarity to the program.

Dr. Nipe explained, "They're enough to put you to sleep or make you sick to your stomach. Nobody seems to know what they mean. They contradict themselves from chapter to chapter."

TACKLING THE POPULATION BOMB

Mr. PERCY. Mr. President, Richard N. Gardner is currently a professor of law and international organization at Columbia University. While he was Deputy Assistant Secretary of State for International Organization Affairs under President Kennedy, Mr. Gardner made the first U.S. proposal for international action to curb population growth.

Because of Mr. Gardner's distinguished record in the population field, I was most pleased to see his recent article on population and the World Population Conference, which I will be attending. I hope my colleagues will read Mr. Gardner's remarks in their entirety, but I do wish to point out what I believe to be his most important point: there is excellent reason to believe that the conference will yield real results. This is the first time that political leaders from virtually every nation will attempt to come to grips with the fact that the world population, which already places great strain on the Earth's environment and resources, will nearly quadruple in the next 100 years if population planning is not undertaken on a world scale.

I share Mr. Gardner's hope that a workable world plan of action will be agreed upon by the nations participating in the World Population Conference, and I ask that his Washington Star-News article, which previously appeared in Saturday Review/World, be printed in the RECORD.

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

[From the Washington Star News, July 28, 1974]

TACKLING THE POPULATION BOMB

(By Richard N. Gardner)

There are two important things to note about this meeting, a U.N. diplomat was saying recently. "First, it's being held in a Communist country. Second, it's being run by a Catholic."

The diplomat was talking about the World Population Conference that the United Nations is holding next month. Its site is Bucharest. Its secretary-general is a Mexican Catholic, Antonio Carrillo-Flores, a large, affable, and politically astute man who was formerly foreign minister of his country.

To grasp the significance of these details, one has only to recall that for the first 17 years of the United Nations' existence, an alliance between Catholic and Communist nations kept the population question off the U.N. agenda. They were aided, of course, by the timidity of the United States and other Western countries that feared to face the subject for political reasons. It was not until 1962 that the world organization was able to discuss the population question, and so the opposition from Catholic and Communist countries was violent.

There were some vivid clashes of personality during that memorable General Assembly debate. After a particularly strong statement by a Scandinavian lady about the necessity for birth control, a Latin American was heard to remark: "If all women were like that one, there would be no population problem!"

The fact that the United Nations is holding its population conference this year with the tolerance of Catholic and Communist nations reflects the vast changes in attitudes of the last dozen years. The world's most populous Communist nation, China, is carrying out a massive family-planning effort. The world's most powerful Communist nation, the Soviet Union, now acknowledges that population trends can threaten economic and social progress sufficiently to require remedial action—at least in less-developed areas.

Here, as on other subjects, the interests of the Soviet leaders finally proved stronger than Marxist dogma. Marx and Lenin never mentioned population as a special problem in economic development—once Marxist society was achieved, demographic factors were supposed to take care of themselves. By the sixties, however, Soviet leaders were coming to see that the rate of population growth in some developing countries would make progress impossible under any form of government. Moreover, they were concerned that the growth rate in the USSR's Asian republics was outpacing that of European Russia.

The Vatican, while continuing to maintain its doctrinal opposition to "artificial" methods of birth control, is now striving ing to integrate its population policy with its recent emphasis on human dignity and development. And despite the Vatican's position, one Catholic country after another—first Chile, then the Philippines, now Mexico—has moved from opposition to support of family-planning measures.

So population is now a sufficiently "legitimate" subject that the United Nations can finally hold a "political" conference about it: The United Nations' two previous conferences were academic exercises run by demographers. This time political leaders will gathers to make policy decisions.

But what practical results can such a U.N. conference achieve? To begin with, to paraphrase Samuel Johnson's famous witticism about a hanging, such a meeting can "concentrate the mind wonderfully." As the Stockholm Conference on the Human Environment demonstrated, the very process of preparing for such a global meeting can help mobilize public opinion, focus the attention of political leaders on hitherto-neglected problems, and significantly influence national policies.

Unfortunately, few political leaders appreciate the urgency of the population problem, because they are not aware of the enormous momentum built into current population growth rates. This momentum is particularly ominous in developing countries as a result of the tremendous increases in the numbers of people entering the childbearing years. For example, a developing country that has a 3 percent population growth rate and wishes to have its population level off at *double* its present numbers must reduce its average family size from over four children per family to slightly over two children per family in steady stages *within the next 10 years*. If it waits 20 years before starting such a ten-year program to reduce family size, its population will grow to nearly *four times* its present numbers.

What this may mean in global terms was brought out recently at a "mini-Bucharest" meeting of experts held in Rensselaerville, N.Y., under the sponsorship of the Aspen Institute for Humanistic Studies and The Institute on Man and Science. The experts noted that world population, which stood at only 1.5 billion at the beginning of this century, is now close to 4 billion. The forecast for the year 2000 is between 6 and 7 billion. Assuming that the level of world fertility continues to decline only at the rate foreseen in current U.N. projections, the experts pointed out, world population growth will not level off until the last quarter of the next century, by which time it will have reached 15 billion. On the other hand, if the world could achieve replacement-rate fertility by the year 2000

(an average of slightly more than two children per couple), world population could be stabilized at about 8 billion by the middle of the next century. Whether world population growth is stabilized at the lower or upper reaches of the 8–15 billion range, the experts concluded, will fundamentally determine the prospects of the human race for peace, welfare, and human dignity.

Beyond hammering these hard facts into the heads of the men who make national decisions, the World Population Conference will have the opportunity of promulgating a "World Population Plan of Action." Some population activists would like the plan to lay down internationally-agreed-upon population targets for every nation. This will certainly not happen, given strong feelings of national sovereignty. But experts at the Rensselaerville meeting suggested that a plan of action could usefully call on countries to set their own population targets, something only a small minority of countries have yet done.

After having chaired the Rensselaerville meeting, I conclude that there are at least ten specific things an action plan on population could ask every country to do:

(1) Take a census at least every ten years.

(2) Institute an effective system for the registration of births, deaths, and other vital statistics.

(3) Assess the implications of its population growth rate for its economic and social goals—especially for nutrition, health, education, housing, and employment. Every nation can develop a population policy as an integral part of its national-development plan, including a target figure at which population should be stabilized and the specific date by which replacement-rate fertility must be realized in order to meet that target.

(4) Review its national legislation in the light of its population policy, including its laws on minimum age of marriage, abortion, taxation, the provision of housing and other benefits, and women's and children's rights, with a view to influencing child-bearing decisions in the desired direction.

(5) Establish a central administrative unit for implementing population policy and programs and give this unit outstanding people and strong political support.

6) Include material on family life and population problems in all levels of its educational system, including adult education.

(7) Make information on, and means of, family planning available to all members of its population in the childbearing years through a network of maternal- and child-health services and through other means just as soon as possible, and in any case. no later than 1980.

(8) Support such national research and training programs (in medicine, communications, administration, and so on) as may be necessary for implementing the above-mentioned measures.

(9) In the case of free-market or mixed economies, facilitate activities by private family-planning agencies and the commercial distribution of contraceptives.

(10) Cooperate with other countries—bilaterally, regionally, and through the United Nations and other international agencies—in supplying information, personnel, and financial support, with particular attention to the contributions that developed countries can make to assist the population policies of the less developed.

Clearly, acquiescence in such a program must be evoked, not forced from the outside. At this stage, we must put our faith in the ability of governments to respond to the facts—that is, to the insoluble problems created by population growth at present rates. We must try to demonstrate that population control is a matter of national self-interest, not a matter of obeying the wishes of foreigners. In this respect, the very process by which governments prepare for the conference—doing the numbers on their neglected demographic homework—may be more important than any formal resolutions adopted at the conference itself.

The Rensselaerville meeting brought out one final point which should be front and center at this summer's Bucharest meeting—that development can do as much for family planning as family planning can do for development. This is particularly true of development that stresses not only increases in GNP but also such fertility-reducing elements as better income distribution, the reduction of unemployment, women's rights, and broad access to basic education, health, and social services. It is therefore not a question of development or family planning—what we need is *both*.

The negotiations in 1974 on energy, trade, monetary reform, and the law of the sea are thus integrally related to the population question. Unless the rich countries make more resources available to the poor through enlightened policies in these and other areas—and unless the poor greatly improve the quality of their own development efforts—the economic and political basis for effective measures to reduce fertility will simply not exist.

This is yet another reason why world-order politics should now replace balance-of-power politics as the first priority on the diplomatic agenda.

AUTHORIZATION TO MAKE CORRECTIONS IN THE ENROLLMENT OF H.R. 15074—REGULATION OF CERTAIN POLITICAL CAMPAIGN FINANCE CHARGES

Mr. MANSFIELD. Mr. President, am I correct in my understanding that a message has been received from the House covering House Concurrent Resolution 574?

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. MANSFIELD. Mr. President, I ask the Chair to lay before the Senate House Concurrent Resolution No. 574, which was just received from the House of Representatives.

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

The legislative clerk read as follows:

A concurrent resolution authorizing the Clerk of the House of Representatives to make corrections in the enrollment of H.R. 15074.

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

There being no objection, the Senate proceeded to consider the concurrent resolution.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the concurrent resolution.

The concurrent resolution (H. Con. Res. 574) was agreed to.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Is there further morning business? If not, morning business is closed.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, AND RELATED AGENCIES APPROPRIATIONS, 1975

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now proceed to the consideration of H.R. 15572, which will be stated by title.

The legislative clerk read as follows:

A bill (H.R. 15572) making appropriations for the Department of Housing and Urban Development; for space, science, veterans, and certain other independent executive agencies, boards, commissions, corporations, and offices for the fiscal year ending June 30, 1975, and for other purposes.

The Senate proceeded to consider the bill, which had been reported from the Committee on Appropriations with amendments.

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

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

The second assistant legislative clerk proceeded to call the roll.

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

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

Mr. PROXMIRE. Mr. President, the pending measure is one of the largest appropriation bills before the Senate, and it contains new budget—obligational—authority of $21,296,885,000 for the Department of Housing and Urban Development, the National Aeronautical and Space Administration, the National Science Foundation, the Veterans' Administration and eight other independent agencies.

What the Appropriations Committee has done is to reduce the amount requested by the administration by $139,928,000 and it is $450,533,000 over the sum recommended in the House bill.

However, I hasten to point out that the committee considered amended estimates aggregating $618,962,000 for the Veterans' Administration, which were not considered by the House. Consequently the sum recommended by the committee is $168,409,000 less than the House allowance for those items which were considered by both bodies.

Mr. President, the recommendations of the committee are $483,849,000 above the sum that was appropriated in fiscal year 1975. However, that figure is more or less meaningless, for comparative purposes, and in order to make a true comparison of the recommendations with fiscal year 1974, it is essential that we look at the component parts of the bill.

For the Department of Housing and Urban Development, the committee recommendation of $3,035,002,000 is $60,722,000 less than the sum that was made available in fiscal year 1974.

For Disaster Relief, the committee's recommendation of $200,000,000 is $232,600,000 less than last year.

For the space agency, NASA, the committee's recommendation is $207,687,000 more than was appropriated last year.

For the NSF, the committee's recommendation of $675,000,000 is $127,340,000 greater than the sum appropriated in the previous fiscal year.

And finally, Mr. President, the committee's recommendation for the VA is $14,000,772,000, which is $461,852,000 greater than the sum appropriated last year, which is primarily due to the fact that Congress has passed legislation increasing the compensation and pensions of veterans.

Concurring with the action of the House, Mr. President, the committee has deferred consideration of an additional $2,175,000,000 requested for a community development grant program, pending final congressional action on the Housing and the Urban Development Act of 1974.

In title I of the bill, which covers the items for the Department of Housing and Urban Development, Mr. President, the committee recommends an appropriation of $3,035,002,000, which sum is $131,951,000 less than the budget estimate and $175,420,000 under the House allowance. Included in the sum made available for the Department is $325,000,000 for the urban renewal programs and Model Cities. Under pending legislation, these aforementioned categorical grant programs will be replaced by some type of community development block grant program, presently being considered by a conference committee of the Banking and Urban Affairs Committee of the Senate and the Banking and Currency Committee of the House of Representatives.

Incidentally, I happen to be a member of the Banking, Housing and Urban Affairs Committee of the Senate, and I am a member of the conference. We were in conference this morning, and we have been for 3 weeks on the housing bill.

In this connection, the committee was informed that if this legislation is enacted, the Department of Housing and Urban Development would be prepared to put into effect a community development block grant program by January 1, 1975.

For the space programs, the committee recommends an appropriation of $3,242,694,000 which is the same as the budget estimate and $39,644,000 over the House allowance.

For the National Science Foundation, the committee recommends an appropriation of $675,000,000 which is $8,200,000 over the sum recommended by the House, but $6,400,000 below the budget estimate.

Mr. President, more than 65 percent of the sum recommended by the committee of new budget obligational authority is for the budget of the Veterans' Administration which, as I say is two-thirds, totals $14,000,772,000. Of this amount, $7,283,000,000 or more than 50 percent is for compensation and pensions for veterans and widows and their survivors; $2,676,000,000 is for readjustment benefits and $3,187,644,000 is for the medical care of our Nation's veterans.

The committee has concurred with the House and has recommended an increase above the budget for the Federal Communciations and the Securities and Exchange Commissions, in order to insure that these very important watchdogs of the public welfare will be able to more effectively meet their very demanding and expanding workloads.

Incidentally, in both cases, both of these agencies derive almost all of their funds from fees, so the actual cost to the general taxpayer is very small indeed. In fact, it is relatively insignificant.

For the Selective Service System, Mr. President, the committee recommends an appropriation of $38,500,000, which is $8,663,000 less than the budget estimate and $7,963,000 under the amount contained in the House bill. Once again, the committee considered providing a minimal amount of funds in order to terminate the Selective Service System. However, this action would amount to an effective repeal of the Selective Service System statute and in the opinion of the Committee, Mr. President, it was felt that if the act is to be repealed, it should be accomplished through the legislative process.

As we all know, the Selective Service System has not had to function in the last 2 years because there have not been any inductions, any physicals, which is the real reason for the committee to continue. We would like to terminate it, but that is a legislative prerogative.

The committee has also concurred with the House by incorporating a flat 10 percent reduction from the sum requested by the Department and agencies for the payment of space rental provisions levied by the General Services Administration, in accordance with the Public Buildings Amendments of 1972, Public Law 92–313, approved June 16, 1972. In concurring with the House action, the committee also felt that the 10 percent reduction will have the effect of bringing the charges imposed by the General Services Administration in consonance with the costs of services provided.

Mr. President, the committee has added a provision to the bill which in effect restates existing law and restricts the usage of Government vehicles. Section 638a of title 31 of the United States Code prohibits the use of Government vehicles for other than "official purposes." It also states that "official purposes" shall not include the transportation of Government officers and employees between their domiciles and their places of employment.

The exceptions to this prohibition are extremely limited and include the President and his Cabinet, medical doctors on out-patient duty, and those employees engaged in field work who live far from their headquarters.

The hearings of this committee over a 2-year period indicate that this prohibition is violated by almost every agency under its jurisdiction, for which various excuses are given.

It was claimed by one non-Cabinet official that he was justified in being driven to and from his home in McLean, Va., because he was on "field work." Others stated that since Congress in the past had provided funds for cars and drivers we have acquiesced in the practice and the clear and obvious prohibition found in the law does not apply.

Mr. President, in order that there may be no doubt as to the position of this committee that existing law must be observed, language was added to the bill stating that none of the funds in the act may be expended in violation of section 638a of title 31 and section 101 of title 5, U.S.C. While it may seem to be unnecessary to state that the existing law must be carried out, it is vitally necessary because of the excuses and legerdemain of the officials involved.

The only officer to whom such limitation would not apply in this bill would be the Secretary of Housing and Urban Development who is specifically excluded by the provisions of title 5, section 101 of the United States Code, as a Cabinet officer. No other official is excluded from the provisions of the law.

The committee also directs the Comptroller General of the United States to determine that the provisions of the law and of this act are scrupulously adhered to and to exercise such authority as he has to see that the provisions of section 638a are carried out.

Section 638a provides for the suspension or removal of any officer or employee who willfully uses or authorizes the use of any vehicle to transport officials between their domiciles and places of employment.

As a result of the activities of this committee and its members, considerable progress has been made in reducing the number of limousines—class VI, V, and IV cars—in Washington. We have been less successful in preventing the abuse of section 638a. What we are too often seeing now is chauffeur-driven Pintos instead of chauffeur-driven Cadillacs.

In addition to the fundamental proposition that the law should be obeyed there are two additional and compelling reasons why driving officials to and from their homes is wrong. First, during this period of high fuel prices and shortages, it means a doubling of the mileage. The car goes both ways twice in a single day. Second, our hearings established that the average annual earnings, including overtime of the chauffeurs is about $15,000. In one case it was $20,000 a year. This is absolutely unnecessary expense at a time of rampaging and double-digit inflation.

Mr. President, that concludes my remarks on the bill.

Mr. President, I ask unanimous consent that the committee amendments be considered and agreed to en bloc, and that the bill, as thus amended, be regarded, for purposes of amendment, as an original text; provided, that no point of order shall be considered to have been waived by reason of agreement to this order.

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

The committee amendments agreed to en bloc are as follows:

On page 2, in line 9, strike out "$14,340,000" and insert in lieu thereof "$12,500,000".

On page 3, in line 8, strike out "$2,425,000,000" and insert "$2,300,000,000, of which not less than $500,000,000 shall be used only for the payment of operating subsidies to local housing authorities".

On page 3, at the end of line 14, strike out "$23,400,000" and insert in lieu thereof "$22,500,000".

On page 4, in line 14, after "1976" strike out the comma and the following:
of which $1,000,000 shall be available only for rehabilitation and redevelopment of the DeKalb County, Tennessee, model cities area devastated by recent tornado damage.

REHABILITATION LOAN FUND

For the revolving fund established pursuant to section 312 of the Housing Act of 1964, as amended (42 U.S.C. 1452b), $70,000,000, to remain available until expended.

On page 4, in line 24, strike out "$100,000,000" and insert in lieu thereof "$110,000,000".

On page 5, in line 20, strike out "$60,000,000" and insert in lieu thereof "$70,000,000".

On page 5, in line 26, strike out $5,000,000" and insert in lieu thereof "$6,320,000".

On page 6, in line 7, strike out "$10,900,000" and insert in lieu thereof "$11,900,000".

On page 10, in line 9, strike out "$2,327,380,000" and insert in lieu thereof "$2,349,080,000".

On page 10, at the end of line 15, strike out "$135,670,000" and insert in lieu thereof "$144,490,000".

On page 11, in line 13, strike out "$75,080,000" and insert in lieu thereof "$79,020,000".

On page 12, in line 2, after the comma, insert "(1) $3,940,000 for construction of an Orbiter Horizontal Flight Test Facility, Flight Research Center".

On page 12, in line 7, strike out "and".

On page 12, in line 8, at the end of the line after the semicolon, insert "and (19) $4,880,000 for an addition to the Systems Development Laboratory (SDL) at the Jet Propulsion Laboratory (JPL);".

On page 13, in line 8, strike out "$740,000,000" and insert in lieu thereof "$749,124,000".

On page 14, in line 1, after the semicolon, insert "not to exceed $5,000 for official reception and representation expenses;".

On page 14, in line 3, strike out "$35,900,000" and insert in lieu thereof "$36,500,000".

On page 14, in line 8, strike out "$666,800,000" and insert $675,000,000, to remain available until expended".,

On page 14, in line 10, strike out "less" and insert in lieu thereof "more".

On page 14, in line 10, strike out "$13,200,000" and insert in lieu thereof "$12,700,000".

On page 14, at the end of line 10, strike out "only".

On page 14, in line 11, strike out "less" and insert in lieu thereof "more".

On page 14, at the end of line 11, strike out "$68,900,000" and insert in lieu thereof "$61,400,000".

On page 14, in line 12, strike out "only".

On page 14, in line 13, strike out "less" and insert in lieu thereof "more".

On page 14, at the end of line 13, strike out "$8,000,000" and insert in lieu thereof "$3,000,000".

On page 14, in line 14, strike out "only".

On page 14, in line 15, strike out "$40,000,000" and insert in lieu thereof "$5,000,000".

On page 15, in line 22, after "and," insert "not to exceed $1,200,000 for travel expenses and,".

On page 16, at the end of line 9, strike out "$46,463,000" and insert in lieu thereof "$38,500,000".

On page 17, in line 2, strike out "$6,716,200,000" and insert in lieu thereof "$7,283,000,000".

On page 17, beginning with line 9, insert

"VETERANS INSURANCE AND INDEMNITIES

"For military and naval insurance, national service life insurance, servicemen's indemnities, service-disabled veterans insurance, and soldiers' and sailors' civil relief, $8,750,000, to remain available until expended."

On page 18, at the end of line 5, strike out "$3,190,044,000" and insert in lieu thereof "$3,187,644,000".

On page 18, in line 19, strike out "$86,770,000" and insert in lieu thereof "$89,000,000".

On page 18, beginning with line 20, strike out

"ASSISTANCE FOR HEALTH MANPOWER TRAINING INSTITUTIONS

"For pilot programs for assistance in the establishment of new State medical schools, grants to affiliated medical schools, assistance to public and nonprofit institutions of higher learning, hospitals and other health manpower institutions affiliated with the Veterans' Administration to increase the production of professional and other health personnel, and for expansion of Veterans' Administration hospital education and training capacity as authorized by 38 U.S.C. Chapter 82, $30,000,000, to remain available until June 30, 1981."

On page 19, at the end of line 19, insert "not to exceed $2,500 for official reception and representation expenses;".

On page 19, at the end of line 25, strike out "$388,130,000" and insert in lieu thereof "$428,842,000".

On page 27, after the colon, insert "Provided further, That not to exceed $1,000 shall be available for official reception and representation expenses:".

On page 27, at the end of line 14, after the colon, insert:

Provided further, That the dollar limitation of section 18(c) of the Federal Home Loan Bank Act is further increased by the cumulative assessments and interest-bearing or other advances for purposes thereof, which shall include related commercial facilities, hereby authorized to be required by the Board as nonadministrative expenditures of agencies under administration or supervision of the Board or of a body composed of its members, all of which are hereby included in the references therein to agencies under the Board's supervision, and the Board is hereby authorized to adjust as it deems equitable the interest on advances now or hereafter outstanding thereunder or hereunder:

On page 31, beginning with line 3, insert:

SEC. 406. No funds appropriated by this Act may be transferred to or expended by or on behalf of the Central Intelligence Agency.

SEC. 407. None of the funds provided in this Act to any department or agency may be expended for the transportation of any officer or employee of such department or agency between his domicile and his place of employment in violation of section 5(c)(2) of the Act of July 16, 1914, as amended (31 U.S.C. 638a).

On page 12, in line 12, strike out "406" and insert in lieu thereof "408".

Mr. PROXMIRE. Mr. President, I ask unanimous consent that the Secretary of the Senate in the engrossment of the Senate amendments be authorized to make any technical and clerical corrections.

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

Mr. PROXMIRE. Mr. President, I ask unanimous consent that Mr. Howard E. Shuman, my administrative assistant; Mr. Maurice Pujol, and Mr. Tom Vander Voort of my staff be permitted to remain on the floor during the debate on the bill.

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

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

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

The second assistant legislative clerk proceeded to call the roll.

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

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

Mr. MATHIAS. Mr. President, I ask unanimous consent that Mr. Michael Smith of my staff be permitted to be on the floor during the consideration of the pending business.

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

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

The ACTING PRESIDENT pro tempore. There is no time limit on the bill.

Mr. MATHIAS. Mr. President, I wish to make some remarks about various parts of the appropriation bill we are now considering, which involves the Department of Housing and Urban Development, and covers NASA and the space program, the National Science Foundation and the Veterans' Administration.

All of these Departments are extremely important and essential agencies of Government; many of them deal importantly with the lives of people, not just as Government agencies functioning somewhere off in the wild blue yonder, but actually impacting on the lives of the people.

Therefore, this is a bill which I think is of unusual importance to the American people.

Before I comment broadly on the portions of the bill that I think deserve some further clarification, I do want to extend my compliments and my thanks to the chairman of the subcommittee, the Senator from Wisconsin (Mr. PROXMIRE) because he has worked extremely hard; he has put in many hours in both listening to the witnesses and assessing the testimony, and in presiding over the markup of this bill. He has conducted hearings for many months.

I would like to say to him now and to the Senate that I appreciate very much the cooperation and the courtesies he has extended to us on this side of the aisle as we have gone through the process which has led us to completed committee action on this bill.

Mr. PROXMIRE. Will the Senator yield?

Mr. MATHIAS. I am happy to yield to the Senator from Wisconsin.

Mr. PROXMIRE. I want to take this occasion to repay the compliment.

There is no Senator on either side of the aisle that I would rather work with than the distinguished Senator from Maryland. He is most considerate and thoughtful. He has a remarkable grasp of this very complicated measure.

I suppose there are few Senators, if any, who are more available to their constituents than "MAC" MATHIAS because he is from Maryland, and his constituents, of course, are here.

Therefore, probably his time is taken

up more with attention to constituents than almost any other Senator, and yet he has been extraordinarily diligent in attending the hearings, and his questioning has been most helpful in developing the record, which I think is a good and thorough record on this complicated and extensive bill.

Mr. MATHIAS. Well, I appreciate the very kind remarks of the Senator from Wisconsin.

I would note that as a result of the work of the subcommittee and finally the full committee under the chairmanship of the Senator from Arkansas, that we have succeeded in bringing to the floor a bill which is $139,928,000 below the budget estimates that were submitted.

When you consider that over half of the 21-plus billions of dollars in this bill is for the Veterans' Administration and that about $10 billion of this is for compensation, pensions and readjustment benefits for veterans which are not only uncontrollable expenditures, but which also are moral commitments on the part of the Government, then you get a better understanding of how difficult it is to limit the expenditures in the bill in any kind of substantial way.

So it is a circumstance worthy of some notice that in spite of these uncontrollable elements of the bill, it is nearly $140 million below the budget estimates.

Mr. President, there are some important points that concern the Veterans' Administration that I think should be noted, although they are set forth in the report that accompanied the bill. The committee did not vote any new funds for assistance for health manpower training institutions for which there was, of course, no budget estimate.

The House had included $30 million in their bill in the other body, but the committee ascertained that there were available funds from prior years' appropriations and, therefore, the committee is of the opinion that there are adequate funds for obligation during the present fiscal year to carry out these programs.

Language explaining the status of these unexpended funds from prior years is in the committee report on page 35, which also makes it clear the committee will give full consideration to a supplemental appropriation, if that is needed.

The lack of appropriation of funds here does not in any way represent a lack of interest or a lack of support on the part of the committee for this program, but simply that the funds were already in hand and unexpended to carry out the program during the year.

The committee has recommended approval of the full $24,400,000 requested by the Veterans' Administration for funding of the new Veterans Representative-on-Campus program. I, for one, heartily support this appropriation for a program which should be extremely valuable because it is designed to speed up the delivery of checks to veterans on campuses throughout the country.

This is a problem area that does need attention. At various times I have had as many as 100 veterans appealing to my office at a given time, seeking help in getting checks and other educational benefits which have been delayed and which are therefore prejudicing their opportunity to continue their education.

Also in the report we have pointed to $4 million which we believe the Veterans' Administration should earmark to commence hiring personnel for preplanning and training to implement new legislation which is now pending and which would provide direct tuition payments to Vietnam-era veterans attending educational institutions.

We have suggested this earmarking because of the importance of the new GI Bill of Rights to the Vietnam veterans. It is extremely important that they get this new benefit if they are, in fact, to get any benefit at all out of the educational features in the GI Bill.

All too often in recent years the veterans have not been able to afford to take advantage of the benefits of the GI bill because they are so meager that without outside income they cannot take advantage of what is supposed to be the educational opportunities provided by the bill.

Once again I return to the committee report, which cites the fact that for several years there have been funds available to commence planning and site acquisition for a very much-needed veterans' hospital in Baltimore, Md. Funds for this hospital were originally requested by the Veterans' Administration with the approval of the Office of Management and Budget, and were voted by the Congress. But to date, final planning, let alone site acquisition, has not been undertaken. I am pleased to note that the State of Maryland and the University of Maryland have offered to donate suitable land for the construction of the hospital, and that representatives of the Veterans' Administration are now consulting with Maryland officials on this proposal.

I would like here and now to put the Veterans' Administration on notice that foot dragging has gone on far too long and that we ought to get on with the necessary preparation leading to construction of the hospital, which will serve so many veterans in a wide area surrounding Baltimore. It will be important in a far larger sense. It will be closely related to the teaching hospital of the University of Maryland. I think it will vastly increase the great work which is already being done there.

Title I of the bill dealing with appropriations for the Department of Housing and Urban Development includes a number of provisions of great importance to the health and development of cities and suburban areas. I think we have succeeded in achieving the very difficult balance between the urgent needs which HUD's range of programs seek to address and our own commitment to cut all the fat that we can from the budget.

One major program for which the committee has not included funds is the community development program for HUD. The reason this is not included is, of course, because the authorization legislation is still pending. A budget estimate of $2.5 billion has been considered by both the House and the Senate, but because at this time this bill is still deadlocked in conference, these funds have not been provided. Instead, the committee has agreed with the House in providing $200 million in new obligational authority for urban renewal programs, and $125 million for model cities programs.

So while we await implementation of the new legislation, these existing categorical programs will continue. I understand there may be an effort today to provide funds in the bill for the proposed community development grant program.

This may very well be necessary to avoid having some sort of interregnum, some sort of hiatus, in all of our urban programs. I do not think we can now predict when the Congress will pass a supplemental appropriations bill. Timing is of the essence in getting started on this very crucial new development. Perhaps those Senators who are on the authorizing committee can enlighten the Senate as to the possible timing of the enactment into law of the community development grant program.

Mr. PROXMIRE. Will the Senator yield on that point?

Mr. MATHIAS. I yield.

Mr. PROXMIRE. I am on that authorizing committee and I just came from a conference this morning. We had a conference of about 2 hours with the House on the bill. I think there is a likelihood of a further deadlock for a considerable period of time. I cannot see our going ahead and appropriating $2,175,000,000 of funds for community development when we may not have a bill at all. I think the Appropriations Committee, the Senate, and the Congress would be put in an unfortunate position if we appropriate that enormous sum and then have no authorization. Once the authorizing committees have acted, if the administration then agrees to send up a request, first we will know how much and, second, we will know the degree of support from the administration on it.

So pending that request, I would hope that no one would offer an amendment providing for the community development money, and, if they do, as chairman of the subcommittee I would have to oppose it.

Mr. MATHIAS. I think the chairman would agree with me that whatever the circumstances, appropriating funds without an authorization is a very dubious practice. It can get us into trouble. Occasionally it is done under pressure of some circumstances that are deemed urgent.

I know as far as I am concerned, and I am sure as far as the chairman is concerned, we will be available at very short notice to consider any supplemental request which might be made necessary by the enactment into law of the community development program.

I might inquire of the chairman at this point, however, whether he feels there has to be a new request on behalf of the President for these funds, or whether the original budget message, which contemplated the establishment of the new program, would be an adequate point from which to move.

Mr. PROXMIRE. I did not mean to imply that there needed to be a formal

action sent down by the administration and approved by the Budget Bureau. But we would like to get a view of the administration, of Mr. Lynn, of what he thinks would be necessary once we do act. After all, we are moving along now. We are already more than a full month into the 1975 fiscal year. We should be prudent on this. It may be 2 months or more before we can get this reconciled. I just would like to get some notion on their part as to how much would be desirable and necessary so that we will have the facts before the Congress before we act.

Mr. MATHIAS. In other words what the Chair would say is that as soon as the new program is enacted into law and signed by the President, that will be the signal for us then to consider what funds are necessary to implement that legislation.

Mr. PROXMIRE. That is correct.

Mr. MATHIAS. At that point, we can call the Secretary of Housing and Urban Development before the committee and explore with him exactly what he needs for the rest of the year.

Mr. PROXMIRE. That is right.

Mr. MOSS. Mr. President, will the Senator yield for a unanimous-consent request?

Mr. MATHIAS. I will be happy to yield.

Mr. MOSS. Mr. President, I ask unanimous consent that Mr. Robert Allnutt be permitted the privilege of the floor during the debate and any votes that occur on the bill now before the Senate.

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

Mr. GOLDWATER. Mr. President, would the Senator yield for a unanimous-consent request?

Mr. MATHIAS. I yield.

Mr. GOLDWATER. I ask unanimous consent that a member of my staff, Mr. Charles Lombard, be permitted the privilege of the floor during the period of debate and votes on this bill.

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

Mr. PROXMIRE. Mr. President, I ask unanimous consent that Ron Tammen, a member of my staff, may have the privilege of the floor.

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

TELEGRAPH AND TELEPHONE REGULATIONS—REMOVAL OF INJUNCTION OF SECRECY

Mr. PROXMIRE. Mr. President, as in executive session, I ask unanimous consent that the injunction of secrecy be removed from the Telegraph Regulations and the Telephone Regulations along with the appendixes thereto and a final protocol to those regulations, done at Geneva, April 11, 1973 (Executive E, 93d Cong., 2d sess.), transmitted to the Senate today by the President of the United States, and that the treaty with accompanying papers be referred to the Committee on Foreign Relations and ordered to be printed, and that the President's message be printed in the RECORD.

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

The message from the President is as follows:

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Telegraph Regulations and the Telephone Regulations along with the appendices thereto and a Final Protocol to those Regulations, done at Geneva, April 11, 1973. Also transmitted for the information of the Senate is the report of the Department of State with respect to the Regulations.

These Regulations are simplified, completely revised versions of the 1958 Regulations and will make it easier for the international business system guided by the Regulations to keep apace with rapidly advancing telecommunications technology.

I recommend that the Senate give early and favorable consideration to both the Telegraph Regulations and the Telephone Regulations and give its advice and consent to their ratification with the declarations proposed in the report of the Department of State.

RICHARD NIXON.

THE WHITE HOUSE, *August 5, 1974.*

VISIT TO THE SENATE BY MEMBERS OF THE JAPANESE DIET

Mr. HUGH SCOTT. Mr. President, I ask unanimous consent that the Senate stand in recess for 2 minutes for the purpose of meeting distinguished guests, a very important gathering of members of the Japanese Diet, from the House of Counselors and the House of Representatives, including members of three of the major parties of Japan. The names of our distinguished guests are as follows:

JAPANESE DELEGATION LIST

LIBERAL DEMOCRATIC PARTY (DIET MEMBERS)

Mizuno, Kiyoshi—House of Representatives, [Secretary of Japanese Delegation].

Oishi, Senpachi—House of Representatives.

Takatori, Osamu—House of Representatives.

Yamasaki, Taku—House of Representatives.

JAPAN SOCIALIST PARTY (DIET MEMBERS)

Den, Hideo—House of Councillors.

Doi, Takako (Miss)—House of Representatives.

Kawakami, Tamio—House of Representatives.

KOMEITO (LEAN GOVERNMENT) (DIET MEMBERS)

Arai, Yoshiyuki—House of Representatives.

Sakai, Hiroichi—House of Representatives.

Shiode, Keisuke—House of Councillors.

(Applause, Senators rising.)

RECESS

The PRESIDING OFFICER (Mr. BARTLETT). Without objection, the Senate will stand in recess.

Thereupon the Senate took a recess for 2 minutes.

During the recess, the members of the Japanese delegation were greeted by Members of the Senate.

On expiration of the recess, the Senate reassembled and was called to order by the Senator from Oklahoma (Mr. BARTLETT).

ESTABLISHMENT OF A COST OF LIVING TASK FORCE—MESSAGE FROM THE PRESIDENT

The ACTING PRESIDENT pro tempore (Mr. JOHNSTON) laid before the Senate a message from the President of the United States submitting proposed legislation to establish a Cost of Living Task Force, which was referred to the Committee on Banking, Housing and Urban Affairs. The message is as follows:

To the Congress of the United States:

Earlier this year, before the expiration of the legislation authorizing the Cost of Living Council, I proposed to the Congress that a residual group within the Executive Office of the President be authorized to monitor wages and prices, as an on-going part of our fight against inflation. The Congress did not act on this proposal.

In my economic address on May 25 of this year, I called for the establishment of a Cost of Living Task Force to monitor wages and prices, Again, no congressional authorization was forthcoming. While I continue to oppose mandatory wage and price controls, it is essential that wages and prices be carefully watched, that labor and management be constantly aware of public concern in this area, and that Government have the information it needs to persuade labor and management to do their duty in the effort to reduce inflation. We have carried out this monitoring function as best we can with our existing resources, under the leadership of my Counsellor for Economic Policy, Kenneth Rush. The need for a properly authorized group continues, however, and it now appears that many Members of the Congress are prepared to reconsider their earlier opposition to my proposal for such a group. A senate spokesman for the majority party of the Congress is now advocating such a proposal.

Therefore, I am today transmitting a legislative proposal to establish a Cost of Living Task Force. I invite all those who have come to see the need for this proposal to join as bipartisan co-sponsors in this vital step in our fight against inflation.

RICHARD NIXON.

THE WHITE HOUSE, *August 2, 1974.*

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Hackney, one of its reading clerks, announced that the House disagrees to the amendments of the Senate to the bill (H.R. 15155) making appropriations for public works for water and power development, including the Corps of Engineers—Civil, the Bureau of Reclamation, the Bonneville Power Administration, and other power agencies of the Department of the Interior, the Appalachian regional development programs, the Federal Power Commission, the Tennessee Valley Authority, the Atomic Energy Commission, and related independent agencies and commissions for the fiscal year ending June 30, 1975, and for other purposes; that the House agrees to the conference requested by the

Senate on the disagreeing votes of the two Houses thereon; and that Mr. EVINS of Tennessee, Mr. BOLAND, Mr. WHITTEN, Mr. SLACK, Mr. PASSMAN, Mr. MAHON, Mr. DAVIS of Wisconsin, Mr. ROBISON of New York, Mr. MYERS, and Mr. CEDERBERG were appointed managers of the conference on the part of the House.

The message also announced that the House disagrees to the amendments of the Senate to the bill (H.R. 15405) making appropriations for the Department of Transportation and related agencies for the fiscal year ending June 30, 1975, and for other purposes; agrees to the conference requested by the Senate on the disagreeing votes of the two Houses thereon; and that Mr. MCFALL, Mr. YATES, Mr. STEED, Mrs. HANSEN of Washington, Mr. BOLAND, Mr. MAHON, Mr. CONTE, Mr. MINSHALL, Mr. EDWARDS of Alabama, and Mr. CEDERBERG were appointed managers of the conference on the part of the House.

The message further announced that the House has passed without amendment the joint resolution (S.J. Res. 228) to extend the expiration date of the Defense Production Act of 1950.

ENROLLED BILLS SIGNED

The message further announced that the Speaker has affixed his signature to the following enrolled bills:

S. 3669. An act to amend the Atomic Energy Act of 1954, as amended, and the Atomic Weapons Rewards Act of 1955, and for other purposes; and

H.R. 14012. An act making appropriations for the legislative branch for the fiscal year ending June 30, 1975, and for other purposes.

The enrolled bills were subsequently signed by the Acting President pro tempore (Mr. JOHNSTON).

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, AND RELATED AGENCIES APPROPRIATIONS, 1975

The Senate continued with the consideration of the bill (H.R. 15572) making appropriations for the Department of Housing and Urban Development, for space, science, veterans, and certain other independent executive agencies, boards, commissions, corporations, and offices for the fiscal year ending June 30, 1975, and for other purposes.

Mr. GOLDWATER. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. GOLDWATER. Has the Senator from Maryland relinquished the floor?

Mr. MATHIAS. Yes. I am yielding the floor now.

Mr. GOLDWATER. Mr. President, I should like to ask a question of the Senator from Wisconsin.

Is it true that he proposes to offer an amendment that would cut this overall budget item by 3 percent?

Mr. PROXMIRE. The Senator is correct. My amendment would make an across-the-board cut on all the controllable items. Obviously, we cannot cut veterans' pensions or benefits, which are fixed by law and are in a contractual and legal position. It would be futile to try to make a reduction, and we should not. Everything to be reduced would be reduced by 3 percent below what the Appropriations Committee submitted to the Senate.

Mr. GOLDWATER. Would the Senator be favorable to eliminating that cut from NASA, which is a part of this grouping of budgets?

Mr. PROXMIRE. No. I would be opposed to that, for several reasons. No. 1, the NASA request is either at or above the budget, and the others, in some cases, are far below the budget. We have one agency, for example, which is about 20 percent below the budget, and we are making a further cut of 3 percent.

I recognize that there is great merit in the NASA position, and I also recognize that the Office of Management and Budget has reduced it far below what many people feel is desirable and necessary. We have to do this on an equal basis, or we have great difficulty justifying this kind of reduction.

Mr. GOLDWATER. I ask that because I think the Senator might agree that including NASA in this group is illogical. It is probably the only scientific appropriation we have. Well, the National Science Foundation is in it. But the rest do not apply to science. I thought that the Senator might be agreeable to skipping NASA, so that we could get at the rest of it.

Mr. PROXMIRE. I am afraid not. I would have to resist that. I do not see how we could do that. One could make a very strong appeal to skip the National Science Foundation and to skip some of the other very worthy agencies here.

As the Senator from Maryland has said, these are people-oriented programs, all deserving programs, and good programs. I do not see how we can make an exception.

The purpose of this reduction would be to ease the inflationary pressure. As the Senator from Arizona knows far better than I, NASA does use goods and materials that are in short supply—steel, chemicals, highly trained and highly skilled people. For us to exempt NASA under these circumstances will be extremely difficult to justify.

Mr. GOLDWATER. The Senator from Wisconsin puts this particular Senator in a bad spot, because I have voted consistently for cuts and will continue to vote for cuts. I have argued for years, as the Senator knows, that spending money we do not have has caused our inflation. As to whether I vote for this 3 percent or not, I will have to go out and wrestle with my conscience. Right now, that is not being done, but I might try.

Mr. PROXMIRE. If anybody can wrestle with the conscience of a conservative, it is the distinguished Senator from Arizona.

I might point out that NASA represents only part of this overall cut. The cuts would be made equitably under the other agencies, too.

Mr. GOLDWATER. I realize that.

I thank the Senator from Wisconsin.

Mr. ERVIN. Mr. President, will the Senator yield for an observation, with the understanding that he will not lose his right to the floor?

Mr. GOLDWATER. I am glad to yield.

Mr. ERVIN. I would like to pay this tribute to the Senator from Arizona, as a result of my long service with him in the Senate. If he wrestles with his conscience, his conscience will win. (Laughter)

Mr. GOLDWATER. I think it usually does, much to my disappointment.

Mr. President, at long last, the Senate appears to be making a determined effort to do its part in bringing inflation under control. I applaud that effort.

There is no question in my mind that there is plenty of fat in the Federal budget—fat that has contributed to the inflationary spiral.

I certainly intend to support any and all efforts to get the fat out. At the same time, I want to make sure we cut the fat and not the bone.

Last week we had amendments offered cutting appropriations for Public Works and the Department of Transportation. On Public Works the cuts failed, although I supported them. Friday, by a vote of 58 to 15, the Senate approved a 3.5 percent reduction for the Department of Transportation, which I also supported. In both instances, the Senate had an opportunity to work its will on one Department and one set of programs.

I submit the case is very different in H.R. 15572, because we have a kind of omnibus appropriations bill covering 11 Departments, Agencies, Commissions, and a Foundation. They are:

Housing and Urban Development;

Funds Appropriated to the President: Disaster Relief;

American Battle Monuments Commission;

Cemeterial Expenses, Army;

Federal Communications Commission;

National Aeronautics and Space Administration;

National Science Foundation;

Renegotiation Board;

Securities and Exchange Commission;

Selective Service System; and

Veterans' Administration.

As I noted earlier, there is quite a grouping of unrelated items. As one Senator has alluded, most are people agencies. But it is hard to see NASA right now as a people agency, although I think it is going to become one.

The funding histories of this group differ, and therefore a straight across the board 3½-percent cut will fall unequally on them.

In 1972, the Congress and executive approved a constant level budget of $3.4 billion for NASA. The purpose of this budget was to stabilize NASA's expenditures over the ensuing 5 to 7 years. A mix of new starts were combined with existing programs.

No sooner was the ink dry on this agreement, then NASA took further cuts. If the constant level budget that was approved in the Congress had been carried out, the NASA budget this year would be $3.750 billion. In other words, the NASA budget that we are approving today is one-half of a billion dollars below what the Congress and the execu-

tive agreed was a sound budget back in 1972.

Now, the 3-percent cut that is being proposed is, in my opinion, a meat-ax approach. It does not take into account the funding history of the agencies involved. NASA, for example, has had to absorb most of the inflationary increases without relief.

There are three multibillion-dollar agencies provided for in H.R. 15572. They are: the Veterans' Administration at $14 billion; the National Aeronautics and Space Administration at $3.2 billion; and the Department of Housing and Urban Development at slightly over $3 billion.

A look at the employment records of the three agencies involved tells part of the story. In 1966, NASA had 35,494 employees. The Veterans' Administration had 154,823 and Housing and Urban Development had 14,329. In 1973, NASA had 27,540; VA had 16?,129, and HUD had 17,780. Working the percentages since 1966, HUD has increased 124.1 percent, VA increased 108.6 percent and NASA has decreased 77.6 percent.

Mr. President, I have a table comparing NASA, the Veterans' Administration, and the Department of Housing and Urban Development employment, and I ask unanimous consent that it be printed at this point in the RECORD.

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

PAID CIVILIAN FULL-TIME EMPLOYEES WITH PERCENT DEVIATIONS FROM 1966 EMPLOYMENT

	NASA	VA	HUD
1966	35,494	154,823	14,329
Percent	100.00	100.00	100.00
1967	35,703	157,576	14,618
Percent	100.59	101.76	102.02
1968	34,378	155,174	15,574
Percent	96.86	100.23	108.69
1969	33,707	152,230	14,713
Percent	94.97	98.33	102.68
1970	33,062	153,913	15,422
Percent	93.15	99.41	107.63
1971	31,135	163,668	17,102
Percent	87.72	105.71	119.35
1972	28,665	163,988	16,462
Percent	80.76	105.92	114.89
1973	27,540	168,129	17,780
Percent	77.59	108.59	124.08

Source: Pay Structure of the Federal Civil Service, table I.

Mr. GOLDWATER. Mr. President, in the fiscal year 1965 the NASA budget was 3.79 percent of the total Federal budget. Since then it has gradually decreased to a point where the estimate for 1974 is 0.98 percent. This is less than 1 percent of all Federal expenditures.

For this dollar investment, the Nation gets untold benefits covering electronics, medicine, computer technology, and a variety of other areas too numerous to mention. The NASA programs are an investment in the future. They will produce taxable dollars. They will increase the wealth of the Nation by providing better ways of doing things.

Mr. President, one of the better ways of doing things is the Earth resources and technology satellites. They can detect crop disease, monitor pollution, and provide flood control information. They can also tell the farmers who live in the arid Southwest, which is my home, whether they are getting enough Reclamation water, or whether they are not. A number of my colleagues would like to see the Earth resources technology satellites continue under development.

If this 3.4-percent cut stands, I am afraid that ERTS–C, which is the next one that we shall have to put in orbit—and ERTS–B has already outlived its useful life, although it is producing remarkably well; we do not expect it to be in an operable stage much past October. So we have to get ERTS–C up, if this valuable service provided to all the States and to foreign countries is to be continued and improved on.

Mr. President, in testimony received before the Committee on Aeronautical and Space Sciences last fall, markets for space processing and manufacturing in the amount of $2 billion per year were identified. Among those space processing items already identified are vaccines, livestock sperm, DC rectification and regulation crystals, tungsten carbide components for oil pumps and valves, aircraft turbine blades, acoustic wave devices, X-ray targets, scientific and optical glasses, computer memory devices, and the development of small electric motors. And this is only the beginning.

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

Mr. GOLDWATER. I am happy to yield.

Mr. MATHIAS. Will the Senator agree that the items he has just mentioned really go a long way toward, as he said, bringing NASA into the future as a people-oriented agency?

Mr. GOLDWATER. There is no question. When I made the comment I made prior to this point, I recognized that NASA probably would not fall under the people agencies at this time. But when we start improving the transmission of electricity, when we start improving the development of other crystals, the development of space-produced vaccines and sperm, when we really feel that it might be possible some day to take very critically ill people—say very critical heart cases—into space, believe it or not, and cure that person, I think the day is very close at hand when we shall have to call it a people agency.

Mr. MATHIAS. I might share with the Senator an experience I had last week. I went to Cumberland, Md., where there was in session a class in which the pupils were sitting in Cumberland, but the teacher was at the University of Kentucky. This was a class taught by satellite. It is an experiment to demonstrate the feasibility of the practices where education would be broadcast from one central classroom and then beamed down in directional beams from the educational satellite.

This is the same equipment which, under international agreement, will be loaned to India next year and which I think can have a revolutionary effect on people and on the educational process in areas where education has been very limited in all the years up to this time.

Mr. GOLDWATER. I say to my good friend from Maryland that on the vast Indian reservations in my State, which comprise 113,000 square miles, we are using this same program. For the first time in the history of many of these children, they are being allowed to be educated by people who are, in some cases, thousands of miles away.

Another important thing that I am afraid we overlook is that in many of the Western States such as Arizona, where 84 percent of the population is confined in two cities, we have great, great areas where there is no medical attention; where we have no hospitals; where it is impossible to get a doctor to go and live because there are just not enough people to take care of. We are now beginning to use satellites to transmit medical information. This information will be fed to a computer and the answer to the symptoms will be fed back to the parties involved.

Already we are involved in a great humanitarian project and, as time goes on, it will be greatly increased. But it is not going to be increased if we have stops and starts in vital technological programs. This cut will mean about $97 million—most from new starts.

While that is not an astronomical amount as we talk about budgets in this body, it will have a serious effect on these items that are of humanitarian concern around the world.

Mr. MATHIAS. Of course, I share the Senator's concern. It seems to me that when we talk about an across-the-board cut in an appropriations bill, where half of the items in the bill are uncontrollable, fixed items, it really has the effect of doubling the cut on the balance of the items. So if we talk about a 3-percent across-the-board cut in this bill, I think the Senator would readily agree that this really means we are making a 6-percent cut in the parts that are adjustable, because half of the bill is fixed, is frozen. We cannot do anything about it.

So it becomes a very dangerous kind of thing to do.

Mr. GOLDWATER. The effect will be that if we apply this 3-percent cut, it will mean no new starts in anything in space. It will mean cutting again—not big cuts, because $97 million, compared to the over $3 billion budget, is not necessarily earth shaking. But it is when we consider the fact that we shall have practically no new starts.

I think it might be interesting for the Senators to know that during hearings last Fall before the Space Committee, we had testimony from Mr. David Keller, who is manager of Advanced Programs of the Space Division of General Electric.

He testified that space processing made possible by the space shuttle would have an annual value of $2 billion. I have often prophesied that it will annually exceed the $40 billion that we have now invested in space. Some of the items listed by Dr. Keller are: in 10 typical vaccines, there would be over $1 billion; in livestock sperm $422 million; direct current rectification and regulation crystals, $100 million.

One of the reasons that we do not have adequate electricity, particularly in our large Eastern cities, is that our transmission losses run as high as 20 percent. In other words, if we are generating a million kilowatts a generator, we lose 20 percent of that by the time it gets to New

York City, or Washington, or Philadelphia, or Chicago.

The development of these crystals which will convert alternating current to direct current will mean that those losses can be cut to less than 1 percent. It can also mean a modification of the transmission lines, which is already long overdue.

Nothing makes me more angry than to see our countryside covered with big transmission lines, when they can go underground—a little more money, yes, but more efficiently, and almost 100 percent more efficiently with the $100 million of DC crystals that we can produce in space a year.

Now, this 20 percent, if applied to New York City, would mean no brown outs and probably enough excess energy for 10 to 15 years. If one wants to extend it out over the period of the life of the shuttle and the life of the communities, I think we are looking at savings on the order of $500 billion to $700 billion.

Mr. MATHIAS. Mr. President, will the Senator yield for just one comment at this point?

Mr. GOLDWATER. Yes.

Mr. MATHIAS. This really becomes a conservation matter. When we talk about saving 20 percent of the electricity which is carried on long-distance transmission lines, we are talking about conservation of coal and we are talking about conservation of oil, a major conservation effort, an of course one of enormous economic consequences. And while this is something in the future, it is pretty well tested out. The limiting factor on the use of this technology now is the limit on the size of the crystals that can be made on the surface of the Earth; but much larger crystals can be made beyond the pull of gravity in space. This is one of the returns on the NASA investment which is now virtually in hand.

Mr. GOLDWATER. The Senator is absolutely correct. The absence of gravitation, by the way, is also the reason why they cannot only develop perfect crystals in space, which we could never do on Earth, but they can also do the same thing with aircraft turbine blades. If we can create turbine blades that can take more heat, we can cut down the noise of engines, and eventually I think we will all see the day when the turbine engine has little or no noise at all.

This applies also to scientific and optical glasses, computer memories, and so forth.

I mention those things, Mr. President, merely because we are just beginning to understand what the spinoff or fallout from space exploration amounts to.

The total value of space processing and manufacturing already identified amounts to about $10 to $12 billions over the life cycle of the Space Shuttle. However, the benefits to the Nation are many times that number. I have gone through this, but it bears repetition: Installing new transmission lines using DC current, made possible by space-manufactured crystals, would save the Nation hundreds of billions of dollars.

It is hard to understand the concept of saving a billion dollars, but anything that would save hundreds of billions, I think, should arouse a great deal of interest among us and among our constituents.

Mr. MATHIAS. The implications of all this are tremendous; because, for instance, if we have to burn North African or Middle Eastern oil to generate the electricity we are going to waste by the present long-distance transmission lines, we are sending dollars out of the United States simply to be burned up and do no one any good, because of this 20 percent loss we are now suffering. Thus we have a worsening of our international currency position; so this is a further remote byproduct. I agree it is a remote byproduct, but a very important one.

Mr. GOLDWATER. Not only that, but, as long as the Senator has brought it up, about the only thing we have going in the black for us in international trade is our aircraft industry. The only way the aircraft industry of the United States is going to stay ahead of the rest of the world is contained in the moneys that this 3 percent would cut out; namely, further experimentation in supersonic flight.

I can see immediately that it raises the hair on the head of my friend from Wisconsin when this is brought up, but we do not stop developing airplane just because we can now fly near the speed of sound with transports. We have to continue the investigation and experimentation.

If we fail to pursue aeronautics, although I do not see it right now, we can begin to see ourselves slipping in international trade in the aircraft business.

The NASA portion of the Federal budget is productive. It can provide a better and fuller life for all Americans. If we cut our investment in future technology, then in the future we will have fewer and fewer dollars to tax.

As I indicated at the outset in my questioning of my friend from Wisconsin, I am perfectly in accord with any effort to cut the Federal budget. While one does not like to step on one's own toes, one might be forced to do it. Because NASA has taken such large cuts, and because it has actually served as an example to every other Federal agency, we might be able to, in some way, keep this outside the tent while we are working on the rest of it inside.

Mr. President, I merely wanted to express my views. I commend any Member of this body who wants to reduce Federal spending. Sometimes it is not easy; other times it is. Most of the times it is very simple. Today it is going to be harder.

Mr. President, I yield the floor.

SECTION 312 REHABILITATION LOANS

Mr. TAFT. Mr. President, I am concerned about the committee's action to delete the House request of $70 million in new appropriations for the section 312 housing rehabilitation loan program.

Both the Congress in the housing bill now in conference and the administration in its policy pronouncements have recognized that housing and neighborhood preservation strategy deserves much more of our attention than it has had in the past. Efforts to preserve declining neighborhoods before they deteriorate to the point where comprehensive renewal is necessary can be worthwhile both in terms of cost-effectiveness and of the livability of our urban areas. Section 312 is almost universally recognized as a successful effort to provide just this type of Federal assistance.

I understand that the new appropriation was deleted "without prejudice," based upon the belief that approximately $70 million in funding already will be available. However, I have been informed that of the $70 million, only about $30 million is pure "'carryover" money. Of the rest of the funding, $22.8 million would come from estimated loan repayments, while the remainder would result from the reallocation of funds allocated but not used in fiscal 1974.

My concern is that not as much of this money may become available as anticipated. HUD spokesmen acknowledge that since the $22.8 million would be repaid throughout the year, there would certainly be some of that money which could not be reloaned in fiscal 1975. Furthermore, the portion of funds assumed to be available for reallocation is a rough estimate, as I understand it. This estimate, it seems to me, is much more likely to be high than low.

Because the matter will be in conference in any event, I will not contest formally the committee's decision. However, I urge the committee to explore this matter thoroughly and to consider the House provision in conference with an open mind, because I believe that more funding may be necessary for this very important program.

Along the same lines, I must take this opportunity to encourage the Senate conferees to stick with a separate section 312 program. It is a sound program which has basically been subjected to criticism only on the grounds of its disproportionately large budget impact, which occurs not because of large Federal costs, but because the budget treats loans as if they were grants. It is in keeping with the administration's emphasis of fuller utilization of existing housing. Furthermore, in several States, including my own, constitutional restrictions cast legal question upon the ability of localities to use community development funds for rehabilitation in the same manner as section 312 could be used. Despite these points, section 312 is the only housing loan program which the House housing bill proposes to consolidate. While I realize that the community development provisions are now part of difficult negotiations, I hope that the Senate conferees on the housing bill will continue to give these points the fullest consideration.

Mr. BIDEN. Mr. President, included in the National Aeronautics and Space Administration funding under H.R. 15572, the HUD-Space Appropriations bill, is $886 million for the space shuttle—$800 million for research and development and $86 million for facility construction. I believe that spending such an enormous sum of money this year, for a project of such questionable worth, is a classic example of misplaced priorities. And, if this were not bad enough, we should realize that spending this sum of money this

year will almost invitably commit us to still larger expenditures for each of the next 3 fiscal years, by NASA's own admission. It will also commit us to a space program during the 1980's which is almost certainly overly ambitious, since the space shuttle, once built, will require that a vast number of missions be flown in order to justify its existence. Mr. President, the time to stop this juggernaut from coming into being is now, when the funds which have been spent on the shuttle are still much smaller than the vast sums yet to be spent. I believe that we should take the opportunity to stop and rethink the feasibility of this program in view of its gigantic economic consequences. With each succeeding year the shuttle will become more difficult to stop, as the total funds already obligated will continue to grow and will become an argument for continuing the program, in order that the funds already spent shall not be "wasted." Better to stop the waste now than later, when it will have increased to monumental proportions.

Mr. President, I do not doubt the claims of NASA and its supporters that the space shuttle would produce significant advances in science and technology. If our national economic circumstances were different, if we had money to spare for such an overwhelming adventure, I might look differently on the matter. But we all know that we are in a difficult time, when we must make choices among many programs and claims on the national treasury, all of which have some justification when viewed alone. What we in the Congress must do is to choose among these conflicting demands, to set national priorities. We must weigh one program against another, and we must weigh all proposed Federal spending programs against the need to hold down spending and curb inflation. When weighed in this balance, I am afraid the space shuttle is found wanting.

We are now in a period of rampant inflation. Most people around the country consider this to be the Nation's No. 1 problem.

Congress has for too long abdicated its role in the budgetary process to the executive. With the passage of the budget reform bill, Congress will hopefully begin to take its rightful place as the "keeper of the purse strings."

We cannot wait until next year, however, when the Budget Committee formally begins its duties. We must look immediately for places where money can be judiciously withheld in order to stem the already too high level of Federal expenditures which are a major ingredient in the current 12 percent rate of inflation.

Let us take a look at a few figures. As I said, the committee recommendations for this year for the shuttle is $800 million for research and development, plus approximately $86 million for shuttle-related facilities costs. Up to now, that is through fiscal year 1974, the amount spent on the shuttle has been on the order of a billion dollars. But this is only the beginning. The total cost for developing the space shuttle, by NASA's own estimates, will be $5½ billion—which means the billion we have spent thus far is less than 20 percent of the total development cost. And that $5½ billion figure does not take inflation into account; nor does it include any room for possible overruns. Even this sum does not buy a completed, operational space shuttle system. The procurement of additional orbiters, ground support facilities, and the so-called "space tug"—all necessary in order to make the system operational—may add another $3 billion to the bill. Under current planning, the first version of the "space tug" may be built by the Defense Department, so funds for it may not come out of the NASA budget. Nevertheless, development of the tug is a cost of the space shuttle system which must eventually be borne by the U.S. taxpayers, whether it comes out of DOD funds or NASA funds.

So now we are up to $8½ billion—but wait, there is more to come. According to NASA estimate, the total money that the U.S. Government, and the U.S. taxpayer, will spend during the life of the space shuttle, including development costs, launch costs, and the costs of the payloads to be orbited by the shuttle, amounts to $45 billion. That is $45 billion. Granted, some of the experiments may be very worthwhile and useful, and some of them probably would be conducted using expendable rockets even if the shuttle were not built. Still the question remains: Do we really want and need a space program of the magnitude that would be necessary in order to justify the shuttle?

Let me turn now to some of the specific uses which, it is claimed, justify development of the shuttle. There are three arguments in particular which I should like to discuss. First, with the shuttle it will be possible to retrieve and repair or replace malfunctioning satellites in orbit. This sounds like an excellent capability to have. But there are qualified scientists in this area who claim that this capability will not be worth much as a practical advantage. As technology develops, satellites are becoming more reliable and less susceptible to failure. Also, the satellite to be repaired may well be obsolete when the time comes to repair it. So this capability becomes of doubtful value. Second, it is claimed that there will be military benefits—mainly unspecified—derived from the shuttle. In fact, the design characteristics of the space shuttle have been strongly influenced by military considerations. Very well, then—why does the Defense Department not share in the cost of developing the shuttle? Why does it not even specify how the shuttle would be useful to the military? This whole area of DOD involvement in the shuttle raises far more questions than it answers.

Finally, all sides seem to agree that the shuttle is necessary if there is to be continuation of a manned space program. Now, I was as thrilled as any other American citizen when our astronauts went into space, and when they planted the American flag on the Moon. We can all be proud of the heroic exploits of our astronauts. But it may well be that, in the future, we will be able to obtain as much useful scientific information from unmanned probes as we could from live astronauts—and at a much lower cost, and without need of the space shuttle. Once again, I point to the remarkable improvements in the instrumentation in recent years—in computers, in electronics, in remote sensors. Unmanned probes have sent back photographs and other information in amazing detail from Mars, from Venus, from Mercury, and Jupiter. Is it not possible that the development of these devices, which do not need the life support equipment required by live astronauts, is really making manned space flight an unnecessary luxury? Again, there are many qualified space scientists who believe this to be the case.

Speaking of these space scientists reminds me that there is a serious "priorities" argument raging within the scientific community with regard to the space shuttle. A number of scientists believe that the space research and applications programs, which are of real benefit to mankind and have brought us such undoubted benefits as communications satellites and earth resources satellites, are suffering from an acute shortage of funds as NASA pours money into the shuttle program. So, even within the confines of the space program, the shuttle has its serious critics.

To sum up, we are in a time of great social needs, not all of which can be met without an unacceptable increase in the Federal budget, an increase which would be paid for by the American people either in higher taxes or in the "hidden tax" of inflation. Within the context of these unmet needs, the space program must find its proper place. I submit that the space program should be continued, but not at the swollen level which will be mandated by the continuation of the space shuttle program at its current rate.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

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

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

On page 2, line 9, after "$12,500,000" strike the period and insert the following:

": Provided, That none of these administrative funds may be used for the administration of the Section 23 leasing program, or any replacement program, unless the available, unused balance of contract authority under the Section 235 and Section 236 programs, or any replacement programs, is made available for commitment, and committed, concurrent with the commitment of any contract authority under the Section 23 program, or any replacement program, in amounts proportionate to the amounts committed under said Section 23 program, or any replacement program."

Mr. JAVITS. Mr. President, the purpose of this amendment is to zero in on the fact that what there is still contract authority available under sections 235 and 236 which should be used before the section 23 leasing program designed to replace both of those other programs is fully utilized.

The amendment does allow for a ratable utilization of section 23 in proportion to what is used of the contract authority under sections 235 and 236.

This goes along, it seems to me, with the general concept of the committee as reported on page 7 of the Senate report.

Our feeling is that these programs, especially section 236, are critically important particularly to the big cities. In view of the fact that the Department wishes to rely entirely on section 23, it runs too much of a risk if it takes a long time, for example, to install that particular program. Then you end up with a lapse in the existing programs, which are extremely beneficial, especially to us in the cities, and the figures I have show approximately $237 million left in section 235, and $167 million left in section 236. So this amendment takes an elementary precaution to see that we are not completely out of any program for a certain period of time which can really stimulate housing until such time as the expended section 23 program may be installed, financed, and administered.

It is just more of a lapse than we have any right to invite, especially with a tremendously falling number of housing starts today.

I notice the committee at page 7 says:

> The Department now wishes to rely entirely on what is called the new Section 23 program, a program of leased housing to replace the conventional public housing program, and Sections 235 and 236.
>
> The Committee feels that it would be a tragic error to take this course. First, Section 23 may not work. Second, if it does work, it could take a very long time to go into effect. Third, even if it works, it may not do two important things, namely, service the kind of low income families that public housing helped, and build in the regions of areas where housing is most needed.

So, it seems to me, Mr. President, for these reasons that this would be a desirable amendment to take to conference.

Mr. PROXMIRE. Mr. President, will the Senator from New York yield?

Mr. JAVITS. I yield.

Mr. PROXMIRE. I congratulate the Senator from New York on the amendment. The Senator is an amazing Senator. He served years ago on the Banking, Housing, and Urban Affairs Committee, but he has not served for some time on it, and yet he is extraordinarily alert.

I have been on the Banking, Housing, and Urban Affairs Committee ever since I have been in the Senate. We have just been in conference this morning on something very close to this issue, section 235 and section 236 of the authorization bill. The amendment of the Senator recognizes there are now some $240 million in appropriated but unspent section 235 funds, and about $170 million, I believe, in section 236 funds. These are funds which have been impounded and which, under the Budget Reform Act, must now be used.

I favor this action for several reasons. The administration and HUD are now, as the Senator from New York has said, putting all their eggs in the section 23 basket. It is a new program.

Now, section 23 may not work at all. It is an untried program.

Second, if it does work, it may take a very long time to get going. HUD claims they will commit $1.2 billion in a year. I do not think that is at all possible. They have had this section 23 on the books now for many, many months, and they have yet to have one single start. There were no starts at all.

When we approved public housing under the 1949 act we said that 810,000 units should be built in 6 years. It took 20 years to do that.

When we passed section 221(d)(3) for moderate-income housing in 1962, we said we should build 45,000 units in a year. It was not until the sixth year that the total of 45,000 units were built. So section 23 may take a long time to work, if it works at all.

Third, even if it works, it may not even reach the income groups now covered by public housing or by section 235 or section 236. It may not build in the suburbs or in the central city or it may work in one place but not in another. It may work in the South but not in New England; it may work in the West but not the Midwest.

For all these reasons, it is wrong to put all our eggs in the section 23 basket.

Section 235 was not a failure. Where it failed, as in Detroit, almost all the other programs failed because of corruption. In Wisconsin, less than 3 percent have failed in a program where we expected initially as high as 15 percent failures.

One measure of its success is that the funds for section 235 are actuarially sound. That means that it has worked as Congress intended.

People have gotten off subsidy. The Government pays less than it did before in subsidies to those in section 235. This program has worked and should not be the victim of HUD's mismanagement and HUD's propaganda.

I, for one, am happy to accept the amendment with a proviso as a part of the legislative or appropriation record for, I believe, sections 235 and 236 and section 23 units should march together, as the amendment provides. I do not think the total funds for all of them should exceed the total originally proposed by HUD for section 23. We are not expanding funds; we are changing the mix.

With that proviso, I am happy to accept the amendment.

I ask my distinguished colleague from Maryland (Mr. MATHIAS), the ranking Republican on the committee, for his views.

Mr. MATHIAS. I would concur with the chairman's views.

I also thank the distinguished Senator from New York (Mr. JAVITS) for making this valuable suggestion which, as I would interpret it, really seeks to mandate a balance of section 235, 236——

Mr. JAVITS. And section 23.

Mr. MATHIAS. And section 23. And, in so mandating the balance, I think it expresses on the part of Congress a sense of what the policy should be and its importance. It is important but substantively and I think it is important procedurally, so I think it is a good amendment, and I have no doubt that it will meet with considerable support in the other body.

They have mentioned this area in the House report on page 7 in which they use committee language which tends to support the thesis that the Senator from New York has spoken on today. So, on behalf of the minority, I am happy to accept it.

Mr. JAVITS. I thank my colleague very much.

The PRESIDING OFFICER. The question is on agreeing to the amendment. (Putting the question.)

The amendment was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. PROXMIRE. Mr. President, I am happy to yield to the distinguished Senator from California (Mr. CRANSTON).

Mr. CRANSTON. I thank the Senator very much.

I have several questions of the Senator from Wisconsin, and I would like to discuss with the distinguished chairman of the HUD, Space Science, Veterans' Subcommittee of the Appropriations Committee (Mr. PROXMIRE), and its distinguished ranking minority member (Mr. MATHIAS) a number of issues pertaining to VA medical appropriations as contained in the Appropriations bill reported from committee. At the outset, I would especially like to thank both of them and the other members of the committee for their continuing cooperation in working together on VA Appropriations and other matters of such great concern to all of us. Particularly, I am most grateful for the opportunity they have provided to me to suggest certain matters which might be discussed in the committee report and for their sympathetic treatment for those items in the pending committee report.

First, I would like to call attention to the language included in the report at my suggestion stating the strong view of the committee that VA medical and hospital personnel must not be included in any government-wide freeze which may be imposed by the President. The report clearly points out the disastrous impact this would have on the functioning of the VA medical and hospital program.

Specifically, the report states:

> The Committee is aware that the President recently announced plans to make substantial cutbacks in total Federal employment throughout the Government. The Committee wishes to express its very strong view that any personnel freeze or other personnel limitations resulting from such a Government-wide policy should not be applied to the medical and hospital employment within the Veterans Administration. In 1972 the VA hospital and medical program suffered from the effects of a Government-wide freeze on

hiring which had an absolutely disastrous impact on the capacity of the VA system to provide quality patient care. Based on that experience, it is projected that over a full year the VA medical program could be expected to lose over 11,000 employees—based upon an attrition rate of between 10% and 33%—especially in the fields of pathology, radiology, nursing, and medical administration. Of these, the vast majority would be in the nursing service (over 8,000), the most critical direct patient care category, where normal VA attrition runs from 15% to 20%.

I would like to ask the distinguished floor managers whether they will do their best to see that this same language is included in the joint explanatory statement to accompany the conference report on this bill?

Mr. PROXMIRE. May I say to the distinguished Senator from California that I agree wholeheartedly. In an amendment which I expect to offer shortly, which was discussed in part by the Senator from Arizona, one of the areas I feel we could not, should not, and must not reduce is the very area the Senator has referred to. These are strong, absolute commitments we have to meet, and I would agree wholeheartedly.

Of course, I speak only for myself, and the Senator from Maryland speaks for himself, but we would do our best to prevail on our colleagues on the Senate side, and hope that the House would see clear to be with us; but I think the Senator from California is correct.

Mr. MATHIAS. As one who is unhappily all too well aware of the inadequacy of existing VA medical services in many regions, I could not in conscience sit still for any chance that they would be further decreased, so I am happy to give that assurance.

Mr. CRANSTON. It would be very useful if the joint explanatory statement to accompany the conference report would contain language similar to the report, and I was asking whether that would be the endeavor of each of you; is that correct?

Mr. MATHIAS. Yes.

Mr. CRANSTON. You will both seek to have similar language in the amendment?

Mr. PROXMIRE. That is my position, yes.

Mr. MATHIAS. It certainly is mine.

Mr. CRANSTON. Thank you very much.

Second, Mr. President, I would like to point out for the information of my colleagues what the distinguished subcommittee chairman and I have previously discussed with regard to the adequacy of the amount included in the reported bill for VA medical care. The committee has sustained the House increase of approximately $16 million for 1,000 new nursing personnel. I believe, however, that an additional appropriation of at least $150 million more is needed to improve the quality of VA medical care. I have discussed this matter with high officials at the White House and the Office of Management and Budget and have good reason to believe that a supplemental budget request will be forthcoming from the administration this month. Frankly, Mr. President, I believe that the White House has already had ample time to submit such a supplemental request since it has had—for over 2 months—the report and findings on the VA hospital system which were submitted by the VA Chief Medical Director, Dr. John D. Chase, on May 31, 1974.

I have discussed the recommendations in this report with Dr. Chase and strongly believe that the $150 million figure I have cited as necessary in supplemental appropriations for the VA medical program is fully in line with his findings. These funds are most urgently needed to increase core VA hospital staffing by at least 8,000 personnel, to activate certain projects to provide more ambulatory care space and facilities and for certain crucial specialized units, such as intensive care units, and to provide for certain maintenance and repair of urgent electrical and other structural deficiencies, as well as to expedite certain air-conditioning projects.

I wish to emphasize that this $150 million figure is actually a conservative one—amounting to less than one-half the amount which VA hospital directors reported to the House Committee on Veterans' Affairs, in response to its survey just completed, as representing additional dollars which they need now and which were not provided in the target allowance based on the budget request. The total amount of that deficiency, on the basis of the House survey, is $305,282,000.

So, Mr. President, I am not satisfied with the medical care or construction amounts in the pending measure. But I recognize the great desirability of proceeding to consider additional appropriations in committee, rather than on the floor, and in connection with a supplemental budget request if one can be forthcoming. Thus, I have agreed to the request of the distinguished subcommittee chairman not to press a floor amendment at this time. It is my intention to proceed, however, with a supplemental appropriation amendment at the next available opportunity whether or not the administration comes forward with a supplemental request.

My question for the distinguished floor managers is this: Can I have your assurances that you will proceed to investigate the report and findings of Dr. Chase's survey and that you will give sympathetic consideration to any supplemental request that may be forthcoming based on that survey for more VA medical care funds?

Mr. PROXMIRE. May I say to the Senator from California that we will certainly investigate the report and findings of Dr. Chase's survey. If they send up a supplemental request, we will have hearings, call witnesses, give it consideration.

I do not think the Senator from California would expect us to make a commitment until we know what is requested and consider it.

I would give it high priority, but will not make any commitment that we would go ahead with any particular amount until we know what it is, and with the inflation situation with what we can do.

Mr. CRANSTON. I did not expect a commitment today. I am perfectly satisfied with a commitment for high priority and sympathetic consideration.

Would the Senator from Maryland comment, also, on that point?

Mr. MATHIAS. Well, I would certainly feel that the report which attempted to give the Congress some sort of objective view of the quality of veterans' medical care would be one of the most important items of business Congress could have.

I would cooperate in every way with the chairman of the subcommittee in calling Dr. Chase before the committee, calling witnesses we might need to supplement his testimony, calling witnesses who might even criticize his report, so that we can get a thorough view of just what the levels of quality of care is.

That ought to be done, I think, without any delay whatever, as soon as the report is available, I think we ought to look at it.

Mr. CRANSTON. I thank the Senator.

Mr. President, we all want to proceed in a bipartisan and a consensual manner in respect to this appropriation for VA medical care.

Because of the Vietnam war, Mr. President, the problems of running the vast VA medical system are more staggering and complex than most Americans realize. The Veterans' Affairs Subcommittee on Health and Hospitals, which I am privileged to chair, has compiled data showing the Vietnam war has resulted in an increase of seriously disabled veterans—more quadriplegic veterans, more veterans with multiple injuries—requiring intensive care and rehabilitation. A survey of Army personnel released from the service demonstrates the severity of the disabilities the VA medical program must cope with. Amputation, paralysis of extremities and nervous disorders comprise nearly 60 percent of the 12,466 servicemen separated for combat wounds and injuries from 1964 through 1972.

Of 18,556 Army personnel separated during the same period for both combat wounds and diseases suffered in Vietnam, 58 percent were caused by crippling injuries to the bones, especially of the feet and legs. This compares with 21 percent in World War II and 24 percent in the Korean conflict. Another 13 percent of these Army medical retirees suffer from mental disorders.

The number of Vietnam veterans receiving medical care in VA facilities represents a substantial proportion of the patients. Of those veterans receiving outpatient care in fiscal year 1973, 2.2 million were Vietnam veterans, or over 20 percent of the total 10.8 million who visited outpatient facilities. In the first 6 months of fiscal year 1974, 1.2 million were Vietnam veterans or 20.7 percent of the total 5.8 million veterans who visited VA outpatient clinics.

Admissions to VA hospitals of Vietnam veterans for both years ran at about 13 percent of all admissions—in fiscal year 1973, 123,000 Vietnam veterans out of the 905,000 total veterans admitted, and in the first 9 months of fiscal year 1974, 97,000 Vietnam veterans out of the 713,000 total veterans admitted.

These statistics clearly indicate that

the VA medical system must have an adequate number of neurosurgeons, plastic surgeons, psychiatrists and other highly skilled specialists, and nursing and technical personnel support them.

As I have said, I believe we need at least $150 million more for medical care than the administration requested in its fiscal year 1975 budget. We have an obligation to pay in full the human costs of this war by providing a truly first-class VA medical system for our disabled veterans.

But, at the same time I am sure that the distinguished floor managers would agree with me that we cannot defer this matter much further to accommodate a forthcoming supplemental budget request at the expense of the seriously disabled veterans of the Indochina war and all our prior wars who must rely upon the VA to tend to their wounds, treat their illnesses, and provide for their rapid recovery and rehabilitation. Would you agree?

Mr. PROXMIRE. I would agree.

Mr. CRANSTON. Mr. President, the Senator from Wisconsin referred to the amendment that he intends to offer shortly.

I would like to ask if I am correct in my understanding that the amendment to be offered by the distinguished subcommittee chairman (Mr. PROXMIRE) to make across-the-board cuts—of 3 percent throughout the bill—in new obligational authorities will exempt from those cuts the VA medical care, medical and prosthetic research, medical administration and miscellaneous operating expenses, readjustment benefits, general operating expenses, and compensation and pension items, and thus the only major item to which it would apply would be to amounts appropriated for construction within the overall VA budget? Am I correct?

Mr. PROXMIRE. The Senator is correct for several reasons. One, of course, is the overwhelming moral reason, we have an obligation to our veterans and will fulfill that completely.

The second reason is that we consider virtually all of this uncontrollable, a matter of law, a matter of absolute obligation by the Appropriations Committee.

We have no alternative on it, so the Senator's description is correct.

Mr. CRANSTON. I thank the Senator very much.

Mr. MATHIAS. Since the Senator from Wisconsin is the author of that amendment, I think his statement is the best evidence on it.

Mr. CRANSTON. Yes, that is why I did not press for an analysis from the Senator from Maryland.

Mr. MATHIAS. Let me say that I am not one who is very enthusiastic about this kind of amendment, to start with, but that I would have to oppose it extremely vigorously if it were to cut into these items. But the Senator from Wisconsin with his usual good judgment, I think, has made it clear that it will not.

Mr. CRANSTON. I thank the Senator.

Mr. President, finally, I want to express my disappointment that the committee has eliminated totally the $30 million added by the House for assistance for health manpower training institutions as authorized by chapter 82, title 38. I believe that at least $20 million of this amount is fully justified and can be and will be obligated during this fiscal year, if appropriated, for grants to medical schools and other health manpower institutions as well as to VA hospitals pursuant to subchapters II, III, and IV of that chapter. This program has been traditionally a zero budget request by the Office of Management and Budget since the enabling legislation was enacted in October 1972, in Public Law 92–541.

I consider this program vital to the health care mission of the Veterans' Administration Department of Medicine and Surgery on the basis that health education and health research programs are an indispensable part of modern hospital-based medical programs and that these grants serve to strengthen greatly the capacity of VA hospitals and their staffs to provide quality care to disabled veterans.

I would like to urge the distinguished floor managers to study this matter carefully during the conference with the House committee and to be sympathetic in their evaluation of the $30 million which the House has added for the purposes I have just described. Would the distinguished floor managers agree that this matter should be carefully studied and agree to work with the House conferees to provide those funds which can be effectively used under this important program?

Mr. PROXMIRE. Mr. President, we will have to do that, because of course it is in conference, but I would like to call the attention of the Senator from California to page 35 of the report, two short paragraphs at the top of the page:

The Committee has not recommended an appropriation for Assistance for Health Manpower Training Institutions, for fiscal year 1975. On July 23, 1974 the Committee was informed by the Veterans' Administration that a total of 77 grants had been tentatively approved with a first year funding requirement of $25,738,000. These tentatively approved grants were chosen from 190 that had been submitted with a first year cost of $71,466,000.

To date only $930,000 has been obligated for grants for new State Medical Schools, leaving $24,070,000 available for obligation from the prior appropriation of $25 million. For grants to existing affiliated medical schools $4,311,000 has been obligated and for grants to other Health Manpower Institutions a total of $3,242,000 has been obligated, leaving $12,447,000 available for obligation from the prior appropriation of $20 million.

This is why we felt that there were funds here for this program. I am sure the Senator recognizes this is a new program, highly controversial program, and we should proceed with dispatch to the extent we can be satisfied it is workable. But also in view of the fact that it is new, we felt there ought to be some caution. That is why we cut it out.

Mr. CRANSTON. I thank the Senator for that comment. It is my information that there now exists, in the pipeline, grant applications that can take a total justified expenditure of an additional $20 million to cover these grants. I would like to simply read one more paragraph which immediately follows those paragraphs from the report which the Senator read:

The committee is aware that a zero appropriation for fiscal year 1975 will limit the ability of the Veterans Administration to make new grants under subchapters II, III, and IV of chapter 82, which was added to title 38 by that Public Law. Nonetheless, the committee will certainly be following the application process in connection with such new first-year grants, and will give consideration to providing funds in a supplemental appropriations act, if the need can be justified by those applications.

I am grateful that that language was included.

Mr. MATHIAS. If the Senator will yield, I believe we have given full assurance of the committee's interest in this field. It seemed to be redundant to appropriate when the funds were already on hand, unexpended and unobligated at this time. If there is real need, a pressing need, for further funds other than those which have not been expended in the past, and which have carried over, we could give very prompt and, I think, very sympathetic consideration.

Mr. CRANSTON. I thank the Senator very much. We will do our best to document that need. I understand there are applications for grants that would justify an additional $20 million. I thank both Senators very much.

Mr. PROXMIRE. Mr. President, I send to the desk my amendments and ask the clerk that they be stated.

The PRESIDING OFFICER. The amendments will be stated.

The assistant legislative clerk proceeded to read the amendments.

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

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

The amendments are as follows:

Senators PROXMIRE, CHILES, HOLLINGS, and NUNN propose the following amendments to the bill H.R. 15572, a bill making appropriations for the Department of Housing and Urban Development; for space, science, veterans, and certain other independent executive agencies, boards, commissions, corporations, and offices for the fiscal year ending June 30, 1975:

On page 2 line 9, strike out $12,500,000 and insert in lieu thereof $12,125,000.

On page 3 line 15, strike out $22,500,000 and insert in lieu thereof $21,825,000.

On page 3 line 26, strike out $200,000,000 and insert in lieu thereof $194,000,000.

On page 4 line 13, strike out $125,000,000 and insert in lieu thereof $121,250,000.

On page 4 line 24, strike out $110,000,000 and insert in lieu thereof $106,700,000.

On page 5 line 5, strike out $39,000,000 and insert in lieu thereof $37,830,000.

On page 5, line 11, strike out $50,000,000 and insert in lieu thereof $48,500,000.

On page 5, line 20, strike out $70,000,000 and insert in lieu thereof $67,900,000.

On page 5, line 26, strike out $6,320,000 and insert in lieu thereof $6,130,400.

On page 6, line 7, strike out $11,900,000 and insert in lieu thereof $11,543,000.

On page 6, line 14, strike out $5,580,000 and insert in lieu thereof $5,412,000.

On page 6, line 17, strike out $3,530,000 and insert in lieu thereof $3,424,000.
On page 6, line 20, strike out $6,830,000 and insert in lieu thereof $6,625,000.
On page 6, line 24, strike out $19,513,000 and insert in lieu thereof $18,927,000.
On page 7, line 4, strike out $29,446,000 and insert in lieu thereof $28,562,000.
On page 8 line 6, strike out $4,512,000 and insert in lieu thereof $4,376,640.
On page 9 line 2, strike out $265,000 and insert in lieu thereof $257,050.
On page 9, line 18, strike out $46,900,000 and insert in lieu thereof $46,759,000.
On page 10, line 9, strike out $2,349,080,000 and insert in lieu thereof $2,278,607,000.
On page 10, line 16, strike out $144,490,000 and insert in lieu thereof $140,155,000.
On page 13, line 8, strike out $749,124,000 and insert in lieu thereof $726,650,000.
On page 14, line 8, strike out $675,000,000 and insert in lieu thereof $660,958,000.
On page 15, line 9, strike out $5,000,000 and insert in lieu thereof $4,850,000.
On page 15, line 17, strike out $5,163,000 and insert in lieu thereof $5,008,000.
On page 15, line 24, strike out $43,077,000 and insert in lieu thereof $42,947,000.
On page 16, lines 9 and 10, strike out $38,500,000 and insert in lieu thereof $37,345,000.
On page 20, line 8, strike out $230,850,000 and insert in lieu thereof $223,924,000.
On page 20, line 20, strike out $45,150,000 and insert in lieu thereof $43,795,000.
On page 21, line 2, strike out $10,000,000 and insert in lieu thereof $9,700,000.
On page 21, line 7, strike out $2,100,000 and insert in lieu thereof $2,037,000.
On page 22, line 14, strike out $100,000 and insert in lieu thereof $97,000.

Mr. PROXMIRE. Mr. President, I ask unanimous consent that the amendments be considered en bloc.

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

Mr. PROXMIRE. Mr. President, I am proposing an amendment to cut 3 percent essentially from the controllable items in this bill. The cut would not affect three major categories of items: First, HUD's contractual housing payments which have been reduced by $125 million by the committee; second, the $200 million disaster relief funds given to the President; third, those fixed items in the Veterans' Administration budget such as pension, veterans' benefits, and so forth, which are fixed items and which are paid as a right. What this means is that only about one-fourth of the total funds in this appropriation bill can be subject to this further 3-percent cut across the board. But they should be cut.

In the subcommittee and full committee of the Appropriations Committee we worked our will and increased a few programs, cut others, and essentially granted the funds requested to still others.

What I am proposing now is that we cut a further 3 percent across the board in the controllable items.

Inflation is the country's number one problem. If we are to meet inflation, we need to cut the Federal budget.

Twice the Senate has voted to cut the budget or place a ceiling on the budget of $295 billion, once by a vote of 74 to 12. That is a $10 billion cut in a $305 billion budget, or about 3 percent.

By vote of 74 to 12, as I say, the Senate voted to do that on June 13. Prior to that, on May 9, we passed a similar amendment by about a 2-to-1 vote. Those are two very strong Senate votes for a $10 billion cut. If we mean business, we should carry out that general intention in the bills before us.

I am therefore proposing that we cut 3 percent from those controllable items in the bill. The amount of the controllable items is $5,337,474,000, and 3 percent of that amount is $160,124,000.

Let me say that I am not proposing to cut veterans' benefits, pensions for veterans, their widows, or children, would, along with other uncontrollable items, make up well over two-thirds of the funds in the bill. I am proposing we cut those items which are not controllable. We should make no distinction between and among programs. Every agency should have to take its fair share, namely, a 3-percent cut.

The distinguished Senator from Arizona (Mr. GOLDWATER) made a very eloquent appeal as only he can—because he is so familiar with the space program—for the space program to be exempted.

Mr. President, I just cannot see any ground for picking them out any more than I can the National Science Foundation, the Securities and Exchange Commission, or any other number of agencies which are absolutely essential for the operation of our Government in a fair and equitable way, but which in my view can absorb a 3-percent cut.

It is not as if we are cutting 50 percent. We are cutting 3 percent. I think all of us have had enough experience in Government to know that it is possible, or in business to know that it is possible, to cut 3 percent without cutting the real muscle or bone of any operation.

These agencies are not necessarily fat and lazy, but a 3-percent cut is something they can do in this period of very serious inflation without great sacrifice.

Inflation is now running at double digit numbers. Unquestionably, it is the No. 1 issue, the No. 1 problem, for 210 million Americans. I think they feel overwhelmingly this is something they would like to have faced.

In my State of Wisconsin I recently sent out a questionnaire to over 100,000 people. I asked them whether they would favor a $10 billion cut in the Federal budget. As part of the answer, because it was part of the same questionnaire, I indicated what they had to cut. I pointed to the military budget, the Space budget, and the various other budgets.

I was astonished by the response. By a 10 to 1 margin, 89 percent to nine percent supported a Federal budget cut of $10 billion. I think if you can get almost 90 percent of the people in my State to approve anything it is astonishing. We have a State that disagrees on almost any issue you can find. I am sure if you asked 100 people whether they loved their mother you would not get that kind of response.

So I think it should be clear to the Senate of the United States that this is something that the people want, something that they recognize very wisely. If we are going to do anything concrete and specific, except talk about inflation, it is something we should do. So for that reason I would hope this is adopted.

One other point is that just a few days ago, I believe on Thursday or Friday, the Senate voted on the transportation appropriation bill. Senator BYRD the manager of the bill brought in a measure that was under the budget, under the House, and then in addition to that he proposed a 3-percent floor cut, or approximately a 3-percent cut, on all the controllable items in that measure. That passed by a 4 to 1 vote. I think the Senate made it very clear that even though there were programs they wanted and supported, we must recognize that inflation has now reached a stage in our society where we have to act on it.

Mr. President, I do hope that the Senate will give these amendments favorable consideration.

Mr. DOLE. Will the Senator yield?

Mr. PROXMIRE. I yield to the distinguished Senator from Kansas.

Mr. DOLE. Mr. President, I ask unanimous consent that I be joined as a cosponsor of the amendment.

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

Mr. DOLE. I have listened very carefully to the Senator. It has been indicated in the past few days on the Senate floor there is nothing troubling the American people more than inflation.

According to a recent poll, 48 percent of the American people feel that the Government is responsible for inflation and it is clear that Federal spending is one of the primary contributing factors.

In this morning's Washington Post, I noticed an article, which was greatly heartening to me, entitled "Public Gives Better Mark to Congress." This heading is especially heartening to me this year, as I am sure it is to other Senators.

However, upon reading further into the article, I was dismayed to see that the improvement in public attitude toward Congress only reflects that of 29 percent of the population. At the same time, 64 percent feels that the Congress is only doing a fair to poor job.

One reason for the low public regard for Congress is undoubtedly inflation, which has become the biggest economic issue in the country today. The people are looking to us for action on this matter and we should not fail them.

The time to act is now. Today we are considering the HUD appropriation bill and this measure presents an opportunity to reduce inflationary Federal spending.

FEDERAL SPENDING RESPONSIBLE FOR INFLATION

High Federal spending has been identified as one of the primary causes of inflation. The President has stated that a $5 billion cut in the budget is necessary. Others, both in the administration and the Congress, have advocated cuts of $5 to $10 billion. The best economists in the Nation have stated that a reduction in Federal spending is absolutely essential to prevent inflation from getting out of hand.

As I have said many times in the past week, the reduction of Federal spending is one area where we could demonstrate our commitment to doing something about it.

There has been a bipartisan effort in the Senate to reduce the budget in the past few days. Cuts were nearly achieved

in the Treasury and Public Works appropriation bills last Wednesday and Thursday. Finally on Friday, we were able to cut the transportation appropriation bill by 3.5 percent.

VA BUDGET EXEMPTED

It should be emphasized that this amendment specifically exempts the funds for the most vital veterans' programs. Most veterans and their survivors are having a difficult time as it is living on the meager pension and compensation they receive.

Veterans have already made a sacrifice for the country which we can never totally repay. Most of the funds in the VA budget are obligational expenditures. These funds cannot be reduced and I do not support cutting them.

Hopefully, the Senator's effort today to cut 3 percent of the controllable items, not touching the contractual or fixed items, will be successful.

Mr. PROXMIRE. I thank the Senator from Kansas.

I would like to say one more thing before I yield to the Senator from Maryland, Mr. President.

As chairman of this subcommittee I had a chance to sit in on every single minute of the hearings on this bill. The hearings are very substantial. I am convinced, on the basis of the record, that we can make this kind of reduction without any serious damage to the agencies. In fact, I think their performance might very well be improved. As the performance of business is improved, the performance of even a family may be improved, if they are careful and more prudent about their spending.

So for that reason, too, because I think I understand these agencies—they all had an opportunity to appear—under these circumstances this cut is a responsible cut and a reasonable cut. It should not cause any serious curtailment of services to the American people.

I am happy to yield the floor.

Mr. MATHIAS. Mr. President, our subcommittee operates, in general, in such harmony and operates on the basis of consensus so often that I am very reluctant to oppose the suggestion that has been made by our chairman. But I do feel that it is necessary to oppose this amendment, and I think it has to be opposed on both practical grounds and grounds of principle.

The practical grounds are very real. When we consider the facts that have already been given to the Senate by the Senator from Arizona (Mr. GOLDWATER) about the reductions in force and the reductions in level of expenditure that have been made in NASA, and then when we consider that by this amendment we will require, we will mandate, the riffing of approximately 3,000 more employees at NASA alone, we question whether that agency will really continue to have an independent existence, whether it really is worth it.

Let us consider the impact of this amendment on the NASA program. I inquired about that over the weekend, and I was advised that the Space Shuttle, which is already well beyond its projected schedule, would be delayed by an additional 18 months.

The Senator from Kansas says that he is concerned about inflation. I am concerned about inflation, and I think we all ought to save all the money we can. But if the Senator from Kansas wants to worry about inflation, he ought to consider the ultimate impact of this cut on inflation.

As the Senator from Arizona has laid it out very clearly, we have ahead of us the prospect of saving 20 percent of the electricity which is transmitted by long-distance lines. If we can save 20 percent of the electricity on long-distance lines, we are going to do more for inflation, more for the international currency position of this country, because of the saving in the oil that would have to be bought overseas, than we possibly could by this amendment, which would cut very vital Government agencies and expenditures.

I think the practical factor here is that this cut is too deep. I have joined the chairman time and again in any reductions that I thought were necessary, but I believe that this one does go too far. I have said that I thought it was bad not only in practice but also in principle, and I think the form of the amendment demonstrates that point. It is not an across-the-board cut. The chairman—I salute him for that and support him in it—has exempted certain elements in this bill from the cut. He has exempted the so-called uncontrollable items. We cannot have an across-the-board cut, by definition, and I think it indicates that we cannot have an across-the-board cut. There are some uncontrollable items, and this is not really an across-the-board cut. It is a cut which is directed at certain programs. It hits them so hard that it really raises serious questions about the viability of those programs at the levels at which they would be left if this amendment were adopted.

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

Mr. MATHIAS. I yield.

Mr. PASTORE. I thought I heard the manager of the bill say that none of the veterans' pensions or payments to orphans and widows would be cut. My question is this: Will the people who will have to administer these programs be cut?

Mr. MATHIAS. It is my understanding that the general administrative expenses of the Veterans' Administration will be cut.

Mr. PROXMIRE. No, that is not the case. The cut would be in construction. It would be confined to construction, so far as the Veterans' Administration is concerned.

These are the amendments: page 20, line 8, VA construction, major projects; page 20, line 20, VA construction minor projects; page 21, line 2, VA grants for construction of State extended care facilities; page 21, line 7, VA grants to the Republic of the Philippines; page 22, line 14, vocational rehabilitation revolving fund.

There would be no reductions anywhere else. We would not cut the people who would administer these programs, because we felt that these were obligations of right, obligations under law, and we are not in a position to have the authority to make that reduction.

Mr. PASTORE. I have another question for the manager of the bill or his counterpart on the Republican side of the aisle. We had a very scandalous revelation not too long ago with respect to some of our Vietnam veterans who had returned. Some of them were paraplegics; some were quadriplegic. Some could not even light their cigarettes. They did not have the facilities. Many of these hospitals are very old—from World War I and World War II. They have not been modernized. They do not have the equipment to take care of some of the very peculiar injuries that have been caused by the kind of war that was conducted in Southeast Asia.

Many of these hospitals are not air-conditioned, and some of these young people cannot even move, cannot even use a fan in order to give themselves a little fresh air. They have to just sit in the sweltering heat.

Does this proposal mean that we cut this out, too?

Mr. PROXMIRE. In the first place, it is a reduction of 3 percent below what the Appropriations Committee appropriated.

Furthermore, last year $68 million was appropriated. This year, $223 million would be appropriated after the cut. So we increased this by more than threefold over last year.

Mr. PASTORE. I realize that as to the space program, that may be necessary. I am not going to defend that on the floor of the Senate this afternoon. I think that possibly we ought to take care of the people on Earth before we begin to explore any more out in the blue yonder. Why can we not exempt completely the Veterans' Administration?

We have these boys who, against their will, have served their country. They have returned maimed—some without arms, some without legs. If there is any money here to put a little air-conditioning in a hospital where they are stretched out on a bed, why do we take that out this afternoon? Why do we not exempt the Veterans' Administration completely?

Mr. PROXMIRE. We have exempted about 90 percent of it. The only part we have included is the construction of facilities, and this construction is a matter of timing. This is something that does go right to the heart of inflation. Steel is in short supply; many other elements that go into construction of these facilities are in short supply. It is enormously increased over last last year.

If it were a bigger cut than it is, I would agree with the Senator. But we do not cut any of the treatment for the veterans, any of the direct services for veterans, any of the pensions for veterans, or anything of that kind.

Mr. PASTORE. I realize that. I am not saying it does. I handled this budget in the past, and the plan was to do it in a very gradual way, to modernize some of these veterans hospitals. Some of them are in very bad shape.

We are saying to these veterans, "As far as you are concerned, you suffer a little more, because we have a little in-

flation in this country." I think we should take it out of where we can and not put it on the backs of these veterans who were badly wounded.

Mr. PROXMIRE. I say to the Senator from Rhode Island that we have given, by far, the greatest consideration to the veterans. Of the total amount in the bill, $21 billion, as the Senator from Rhode Island knows, about two-thirds, $14 billion, is for the veterans. We exempted virtually all of that.

I appreciate the remarks of the Senator from Rhode Island.

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

Mr. PROXMIRE. I am happy to yield.

Mr. CHILES. Mr. President, I want to compliment the Senator from Wisconsin. I serve on this subcommittee. He has worked long and hard on the appropriations.

It seems to me that the design of this amendment, which exempts completely those items having to do with veterans benefits and the hospital care, recognizes what we are trying to do for the veteran. At the same time, it recognizes that the veteran is suffering from inflation as much as or more than anyone else, especially the Vietnam veteran. He is the victim of inflation, because he is in the highest category of the unemployed today. He is the individual who is having the toughest time in the economy today. This is also true with respect to many of our other veterans who are drawing pensions and are trying to live on the pittance we are giving them—fixed funds—and at the same time we see the cost of living escalating.

So anything we can do to try to stop inflation is going to be of more benefit to the people who are in this category than anyone else.

I applaud the Senator, because I think that he—together with other Senators—is attempting to get a grip on inflation, and that is the most important thing that one can do for the veteran today.

Mr. PROXMIRE. Mr. President, will the Senator yield on that point?

I should like to reinforce what I said to the Senator from Rhode Island and what the Senator from Florida is saying: Whereas we are cutting substantially in the other areas, we are cutting less than one-tenth of 1 percent of the veterans budget—one-tenth of 1 percent.

We are cutting far more, in proportion 30 times more in these other budgets. And I think that is right, because I think the veterans deserve everything we can possibly provide them. Therefore, to slow down a little bit, slow down the facility construction by 3 percent this year, it seems to me, is just a modest step.

Mr. CHILES. If the Senator would yield further, in the area of HUD, and I know it is very tough for those of us who are concerned with adequate housing, and with trying to house people in America and provide adequate housing for them, to consider any cuts in this area. But I find the prime reason that we cannot have any more housing in this country is that the interest rates are so high, there is no construction money and the people cannot get funds to build houses.

The reason for that, again, is inflation. If we want to get something started in housing in this country, if we want to start people being able to own a house again, we are going to have to do something.

Mr. President, the observation that the junior Senator from Florida is making is that, I think, the amendment of the Senator from Wisconsin might help in the movement that some of us are trying to make to reduce the deficit we are laboring under this year. If we can cut the spending back to $295 billion and get back to the place where we are in a balanced budget situation, then perhaps we will be in a position to get something done about the interest rates.

I think the interest rates are of more serious concern to housing starts, which are really affecting my State tremendously. I can tell the Senator that unemployment is growing every day in my State because there is no construction money available. There are no funds for housing available, and people have stopped trying to buy a house or build a house because of the tremendous interest rates. So only if we can do something about that matter can we turn this situation around in that regard.

Mr. MATHIAS. Mr. President, will the Senator yield for a question at this point?

Mr. CHILES. I yield.

Mr. MATHIAS. I certainly agree with him that we have to seize every available chance to economize. I think that Government spending does play a major role in inflation. I think the subcommittee, under the leadership of the Senator from Wisconsin, has already demonstrated its awareness of that in bringing the bill to the floor in its present form.

But what about problems such as that presented by the National Science Foundation's budget? In that budget, although we have already enacted a big energy bill with separate funding for the year that just ended, we have $98 million in indirect energy programs, and we are projecting for fiscal year 1975, $149 million in indirect energy programs. That is $66 million higher.

These are programs that are directed at one of the major causes of inflation, which is a shortage of energy. If we cut back the National Science Foundation—and in this bill we have already cut back the budget estimate by $6.4 million, and we shall cut it back under this amendment roughly another $20 million; that is $26 million or a little more—are we not in the shape of the dog that finds itself chasing its tail? We are making what we hope is going to be an anti-inflationary move at the same time that we are taking this step which may have proven, itself, to be inflationary.

Mr. PROXMIRE. Mr. President, will the Senator yield on that point?

Mr. CHILES. As I recall, we are talking about, before the cut, an increase of $174 million above last year. As I look at the programs of the National Science Foundation—and I support their programs—I think it is important that we continue basic research and that we continue some specific research. But we all know that there are many programs that are now being performed by the National Science Foundation that are certainly not productive for next year or for 5 years or 20 years from now, for instance, if they are studying the eating habits of the African ant and some of the other studies that we see are undertaken.

I think what we are saying to them is that they have to look at their priorities and, hopefully, they are not going to cut anything as important as research technology, of immediate application in the energy field. Perhaps they will not go out and get some of these programs that are of such an exotic nature that we have tremendous complaints from our people as to why we do not control some of that research in a better way.

So I think what we are talking about cutting here in no way will handicap them, and again it gets down to this thing that if we talk about cutting public works, someone says, "Don't cut here, cut everywhere else," and if we talk about cutting space, I usually feel I am for cutting everything else, but I hate to think about cutting space because that is getting into the interests of the area where I live. We all have to consider the special interests of our constituents.

But if we are going to do something about spending overall, we have to do something about cutting overall.

Mr. PROXMIRE. Mr. President, I just want to reinforce what the Senator from Florida has said so wisely.

The National Science Foundation does not have to take a penny for any of this out of space research.

The basic research budget for this year is well above last year's budget, in fact, far above it—by some 20 percent or more. So I think the Agency can achieve a modest cut by reducing increases in such areas as materials research and biological sciences, and eliminating the increase in funding for social sciences. Social science research is particularly suspect, with projects ranging from Interpersonal Relations Within the Family" to "Ethnographic Atlas of Quadros," and "Conflict, Justice, and Cooperation"—a study of traffic challenges at intersections.

There are many other projects, as we pointed out, costing a quarter of a million dollars in some cases, several hundred thousand dollars in others, many of which projects are simply not within the expertise of the National Science Foundation. They have one project, for example, which studies hog farming, which certainly ought to be a project within the jurisdiction of the Department of Agriculture. Others are clearly within the Law Enforcement Assistance Administration. There are many cuts that could be made without cutting the research which the National Science Foundation should be making in the energy area.

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

Mr. CHILES. I yield to the Senator from South Carolina.

Mr. HOLLINGS. Mr. President, as to the National Science Foundation, for the information of my colleague from Maryland, about 5 weeks ago we passed a special research and development appropri-

ations bill, and within that bill, the very point the Senator from Maryland speaks to, was an appropriation which amounted, overall, to $2.3 billion. We are not being puny or backward or unrealistic toward the energy problem. On the contrary, we have boosted it all up. We said, "We have got a crisis, and we have got to apply the funds to it, particularly in the field of research and development, and particularly with respect to the National Science Foundation."

Under that bill, we provided $101 million to the National Science Foundation. So we are not, all of a sudden, coming here and, like the Senator says, saying we have an energy crisis but then exacerbating the crisis by not providing the funds necessary to solve it.

Mr. MATHIAS. But the Senator from South Carolina would agree that those appropriations were for areas not covered by programs in this bill, would he not? These are energy research programs which are independent of the major bill, which, as the Senator very properly says, the Senate has already passed and funded.

Mr. HOLLINGS. Mr. President, I would like to agree with that, but, serving as a member of the Technology Assessment Board, I have to demur from that judgment. They keep telling us, on the one hand, that this covers a particular item exclusively, and then we go through it on another particular program, and we now have, at the request of both the House and the Senate, within the Technology Assessment Board, a coordinated effort to try to cut out exactly this duplication.

It is fine to put the money to it, but it is very wasteful and contributory toward the inflation itself, if we are going to continue to duplicate.

If I may say another word, I want to commend the distinguished Senator from Wisconsin on his leadership on this particular score. Every time we turn around, we are asked, "What in the world are you meat axes trying to do here on the floor of the Senate?"

Well, in the first instance, we are trying to be a meat ax, and yet, at the same time we are trying to keep faith with respect to actually doing something on inflation.

This body, in great sobriety and solemnity, met on May 9, when inflation was crashing about us, and we voted some 56 to 33 in favor of the amendment of the Senator from Wisconsin (Mr. PROXMIRE) to cut back the total of the budget from $305 billion to $295 billion. That was some 3 months before the President of the United States finally recognized the problem on August 1. Again, even before the President gave his economic message, we cut back some $5 billion; we had, on June 13, another vote on Mr. PROXMIRE's amendment, and this one was 74 to 12.

I will never forget trying to listen to the President's economic message. I said—

> That gentleman is going to cut us off at the pass; he is going to call our hand. He is going to say, "All right, you are over there, now, asking for a $10 billion cut; sort of place your money where your mouth is, or rather take your money away from where your mouth is, and cut it back $10 billion."

But the President asked for only a $5 billion cut.

We also have been trying to bring out the flaw in comparisons between the bill as reported and the budget request. Because we must get $10 million below these requests, it is not enough for a bill to be "below the budget." We in Congress, particularly we in the Senate—the distinguished Presiding Officer, the Senator from Oklahoma (Mr. BARTLETT) has been a leader in this particular drive, with myself and others, including the Senator from Florida and the Senator from Virginia—are trying our best, in a logical, realistic way, to come down to this $295 billion level.

We knew of no way other than across-the-board cuts after the bills get to the floor—not, of course, affecting the uncontrollables.

So, as these budgets came rolling forward, $500 million over last year, $620 million more than last year—you could just see that rather than cutting back to the $295 billion level, that we were really going to be $5 billion to $10 billion above what the President requested. We got the leadership and cooperation of the Senator from West Virginia on his bill, and it is, indeed, a better situation with respect to these appropriations bills, to have the manager of the bill suggest the method of reduction, instead of those of us, who do not have expertise, trying to do the job. Instead of saying, "Do not cut off veterans, do not cut off uncontrollables" or trying to make disabling economies, the Senator from Wisconsin has gone down line for line to see where he can effectuate the so-called 3 percent economy and make a saving where it can be taken.

Whether that will completely balance us, and mean a $10 billion cut at the end of the line, we do not know, but if we start now—as on this bill today, and on the Interior bill on Wednesday, as we did on Transportation last week—we will be able to reconcile, at the end of this year, as we did back in 1967, when we put in a joint resolution at the end of the year on the continuing resolution. At the end we can see where we did not make cuts and where we did, and we can put it all in order so we can come back out of chaos, say that the Senate is running the budget once again, with only 14 dissenters in the entire body: on a $295 billion budget.

That is what the Senator from Wisconsin is leading toward, and that is what we, as a small group from both sides of the aisle, are trying to apply here today and again on Wednesday.

I think that the other leaders in the Senate with respect to the chairmen of the several committees should realize our dilemma when we get to the Budget Committee. I was not going to interject the Budget Committee because we had not met, but the distinguished Senator from Mississippi, on his bill, with a grand gesture to get authoritativeness, authenticity, credibility for what he was doing with the "pork barrel," said, "We will hear from the chairman of the Budget Committee." And, of course, the Budget Committee chairman arose and said, "We are going to staff, we are going to consult, we are going to get room, we do not have all the wisdom, we are going to study."

Absolutely, I do not denigrate that. I am on that Budget Committee and I know we are not ready yet to act—the Republican members, for example, have not yet been appointed. But who in this body is going to stand in the well and say, "No, not this year, not at this time." It is at this time, in the month of August, that we are in this terrible dilemma of raging inflation—look, yesterday David Rockefeller said that we could have a panic—can we not have, as the Senator from Wisconsin on his bill, that posture of saying, "We do mean business. We will cut back now. This year."

On that score I commend the Senator from Wisconsin for his leadership.

Mr. NUNN. Will the Senator from Florida yield.

Mr. CHILES. I am delighted to yield.

Mr. NUNN. I would like to commend the Senator from Wisconsin also, and I would like to join the Senator from Florida and the Senator from South Carolina in expressing my sincere hope that the amendment of the Senator from Wisconsin will be agreed to.

The Senator from South Carolina, I think, went through the history of this movement by a bipartisan group of Senators consisting of the Senator from Oklahoma, who is now presiding; the Senator from New Mexico, who is not on the floor at the moment, the Senator from Kentucky, and the Senator from Florida, I would say the group started off as a very small group, but it has now grown, it is now growing, thanks in large measure to the leadership of the Senator from Wisconsin who earlier proposed and had passed the overall amendment of trying to hold down Federal expenditures to $295 billion this fiscal year.

One of the regrets the Senator from Georgia has now is that we have already disposed of six appropriation measures in this body totaling $30 billion, and the momentum was not strong enough to carry out significant cuts as those appropriation bills rolled through, even though we made every effort to do so.

So we have already reached a total of $30 billion in appropriations, which, according to my calculations, is more than 15 percent of all the appropriations requested.

According to my further calculations, the net effect of efforts to cut the budget estimates so far has been minor. The net reduction I come up with is $16.6 million out of a total of $29.9 billion. This is a good deal less than one-half of 1 percent in reductions so far.

Everyone has his own estimates of controllable expenditures. One can get any kind of definition, and I understand that the current OMB definition is that we can control only about $13 or $14 billion of the entire budget.

Well, if that is the case, I think we might as well throw in the towel if we have a $305 billion budget and we can control only about $13.5 billion of it. I believe, as do many others, that we have a good deal more control than this. A

reasonable measure of our control is the total of the appropriations we must consider. I know the veterans appropriation is not in this case because most of that program is in fulfillment of a solemn obligation. We all want to do what we can for those young men who are veterans and who have given their best for this country, as did their fathers and grandfathers.

Mr. HOLLINGS. Mr. President, will the Senator yield right at that point?

Mr. NUNN. I am glad to yield to the Senator from South Carolina.

Mr. HOLLINGS. The distinguished Senator is aware, after working on this veterans' problem, that of the entire $14 billion involved in this appropriation bill, the amount involved in this amendment is $8.8 million. I think the exact dollar amounts in there are very appropriate in this part of the remarks of the Senator from Georgia, because what we are doing is just—in that $8.8 million—really not effectuating a large economy, but letting the veterans themselves share in this drive which, I am convinced, he will support.

Mr. NUNN. I am glad the Senator from South Carolina has pointed out that it is an important part of the amendment. But of the total appropriating authority we have about $195.9 billion out of a total of $322 billion of new budget authority estimated, and if we had been able to get the momentum, which I believe is underway now, if we had been able to get it going from the very outset of this process, instead of scoring the first success on Friday, thanks largely to the Senator from South Carolina, the Senator from Florida, the Senator from Kansas, and the Senator from West Virginia, on his initiative, we would have saved a considerable amount of money already.

In order to come up with $10 billion in cuts, as so many of us have urged, if we go back to the very beginning of the appropriation crisis, we would have to impose a 5 percent cut on all the appropriation measures. But now that we have passed approximately $30 billion of those appropriation measures with little net reduction, that percentage has already moved past 6 percent. So we are losing ground every day that we do not make these cuts, and this failure is imposing more and more of a burden on the remaining appropriation bills.

I have further remarks I would like to make at an appropriate point later, Mr. President. But, at this point, I would like just to express my congratulations to the Senator from Wisconsin. He has been a real leader in this regard. It is not easy to cut the HUD budget; it is not easy to cut the space effort; it is not easy to cut the Department of Defense budget; but I think it is necessary.

I would like to point to one argument that has been made here, not today, but previously which I think represents the seriousness of the present situation. I hope that argument has faded away into the wind and we will not hear it any more because, to me, it is absolutely fallacious. The argument is, and it has been made very simply that if we do not spend this money now on construction, if we do not spend this money now on other Government programs, that, my goodness, we are going to have to spend more next year because inflation is going up so high.

To me this is a laughable proposition. This is something that Art Buchwald ought to write an article about, that we better go ahead and spend it now because we have got such an inflationary rate that if we do not spend it now, next year it is going to cost more. What the argument overlooks is that we are the ones who are causing that inflation, in large part by the expenditures. I would like the people in HUD and the people in the Space Agency and the people in the Department of Defense to understand what we are doing to them every year when we see 10 and 12 percent inflation. This is the equivalent not of a 3 percent budget cut, if you have 10 or 12 percent inflation: This is the equivalent of a 10 or 12 percent budget cut. So if we can get a grip on excessive Federal spending, if we can indeed cut $10 billion out of the budget this year on an equitable basis, we will not really be cutting the budget of anybody. We will be cutting inflation, and by cutting inflation we will be restoring the budgets that inflation has been eroding away.

So I might just summarize by saying to the Senator from Florida, who has been so kind to yield—I will state this in the form of a question for the purpose of discussion—if we are able to cut the inflation rate down from 10 percent, 11 percent, to 6 to 7 percent, will not the agencies that we are talking about now, and the recipients of Federal funds be better off even with a 3 or 4 percent budget cut?

Mr. CHILES. The Senator is absolutely correct. We are seeing now every day when we start working with the appropriation figures we have to add the factor in for inflation. It is an automatic thing, and we know it is different for different areas. If it is the military we know that we have got to add the salary factor for inflation, the weapons cost factor for inflation, the installation cost factor for inflation; and that is different depending upon whether you are talking about construction or you are talking about wages.

So if we reduce that automatically, the Senator is right. The same with a cut of dollars, they would be getting the same thing they are paying for. I think the Senator is so right, it is kind of like Pogo, who said, "We have discovered the enemy and they are us." That is kind of where we are now.

Thank goodness we are at that stage, or I hope we are, and I want to associate myself with the Senator's remarks. I think he has given us a very good scorecard of where we are today, and how many budgets we passed, and certainly we cannot really pat ourselves on the back and say we have done anything with, hopefully, the success of this amendment, and the success of the amendment the other day by the distinguished Senator from West Virginia who moved to cut his own appropriation, but at least we are starting a pattern.

At least we are getting a habit what may be a habit, to be able to vote on this floor once to cut something. How many years it been since that habit has prevailed? The Senator from South Carolina gives us something about 1967. I was not here then, but maybe it has been that long since the Senate ever did anything, and Congress ever did anything to decide they could cut something.

The habit has been over all these years that on the floor you only add and, of course, many times we know—and I applaud the Committee on Appropriations—many times for saying, "We had better add something in this committee because if we turn it loose on the floor we know that that addition will be much higher."

So the Committee on Appropriations has only sort of reflected what has been the will of the Senate, and I think if they think the will of the Senate—I know the distinguished chairman of that committee, the Senator from Arkansas, if he knows the will of the Senate is to hold down, you watch and see what he will do with that committee. He will be a cutter as fast as anyone. He has been trying to fight a battle of delay in that committee because really it was trying to come out with a bill that would not get fattened up on the floor.

But maybe we are establishing some kind of a pattern with that last amendment we had on transportation, and with this one, and as we go forth until tomorrow, and the other bills that will come up, we are establishing a pattern where some of us can get into a habit of voting no, and get into a habit of getting to cut something.

When we can establish that pattern then we have got an ability to go back and look at this $30 billion we have already passed, and see what we should do there.

Then I think we also have the ability of having the real experts, and the junior Senator from Georgia and the junior Senator from Florida readily acknowledge, I think, we are not experts. We do not know much about fiscal matters. We have got a gut reaction that we think is coming from our people that we ought to do something about this spending.

We do not know the best way to do it, so we come up here and stumble and blunder with a meat ax or whatever else you want to call it, just crying out to get the experts' attention so that they will do it in the proper way.

But I think if there has to be a pattern, and if the Senate does in a couple of these amendments, then the experts will be patterned to see what we need to do and what the will of the Senate is. I think they will come up with a better way of doing it than we are doing at present.

Mr. NUNN. I would agree with the Senator from Florida, if the Senator will yield for a minute. Talking about this pattern, I think it is interesting to note what happened last week when we started off on agriculture, environment, and consumer protection. Only 16 Senators voted against that measure even though it was 29 percent higher than last year and exceeded the President's estimate for this year. But I recall that in the next few days the vote swelled to 26 who voted

against the bill when it came back from conference.

I know the Senator from Florida, the Senator from South Carolina, and I, could not be more involved in any bill than with agriculture.

Mr. CHILES. It was not easy to vote against that measure.

Mr. NUNN. No; although I would say the farmers are getting a good deal less money out of that bill now—I think they get about $2 out of every $10 spent in that appropriations package—but I could not look my farmers in the eye in Georgia and say that I have done anything for them by increasing this bill if at the same time we are taking 10, 12, and 13 percent, out of their pockets with inflation.

Nobody, except possibly the consumer, has been hurt more than the agricultural community by inflation because fertilizer prices have gone up 100 percent and the gasoline prices and the propane prices that they have to pay for have gone up at a staggering amount.

Tracing this history again, as I said as we voted on the agriculture and environment and consumer protection appropriation, there were 26 negative votes.

We next had the Treasury and postal appropriations, and 42 Senators voted unsuccessfully to cut the amount of the bill. Then, on the next vote, 41 Senators voted for a 5-percent cut in the public works appropriation knowing it would affect all of us. It affects Georgia; it affects me. I have been to the chairman of the Committee on Public Works and other people and asked for projects in Georgia and I intend to go back, but I do not think there is anything in Georgia in that bill that would survive the 5-percent cut.

Nevertheless, 41 Senators voted against that, knowing it would affect us.

And our ranks rose to 44 on the next vote to cut that measure by 3 percent. So the handwriting was on the wall at point.

I think the Senator from West Virginia made a very notable achievement in leadership here on the floor of the Senate by next offering to cut his own bill, the transportation appropriation, by 3½ percent.

At that stage, 58 Senators joined in. I believe this demonstrates the buildup of a significant momentum. I believe the Senator from Wisconsin today is going to add to that.

I commend the Senator from Florida and the Senator from South Carolina as members of the Committee on Appropriations and, I believe, the Budget Committee, for the leadership they have displayed in this regard.

Mr. MOSS. Will the Senator yield?

Mr. NUNN. The Senator from Florida has the floor.

Mr. CHILES. I promised to yield to the Senator from Wyoming, and then I would be delighted to yield to the Senator from Utah.

Mr. HANSEN. I thank my colleague for his courtesy.

Mr. President, I ask unanimous consent that the name of the junior Senator from Wyoming (Mr. HANSEN), the Senator from Kentucky (Mr. HUDDLESTON) and the junior Senator from Oklahoma (Mr. BARTLETT) may be added as cosponsors to this amendment.

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

Mr. HANSEN. Mr. President, I am the ranking Republican on the Committee on Veterans' Affairs and I am certain many veterans will be wanting to know why it is I shall be supporting an amendment which, among other things, cuts certain items in this budget by 3½ percent.

It has already been pointed out that there is appropriated by the committee, of recommendations reported, in excess of $14 billion to the Veterans' Administration. I call attention to the fact that only $8.4 million is being cut by this amendment which means that the cut will be about one-twentieth of 1 percent.

I say that because we are all concerned about the veterans, for those young men and women who have served our country gallantly and who deserve the very best we can give them.

But I think the fact remains that by taking the action which I hope the Senate will take here today in approving this 3-percent cut it will not hurt the veteran or any other person in America, but rather will be of help to him.

I say that because I am convinced that if there is one thing that concerns the typical American today, it is runaway inflation. The only way, Mr. President, that we can get a handle on that is to do precisely what we propose here this afternoon to do, and that is, to take each and every one of these budgets and to cut them back so as to bring down the excess of expenditures over receipts to a reasonable, workable amount.

Unless we do that, despite the fact that we may propose to pay more to everyone in true purchasing power, they know as most Americans already know that it is a sham and a charade and money does not buy as much as it did last year.

The concern of Americans today is that we stop this erosion of their purchasing power. Unless we do that, there is serious concern in the minds of many leaders in America today, including those in the Finance Committee as well as in government and in business, that there is grave danger for this Republic.

The alternatives that we have to examine as we reflect upon ways of doing otherwise, or what would the effects be if we do not make the cut that has been proposed now, are frightening indeed.

I am very proud that there is the support that is evident here today to take this step. I wish that it might have started sooner. It has been recounted on the floor earlier that efforts were made, at first unsuccessful efforts, but I think that instead of people trying to impute any other one motive to what manifests itself here today, I must say in all candor that I believe that a majority of the Senate of the United States has become aware of the fact that this in the No. 1 problem, and unless we meet this problem, unless we overcome this deficit spending, then every other problem cannot be handled.

I thank my distinguished colleague from Florida for giving me the opportunity to express these remarks.

Mr. CHILES. I thank the distinguished Senator from Wyoming. I would like to associate myself with his remarks and I think he has always been one who has tried to practice what he preaches and not only vote for a cut in spending and a ceiling of $295 billion, the bill that was first introduced by the distinguished Senator from Wisconsin who is now the proposer of this amendment, but has also been willing to back up that vote with voting for specific cuts.

I think for too long too many of us, including the junior Senator from Florida, sometimes voted against the debt ceiling or voted for some kind of spending ceiling as a public relations gesture, but never really seriously thinking that we had to come up and pay off that vote by voting to cut some kind of project that might influence or affect us at all, like a vote on an agricultural appropriations bill, or a public works bill, or even this bill, because certainly this affects us all. We are all concerned with housing. Many of us are specifically concerned with space and the National Science Foundation and other portions of this bill.

But if we are going to talk about coming down to a balanced budget, if we are willing to vote and be one of those that voted $295 billion, then that takes more than that vote.

It takes being willing to, in some way, scale that down.

As the distinguished junior Senator from Georgia has recited, regardless of whose kind of figure of controllables you come up with, that means that you have to make some serious cuts in a number of places if you are going to be able to get down to that figure.

Mr. HANSEN. If the Senator from Florida will yield for a further observation—and I know the Senator from Utah is anxious to speak—let me say this: There is not a single item in this whole budget that does not have a constituency. By that I mean there is not any place you can cut where a cut would be popular.

Mr. CHILES. It is over here because it had a constituency that put it here to start with.

Mr. HANSEN. Precisely. Every dollar in here had someone interested in that dollar. I know of no fairer way to try to reduce total expenditures than to proceed in the fashion indicated here this afternoon.

I thank my colleague.

Mr. CHILES. I yield to the Senator from Utah.

Mr. MOSS. I thank the Senator.

I commend him and the others who have spoken on this floor about fiscal restraint and the attempt to cut the budget. I, too, would like to be in that group. I voted to cut the Transportation budget. I was one who voted to have a ceiling on expenditures when that came up. But I am a little fearful of the way in which we are going about it.

In the first place, in listening to the debate, the ideas conveyed to me were that cutting the budget just automatically cuts out inflation, that that is the

solution; that if we should cut the budget, if we bring it into balance, there would be no more inflation.

I wish that were so. If so, I would be glad to cut very deeply into all of the budgets across the board. But as a practical matter, it will not cut inflation any appreciable amount. It will cut it some; it will have some effect on it. But there are so many other factors which enter into our inflation now that the size of the Federal Budget is only one small factor.

In fact, in a meeting which we held with some of the top economists during the latter part of last week, their estimate was that if we cut $10 billion from the budget, it would only affect the inflation rate by about one-half of 1 percent. At the rate it is galloping along now in two digit figures, that is not a very deep cut in the inflation. There are many, many other things that have to be done.

The other thing that concerned me a little is that the Senator from Florida was saying, in effect, that the Congress or the Senate always added on to the budget, that we always loaded it on, that we never did cut.

As a practical matter, Congress has cut the President's budget request every single year during the term of this President, and every year since I have been in the Congress, save possibly one.

I give great credit to the Appropriations Committee, on which the Senator serves, for doing that. As a matter of fact, this budget we are considering today is $139.9 million below the budget request, if we should pass this without any change at all.

Mr. CHILES. I think the Senator is correct. If I gave him some false feeling of my attitude on that in my statement, I want to correct that. What I was saying is generally the Appropriations Committee was fighting a holding battle because any cuts that they were trying to make in the budget they had to be careful about because it was on the floor that we added to their budget. What I was saying was in my experience, in just the few years that I have been here, it is that I have never seen, before this year, any cut on the floor, on the floor of the Senate, that was successful. It was always an addition on the floor of the Senate to the appropriations bill.

The Appropriations Committee has, I think, cut the budget request.

There is one other thing that I want to add because I think it is something that Congress really fails to talk about. We like to talk about how we cut the President's budget request, and how we have done that over all these years. And I think we have. But it is really not fair for us to say that and not take any kind of a responsibility for the authorization bills that we pass, which are the bases in most instances for the budget request.

So where we continue to pass higher and higher authorization bills, whether it is this President, the past one, or the President before that, the President must submit a budget message to us based on the authorization bills, in most instances, that we pass.

Then if we say we cut that back, we cannot exactly automatically pat ourselves on the back, because it is our authorization bills and the increase that we pass in those over the years which have added to these budget requests.

Mr. MOSS. I agree that any appropriation that is made is made in response to an authorization bill that is passed. The bill has to be passed in Congress, but it also has to be signed into law by the President. He has to ask for the size budget that he needs in order to carry out the terms of that legislation, or what he thinks he needs.

I do not want the impression to be given that the Congress never cuts. I appreciate the explanation of the Senator from Florida.

Most amendments that come on the floor are budget increasing amendments. It is the Appropriations Committee that has had the brunt of holding the budget down, which they have done in this instance. In this particular bill, which is rather a conglomerate of several agencies, the big increase comes in the veterans section of the bill. That is because of changing the formula as to what a veteran is entitled to by reason of his military service.

Judgments have been made that that is what is needed and that is what is fair.

Mr. PROXMIRE. If the Senator will yield, the biggest percentage increase in the bill is in NASA, not veterans. It is a $207 million increase for NASA.

Mr. MOSS. No, that is not correct.

Mr. PROXMIRE. I am talking about the $207 million increase over last year.

Mr. MOSS. That is right. It is an increase over last year of about 3.1 percent, which is less than the inflationary factor that has been plowed in this year over last year.

Mr. PROXMIRE. It is an increase of about 6 percent over last year, an increase of $200 million over $3 billion last year.

Mr. MOSS. No, it was $96.7 million over last year.

Mr. PROXMIRE. I refer the Senator to page 50 of the report. The first column shows the obligational authority for 1974. The fifth column shows the appropriations increase, and is $207 million on a $3 billion base. That calculates out to more than 6 percent.

Mr. MOSS. But the Senator has ignored entirely that $111 million of that is carryover from last year, which reduces the increase to $97.7 million, which is 3.1 percent.

Mr. PROXMIRE. I am informed by the staff that there is no carryover here.

Mr. MOSS. It is $111 million.

Mr. PROXMIRE. That is not included in the figures I gave. It was $3 billion last year, and $207 million more than that.

Mr. MOSS. But the Appropriations Committee had to add $96.7 million or 3.1 percent, which is not even the inflationary figure. Therefore, it is less in real purchasing power.

The point I was going to make, is that this particular budget has been increased largely by the veterans amount, which is $586 million over last year. This is about 70 percent of the amount it has been increased over last year's budget.

Mr. PROXMIRE. The veterans increase is about 3 percent, and the NASA increase is 6 percent. It is true that the veterans budget is so much larger that it is a very, very large sum. When you are dealing with $14 billion, of course, an increase of $400 million is relatively a modest amount.

Mr. MOSS. Whether you put it in percentages or in dollars, over fiscal 1974 it is a $662.8 million increase, and $461.8 million of that is for veterans. Of course, in dealing with the total figure to be paid out to veterans, I am not arguing that right at the present time.

What I would like to return to is the discussion of NASA. NASA has been cut well below half of its peak period. There is no program in the Federal Government that has been cut more in the last few years than has NASA.

Two years ago, as the Senator will recall, we passed the constant level budget for NASA, and we have not lived up to that in one year since. We are far below that now. Consequently, we have abandoned that position already.

Mr. PROXMIRE. The Senator knows why the NASA program has been reduced. We were spending an overwhelming amount of the NASA budget on the Moon shots. We were going to the Moon, in a project that President Kennedy set for this country many years ago. It was given top priority. This encompassed a very large proportion of the NASA budget. That is over now. To say that the NASA budget has been cut is to say that we are no longer trying to go to the Moon.

Mr. MOSS. We are no longer going to the Moon, but we are doing a number of things that are carrying it on. After the Apollo project was out of the way, we set this constant level budget as to what we would do in NASA. We went from 35,000 to 25,000 employees in NASA. This cut would probably result in 2,500 more being dropped.

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

Mr. MOSS. I yield.

Mr. GOLDWATER. To keep the record straight, the hardware and the material for the Moon shots have been bought and paid for many budgets ago. We still have vehicles that can go to the Moon, and the costs are not reflected in this budget.

I still maintain along with the chairman, under whom I serve, that NASA has taken as big cuts as any agency in this Government. When we cut an organization such as this, which is not only on the verge but also in the process of making greater material advances for our population than any other agency, we are making a mistake.

Before the Senator came into the Chamber, I implored the chairman of the committee, the Senator from Wisconsin, to vote on each one of these items. For example, I could cut the daylights out of HUD, not just by 3 percent; and there are others in which we really could make cuts. Instead of taking 3 percent from an agency that has been doing an exceptionally fine job, I suggest that we take these one at a time, and I will have a shotgun out for HUD. Three percent off that is sort of laughable.

Mr. CHILES. Mr. President, I would like to comment on that. Therein is the problem, the pattern that seems to have developed, since we started with Agriculture and went to Treasury and Public Works and Transportation, and now this. There is some constituency for each project, and each one feels as the distinguished Senator from Arizona does: I will cut the daylights out of everything, but do not cut mine.

The only problem with that is that so long as everyone is honored in that request, that is how we got to $311 billion. That is how we get to the $10 billion to $12 billion over the amount of money we have. Each one of us is willing to do everything—except. The junior Senator from Florida has been one of the exceptions in that.

I think the only way we are going to get to this thing now is that there cannot be any exceptions. We will have to face up to the fact that if we are going to do something about it, we have to do it now.

I want to comment on the distinguished Senator from Utah's observations that many of the economists now say that when we make a $10 billion cut, we are not going to affect inflation too much. I believe that we can get all kinds of experts to give us all kinds of answers on that. I do not know what it will do with respect to the percentage of inflation.

We are dealing with two things: We are dealing with inflation on one hand and with a recession that possibly can be the start of a depression on the other hand.

I have a strong feeling that whether that happens or not, in large part, is going to depend upon the people panic. Right now, I think there is sort of a near panic occurring, and part of the reason for it is the feeling people have as to how in the world we can be running this kind of deficit budget. They see that over the years it has affected inflation. All the experts will agree to that, regardless of how they say a cut will affect inflation now. Congress is continuing to allow that to happen, and the Executive is continuing to allow that to happen. With interest rates what they are, with the recession gaining, with productivity coming down, still no one is doing anything about it.

I think the feeling people have that no one is minding the store is leading to the near panic. My feeling is that if we could show that we are going to do something about the one thing we can do something about, Government spending, it would help. We cannot pass a bill that will stop inflation. We cannot stop inflation throughout the world. We cannot do something immediately about the food shortages or the energy crisis and the like. But we can do something about Government spending.

I feel that if we were to give evidence to the people that we were going to do something about that, then we could do something psychologically for the people that would stop this near panic and perhaps reverse the whole situation. That could be more important than any two-tenths of 1 percent or any other figure in regard to the stopping of inflation. It could be the stimulus that could lead to increased productivity and to increased spending, and that would stop inflation.

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

Mr. CHILES. I yield.

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

The yeas and nays were ordered.

Mr. MOSS. Mr. President, I share the concern of the Senator from Florida about whether there may be a feeling approaching panic in the country. I do not think we are that close yet, but we may be. I ask the Senator if he does not think we are more likely to get that kind of panic out of a spurt in our unemployment rolls than from continuing inflation. They are both bad, but if we are going to have a panic, I think it is going to come when unemployment goes over 6 percent and keeps climbing.

Mr. CHILES. Unemployment is very bad, and I am not one of those who want to ring out inflation by just letting unemployment skyrocket. I think unemployment is skyrocketing now and is going up now, while inflation is continuing. It is doing so in my State, because much of my State is geared to construction, and that has come to a halt.

I had 20 or 30 calls last week from contractors or building suppliers or people in the building business who told me they are stopping, that they have to lay off people. They said, "You are going to see the largest form of unemployment in your State." That is occurring today, and I think that kind of employment is going to continue.

Perhaps there would be some kind of employment with what we are talking about in this cut, but I think it is small compared to what it is going to be in the present path we are traveling.

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

Mr. CHILES. I yield.

Mr. NUNN. I say to the Senator from Utah that one thing that appears to be happening—although I am not an economic expert—is that the liquidity problem we have in this country has perhaps become even more severe than either the inflation problem or unemployment, although they are all interrelated and are all part of the same vicious circle.

What is happening with respect to the liquidity problem? One thing is that every day people—those who still have money—are refusing to put their money in higher yield securities, because they are beginning to feel that these securities are not safe. Banks are having difficulty in issuing certificates of deposit. Bond issues are not being funded. Each day, they have to come off the bond market. What is the reason? People are putting their money in Government bonds. Where do those bonds come from? They come from the necessity of having to finance the deficits that we pass here, that the President proposes each year. Does it mean that we should not issue Government bonds? I do not think it means that. But its does mean that if we can get the Government's $7 billion, $8 billion, or $10 billion deficit out of the market, there will be that much more money to go into savings and loan associations, banks, commercial issues, and we will reduce that much competition for the American dollar. Liquidity will be up and the cost of credit will be down.

Much of the reduction in the civilian budget, in DOD, or space, can be handled by attrition. That cannot be done with small businesses, homebuilders, contractors going broke each day, because they simply cannot get the money they need to carry on.

I do not think we ought to forget when we are talking about which is the greater problem, unemployment or inflation, that the two go hand in hand. If we do not do something about inflation, we are going to have massive and growing unemployment. By the same token, if we do not do something about the liquidity crisis that is perhaps our most immediate problem—and I do not know any way of measuring the seriousness of these two things, as they are all serious. If we do not do something about it, we are not going to be able to come to grips with inflation or unemployment.

Mr. CHILES. Mr. President, the distinguished Senator from New Mexico had requested that I yield to him.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. MOSS. Mr. President, just by way of comment, it is very unusual to have unemployment and inflation going up at the same time. That does not fit the classic pattern. But I think that if we cut back too hard and too quickly on Federal expenditures, we will find unemployment spurting.

Mr. CHILES. I yield to the distinguished Senator from New Mexico (Mr. DOMENICI).

Mr. DOMENICI. I thank my distinguished friend from Florida.

At the outset I wish to state that it is with reluctance that I support this amendment. My reluctance is not based upon my firm commitment to cut the budget this year, but, rather, stems from the only way that I see that I can have any impact. That is to do precisely what we have been doing for the last 10 days to 2 weeks; that is, come to the floor of the Senate with as many people as we can gather around us, either in support of our own motion to recommit, or to cut, or to support amendments proposed by others.

As my distinguished friend from Florida said, and as my distinguished friend who is presiding, the Senator from Oklahoma (Mr. BARTLETT), has said a number of times, if we do not do it this way, what we have is just more and more of what we have had for the last 10 or 15 years. Everybody votes against programs that he does not want, and there are only a few programs that 15 or 20 Senators do not want. Then everybody votes for those that he wants. As a result, we have 20 Senators on every side of every issue, and the American people sit back there confused, because they think their Senator has voted the right way. But all of a sudden, as we add it up, nobody has voted for a budget cut because never are there enough Senators all on one side.

Therefore, I have no alternative, despite the fact that I agree with many of

the statements that the distinguished Senator from Arizona (Mr. GOLDWATER) made this morning about the tremendous relevancy of the space program, about its tremendous technological advances, about what it offers for the future of Americans in education, in health, in energy. Because I have been part of the space program, I am aware that in the last few years they have been the victim of cuts.

In another way, because their budget is almost always an annual budget, they suffer each year a cut and this year they have suffered another.

I submit to those who want to listen that one can get up and talk about all kinds of economic aspects of the inflationary period that we are in. They can hear the pros and cons of high interest; they can talk about unemployment and underemployment and all the others. But almost all economists now agree that an excessive Federal budget, excessive Federal deficit spending is the one ingredient that is common to all of their thinking. For that reason, today I am going to be consistent.

I want everyone to know that I am not picking on the Shuttle. I support it. I am not picking on NASA. I support it.

On the other hand, I started, 2 weeks ago, voting with 17 other Senators against the budget for agriculture and environmental protection. Those are important matters to me, to my State, and to my committee. But it was $2.9 billion more than last year, and I wondered, when we add them all up, where will we be this year?

So that those who wonder why I voted against NASA will know that I am not picking on it, I voted for a 5-percent and then for a 3.5-percent cut in Public Works and AEC. To those who wonder whether I have some special interest that I pick on, I would like them to know that no budget that we vote for in the Senate has more impact on my State than the AEC. Indeed, the AEC budget had $42 million for my State. I nevertheless voted to cut it 5 percent; that failed. I voted to cut it 3.5 percent, and it failed.

I supported the cut in the transportation budget. Yes, I know that it was rather meager when compared to others. And yes, I know that the budget committees are now trying to shave them down before they come to the floor.

Yes, I also know that the chairman of the Committee on Appropriations has a valid argument when he says we will not cut them down, in fact, we shall add to them and let the Senators take them off on the floor. I respect his advice, and I understand the problem that he has, but as I said the other day, it appears to me that the American people are looking for a signal, a signal that we are committed to the proposition of coming up with a budget that is as close to being balanced as possible.

I have just a few more comments. As a number of us—Senator BARTLETT, Senator CHILES, Senator NUNN, Senator DOLE, and myself—as we get together and try to talk about how we can cut the budget, we are told by experts that we might be at a point in history where we cannot control the budget. I do not know if that is true or not. We are being told by some experts that the uncontrollables are in such preponderance that we could only cut a few million dollars, realistically, out of a budget.

I say, here and now, that if that is where we are, then we ought to tell the American people that. If, in fact, this whole process we are going through is meaningless because we are going to spend $30 billion because we cannot control the budget, then I think we ought to say, all in unison, we deplore it, we are going to change it, but it is a fact of life. I am not yet convinced that it is.

I am not yet convinced that we cannot cut 2.5 percent, 3 percent or 3.5 percent on every budget that hits the floor, let the conference iron out the inconsistencies, and give a clear, resounding signal to the American people that we are willing to bite the bullet on special projects for our States, for our constituents, for our kind of thinking about the country's future, so long as everyone is willing to bite the bullet to some extent, across the board, in an equitable manner.

I know none of us is expert enough to have the capacity that the Office of Management and Budget has and that other entities have that can be very precise on what we can and cannot do, on what would be prudent under these circumstances or under that. I am left in the posture that I am convinced that inflation is the most serious problem facing our land. It is creating anger, frustration; people are now giving up in small businesses. We wonder why productivity is down. It is because there is a fear about the future.

I want to do my share as a Senator to let the signal out that that aspect of this inflationary spiral is out for the budget of the United States, that I am willing, to the extent possible, to do what I can.

I am also aware, with regard to this budget, that perhaps HUD is not getting the benefit of the act, that they have been cut back for a few years, that their impoundments have been held legal, that they are now expected to use any initiatives and thus need new personnel. I am aware of that problem with reference to this budget. But I ask what budget is going to come before us—military, HEW, and the rest—that does not have that kind of situation where, if we look at it minutely, we can justify everything in it?

I have items in this budget that I have asked for that have been put in by the committee. Yes, indeed, I expect them to be cut 3 percent or 3.5 percent. And I do not say that I relish that. But I say I relish the opportunity to say, loud and clear, that we must get this budget somewhere between $295 and $300 billion, and if it cannot be done because of the past 20 years of backdoor and uncontrollable budget items, then I think we ought to call it what it is. We ought to commit to the American people that we are going to take it back within our control.

For those in this Congress who speak of giving away our authority to Presidents—there has been much talk about that in the past. I do not think there is any question that we have given away our authority to handle the fiscal affairs of this Government through the processes I have described and which Senators far more eloquent and experienced than I, have described in the past 2 weeks.

To repeat, it is with reluctance that I vote for a cut in the space program and for some of HUD's programs, but I can commit that I will consistently do it in programs even more firmly tied to my State, to its economy, to its scientific community. I have done that. I do hope that in the long run, the message will get across that we want, in a bipartisan manner, once again to take control of this monstrous process which few of us can understand but which the American people, in their own way, understand tremendously today.

In fact, I am convinced that they blame Congress more for inflation than they blame business or labor, and I say they are right. I say that we ought to do something about it, even if it is only to speak up loud and clear for some kind of congressional control.

So I state with reluctance once again that I will support the reduction on this measure.

Mr. DOLE. Mr. President——

The PRESIDING OFFICER. Does the Senator from Florida yield to the Senator from Kansas?

Mr. CHILES. Mr. President, I yield to the Senator from Kansas, and then yield the floor.

Mr. DOLE. Mr. President, there are a number of approaches to cutting the budget, as I pointed out the other day. I commend, as previously, the Appropriations Committee and its leadership for their efforts to hold down spending. There is probably no other group of more fiscally responsible men in this Congress than the Appropriations Committee.

But it must be recognized that since the Appropriations Committee hearings started in January, there has been a significant change in the rate of inflation. Therefore a great number of us, Democrats and Republicans, are involved in trying to catch up with the American people. We feel it is necessary to provide leadership in the Senate to make a moderate cutback in each appropriation bill.

I believe that in this case 3 percent is a responsible cut and that it is responsive to holding down inflation. Certainly there may be other ways to approach it. Cutting the Federal budget is not the only cure for inflation, but it is one thing we can do. It is about the best thing we can do as Members of Congress, and it is something that can be done on a day-by-day basis.

So, as I indicated earlier, if the 3 percent cut offered by the distinguished Senator from Wisconsin is not acceptable, maybe there is some other way to give us a total spending cut. We have passed some bills without cuts. But there is a strong momentum now in the Senate, which started a little over a week ago. I believe there is a majority now in the Senate, of Democrats and Republicans, all concerned about inflation and fiscal responsibility, so that these cuts will be sustained in this appropriation bill and any future appropriation bills.

To the junior Senator from Kansas, that indicates a responsible attitude on the part of the Senate.

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

The PRESIDING OFFICER (Mr. DOMENICI). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BARTLETT. 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. BARTLETT. Mr. President, I wish to join with others in support of the amendment by the Senator from Wisconsin. It has been brought out in the debate that certain problems exist with this amendment, and certainly cutting back expenditures is not without problems. But if the basic problem were underspending, we have solved that problem many, many times down through the years, because we have been overspending for a long time.

Nonetheless, there is a problem, and we realize that we are on the horns of a dilemma; that we have, on the one hand, rising unemployment, and on the other runaway inflation. But certainly the economists, almost unanimously, are agreeing that inflation must be brought under control if we are going to have a strong, reasonable economy and one which will provide for the needs of the people of this Nation.

The momentum on the floor of the Senate has been mentioned as growing in favor of fiscal restraint, in favor of balancing the budget and cutting back the deficit spending. I believe that this momentum cannot help taking the momentum out of inflation. In fact, I cannot think of anything that would have greater psychological impact, because I do not believe that the people of this country believe that the U.S. Senate will vote for reductions in the budget, or vote for significant cutbacks. But I think this apparently is being done, and there is a growing number of Senators who are expressing themselves with votes to cut back on spending.

So I think this can have a tremendous psychological impact, and the American people are going to be saying, "If the Members of the Senate can do this, then certainly the bankers, the businessmen, and the union leaders can take the steps that they must take in order to strengthen the economy and bring it under control that will provide opportunities for the citizens of our country."

We are all concerned about the high interest rates. Certainly I do not think we can expect, on any kind of quid pro quo basis, that if we reduce expenditures there automatically will be a reduction of interest rates; but I do believe there is ample evidence from economists to indicate that control by the Senate would be a big step toward the possibility of an easing of interest rates. Certainly at this time the chairman of the Federal Reserve Board is pretty much fighting the battle singlehandedly. He has been getting little support from Congress and little support from the administration; and I think that this support that is growing in the Senate today is support that will help bring about fiscal restraint and help bring about a reduction in the rate of inflation.

Also, I think that here today we are also actually helping bring about control of spending on various budget items. Certainly this can improve efficiency as well as show the American people that there are a number of Senators who are willing to cut back. I might stress, as I look across the Chamber at my friend from Georgia, my friend from Florida, and my friend from New Mexico now in the chair, that they have expressed willingness to cut back programs that benefited their States, and programs of which they have a particular knowledge and interest, programs which they know are good programs and sound programs.

I am a member of the Committee on Aeronautics and Space Sciences, and am a strong supporter of the space effort and the various programs that have heretofore been financed. I am aware that NASA has been reduced rather sharply in the appropriations coming its way, and it has been stretching the dollar for several years. But nonetheless, I think it is only proper that if we make adjustments in spending downward, that they be made on a basis that covers as many of the various areas of spending as is possible.

To do this, and do it by just tightening someone else's belt, I found a long time ago, is impossible. We must agree that we are going to tighten our own belts. In voting to cut the budget of the Department of Agriculture, for example, it was a vote in my case and I know in the case of many other Senators against programs that are strongly desired and popular in our States. But if we are going to get the job done, we are going to have to be willing to tighten our belts as well as see them tightened on the other 49 States.

When I was Governor I had the constitutional duty to present a budget, and it was sort of an interesting exercise in dividing up a piece of pie and, as this was finally divided, presenting that to the members of the legislature for their consideration and their approval. I was required to divide up the pie.

Unfortunately, the Members of Congress in the past have not been required to divide up the pie but merely to create the pieces, and then look around for a pie pan big enough to put it all in, and then raise the debt ceiling limit, exercising little restraint and exercising poor economic judgment in many years. But with people today who know banking, who are familiar with economic trends, international and national, saying that we may be looking toward a panic, this could have the consequences that we could be in real trouble, that we may not be able to control the economy and then, I think, it is time for us to take steps to put the brakes on and look around for many other areas that can be improved.

Certainly as we have looked at the budgets recently, I, as a neophyte, as an economist—I am not one at all—but I have learned a lot, and I have learned a lot about the difficulties of reducing the expenditures of the Federal Government.

Nonetheless, it occurs to me there is all the more reason why we should look forward to adopting some changes in the future that would make it easier to adjust the outflow of money to the inflow, and we have passed a very important bill earlier this year toward that end.

Nonetheless, there are other changes that need to be made, changes in the structure of our bills and in the manner in which we approach spending in Congress.

It was my pleasure several weeks ago to join with the Senators from Georgia, Florida, Kentucky, and New Mexico, and Senators from South Carolina, Nebraska, Kansas, and many others, on a bipartisan basis echoing the feeling of the Senator from Virginia, the Senator from Wisconsin, and their concern about spending.

I am glad that there has been a momentum created, a real concern. I compliment the Senator from Wisconsin for his leadership not only today, but particularly today, when he is the floor manager of the bill and sponsoring an amendment to not make an across-the-board cut but to make a specific cut of the various items. Certainly this is a preferable way of operating.

I know that in the steps that have been taken they have not always been the prudent manner in which to operate, sometimes because of time, sometimes because of lack of ability and knowledge on my part, perhaps that of others, but certainly there has been a desire to accomplish a goal and, I believe, that it is possible today to see that we are making some progress, and I am hoping that this momentum will increase, and more and more people will join, particularly those who have the ability to really do the job properly, so that in our eagerness to accomplish a goal we will do it in the proper way, in the best way, in a responsible way.

On many occasions this year the members of this body have expressed their concern about spending, concern about inflation, and concern about the economy.

Today they have an opportunity of expressing themselves again on an appropriation bill, a very important one and, as I said, one which I strongly support.

So, in my vote I will be voting to reduce expenditures in areas that I strongly believe in, in areas that I know are deserving of an ample appropriation. But I believe that if we are to accomplish the purpose of reducing the deficit, we must be willing to cut out a number of areas, a number of programs that are valid, a number of programs that are desired by the American people, a number of programs that are good but to do this in the overall interest of ridding ourselves of runaway inflation that could just eat up this country, doing it with a recognition that inflation hits hardest at those of modest means, those of fixed incomes, the poor, and that it destroys the real strength and fabric of a nation.

We seem to have gotten away from a saving economy to one of a borrowing or spending economy, and I cannot help but believe—not that I am opposed to borrowing, which I have done on many oc-

casions—that savings should be accentuated, and that the old idea that a penny saved is a penny earned is still a good thing and something we should support.

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

Mr. BARTLETT. I yield to the distinguished Senator from Florida.

Mr. CHILES. I want to compliment the Senator from Oklahoma on his remarks and also on his actions which, I think, indicate our desire to try to do something about the fiscal situation of the country.

I had the pleasure of being a cosponsor, along with the Presiding Officer, the junior Senator from Georgia, and the junior Senator from Kentucky, of a resolution that was trying to call attention to the plight, trying to get a domestic summit meeting which would bring together all the parties as sort of parts to this puzzle, labor, management, the President, the Chairman of the Federal Reserve Board, together with a bipartisan membership of the leadership of Congress from both sides of the aisle and both ends of the capitol, and to try to get something working toward a plan of doing something about the economy.

I am delighted with the response that we received in this body by the overwhelming passage of that resolution, and I know that it is working in the House, and it has a number of different resolutions, similar or identical, which have been introduced in the House, but to date it has not come up for a vote there, and I know the Senator from Oklahoma wishes that we could initiate that kind of meeting.

But I agree with him that, barring that, we have got to try to do something here to signal to the American people that we are going to be willing to do our part and that that cannot happen by just voting for a spending cut or even the provision of $295 billion unless we are willing to make cuts that hurt and, of course, across all of the areas.

We are not going to be successful—and I want to associate myself with his remarks and his leadership which he has displayed in this regard.

Mr. BARTLETT. I thank the junior Senator from Florida. I am very happy to work with him and the junior Senator from Georgia and the Senator from New Mexico and the Senator from Kentucky in trying to expand this nonofficial group.

Mr. NUNN. Will the Senator yield?

Mr. BARTLETT: Yes.

Mr. NUNN. I know the Senator from Oklahoma has done a great deal of work on the overall problem of the economy today. I know he has had a lot of discussions on the problem—I have had a lot with him. I know he is concerned with the overall situation. I also heard him mention that he serves on the Aeronautics and Space Committee. The junior Senator from Georgia serves on the Armed Services Committee. One of the things that has happened here in the past, I think, is that when it gets around to the Space budget and when it gets around to the Armed Services budget, nearly everybody wants to get the bulk of the savings out of those two budgets because they involve more of a long-range projection, because the question of national security is an intangible question, and we cannot clearly say what good the military budget has done, as long as we prevent war, except it is a deterrent and it is essential.

I would just like to ask the Senator if he does not think the way we are going about this now in terms of trying to take something out of every budget, will mean that when we get to the later budgets, and when we get to the Department of Defense budget, that we will have set a standard that we can apply equitably across the board, and we will not be jeopardizing the national security, by placing the burden of a balanced budget solely on our defense effort. Instead we will be in a consistent posture of trying to save across the board so that everybody who is a beneficiary of Federal programs sacrifices to some extent, but equitably, with the exception, of course, of completely uncontrollable items. I believe this is a lot more sensible than getting down to the DOD budget and Space budget and saying, "Look, here is a great big hunk, let us take it all out of that."

I would just like to ask the Senator's reaction to that proposition.

Mr. BARTLETT. Yet, I concur with the Senator.

Mr. NUNN. I know the Senator who is Chairman of the Armed Services Committee would be interested in this as he faces this situation every year, I would suggest that the Senator from Mississippi listen to the colloquy here, and give the Senator's response.

Mr. BARTLETT. I agree with the Senator from Georgia.

I know there are those who would look to the defense and space budgets, and others, for cuts, also those who look to the social programs for cuts and retain the items in the President's budget on the military, but it is obviously going to affect us and it must be done on a very broad-based method as much as possible, cutting everywhere we possibly can, recognizing, unfortunately, that there are many uncontrollables that cannot be cut.

So I think the proposed cuts which have been advanced by the floor manager and the chairman of the Appropriations Subcommittee are cuts that make sense, that are spread around, and as I said earlier, are cutting out good items. But the more we can cut the spending which leads to more and greater deficits, if we can reduce that spending a little here and there, then it is better than when the deficit is financed by new money, when there is a rapid growth in the money supply, as there has been, which produces serious inflation.

So if we can reduce that need for rapid growth in new money supply by the actions taken here, this will certainly be a big step in the right direction.

I heartily concur with the Senator from Georgia that the more it can be spread around, the smaller the decrease will have to be, but I do believe that there is the opportunity of bringing about some restraint in spending, bringing about some reduction in deficits and bringing about some stability in our economy.

Mr. President, I yield the floor.

Mr. McCLELLAN. Mr. President——

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. McCLELLAN. I would ask unanimous consent that I may request and suggest the absence of a quorum without losing my right to the floor.

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

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. PERCY. Mr. President——

Mr. McCLELLAN. Mr. President, I believe I have the floor.

The PRESIDING OFFICER. The Senator from Arkansas is correct.

Mr. McCLELLAN. How much time does the Senator want?

Mr. PERCY. Five minutes.

Mr. McCLELLAN. I yield 5 minutes to the Senator from Illinois.

Mr. PERCY. I thank my distinguished colleague.

Mr. President, I would like to express my deep appreciation for the work of the Appropriations Committee, particularly as it has dealt with a very difficult bill before us. I speak with particular reference to the Housing and Urban Development appropriations.

Mr. President, on pages 6, 7, and 8 of the report that is before us, the committee deals with title I, the Department of Housing and Urban Development appropriations. Particular reference is made to sections 235 and 236, programs which were enacted in the Housing Act of 1968. At that time we set out a housing goal of 2.6 million housing units a year for 10 years, of which 600,000 were to be for low- and moderate-income families.

A portion of that program addressed itself to offering housing opportunities to families who, instead of moving into public housing or rental housing, would be given the opportunity to own their own home. This is an opportunity that the Federal Government has offered to GI's and has offered to families of middle income America for many, many years through VA-guaranteed and FHA-insured mortgages.

The program that was developed in the Housing Act of 1968 was a direct result of a bill entitled "The National Homeownership Foundation Act" that I introduced on April 20, 1967.

That bill was sponsored by the following Senators:

Mr. Aiken, Mr. Allott, Mr. Baker, Mr. Bennett, Mr. Boggs, Mr. Brooke, Mr. Carlson, Mr. Case, Mr. Cooper, Mr. Cotton, Mr. Curtis, Mr. Dirksen, Mr. Dominick, Mr. Fannin, Mr. Fong, Mr. Griffin, Mr. Hansen, Mr. Hatfield, Mr. Hickenlooper, Mr. Hruska, Mr. Javits, Mr. Jordan of Idaho, Mr. Kuchel, Mr. Magnuson, Mr. Miller, Mr. Morton, Mr. Mundt, Mr. Murphy, Mr. Pearson, Mr. Prouty, Mr. Scott of Pennsylvania, Mrs. Smith, Mr. Thurmond, Mr. Tower, Mr. Williams of Delaware, and Mr. Young of North Dakota.

Identical legislation was introduced in the House of Representatives by Con-

gressman WILLIAM B. WIDNALL, the ranking minority member of the Banking and Currency Committee, and was cosponsored by 111 Members of that body, 66 of whom are still in the House.

I ask unanimous consent that the names of the 66 House Members who are in the House of Representatives today, and who introduced legislation to provide homeownership opportunities for low-income people, be inserted in the RECORD at this point.

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

*H.R. 8822. Mr. Anderson; April 20, 1967 (Banking and Currency).
See Digest of H.R. 8820.
*H.R. 8823. Mr. Arends; April 20, 1967 (Banking and Currency).
See Digest of H.R. 8820.
*H.R. 8824. Mr. Bell; April 30, 1967 (Banking and Currency).
See Digest of H.R. 8820.
**H.R. 8825. Mr. Betts; April 20, 1967 (Banking and Currency).
See Digest of H.R. 8820.
* H.R. 8826. Mr. Biester; April 20, 1967, (Banking and Currency).
See Digest of H.R. 8820.
*H.R. 8829. Mr. Broomfield; April 20, 1967 (Banking and Currency).
See Digest of H.R. 8820.
*H.R. 8830. Mr. Brotzman; April 20, 1967 (Banking and Currency).
See Digest of H.R. 8820.
*H.R. 8831. Mr. Brown of Michigan; April 20, 1967 (Banking and Currency).
See Digest of H.R. 8820.
*H.R. 8832. Mr. Brown of Ohio; April 20, 1967 (Banking and Currency).
See Digest of H.R. 8820.
*H.R. 8833. Mr. Broyhill of North Carolina; April 20, 1967 (Banking and Currency).
See Digest of H.R. 8820.
*H.R. 8838. Mr. Carter; April 20, 1967 (Banking and Currency).
See Digest of H.R. 8820.
*H.R. 8839. Mr. Cederberg; April 20, 1967 (Banking and Currency).
See Digest of H.R. 8820.
*H.R. 8840. Mr. Chamberlain; April 20, 1967 (Banking and Currency).
See Digest of H.R. 8820.
*H.R. 8841. Mr. Don H. Clausen; April 20, 1967 (Banking and Currency).
See Digest of H.R. 8820.
*H.R. 8842. Mr. Conable; April 20, 1967 (Banking and Currency).
See Digest of H.R. 8820.
*H.R. 8443. Mr. Conte; April 20, 1967 (Banking and Currency).
See Digest of H.R. 8820.
*H.R. 8847. Mr. Dellenback; April 20, 1967 (Banking and Currency).
See Digest of H.R. 8820.
*H.R. 8848. Mr. Derwinski; April 20, 1967 (Banking and Currency).
See Digest of H.R. 8820.
*H.R. 8849. Mr. Duncan; April 20, 1967 (Banking and Currency).
See Digest of H.R. 8820.
*H.R. 8851. Mr. Erlenborn; April 20, 1967 (Banking and Currency).
See Digest of H.R. 8820.
*H.R. 8852. Mr. Esch; April 20, 1967 (Banking and Currency).
See Digest of H.R. 8820.
*H.R. 8853. Mr. Eshleman; April 20, 1967 (Banking and Currency).
See Digest of H.R. 8820.
*H.R. 8854. Mr. Findley; April 20, 1967 (Banking and Currency).
See Digest of H.R. 8820.
*H.R. 8855. Mr. Frelinghuysen; April 20, 1967 (Banking and Currency).
See Digest of H.R. 8820.
*H.R. 8859. Mr. Hammerschmidt; April 20, 1967 (Banking and Currency).
See Digest of H.R. 8820.
*H.R. 8860. Mr. Hansen of Idaho; April 20, 1967 (Banking and Currency).
See Digest of H.R. 8820.
*H.R. 8862. Mrs. Heckler of Massachusetts; April 20, 1967 (Banking and Currency).
See Digest of H.R. 8820.
*H.R. 8863. Mr. Horton; April 20, 1967 (Banking and Currency).
See Digest of H.R. 8820.
*H.R. 8864. Mr. Hunt; April 20, 1967 (Banking and Currency).
See Digest of H.R. 8820.
*H.R. 8866. Mr. King of New York; April 20, 1967 (Banking and Currency).
See Digest of H.R. 8820.
*H.R. 8868. Mr. Laird; April 20, 1967 (Banking and Currency).
See Digest of H.R. 8820.
*H.R. 8869. Mr. Latta; April 20, 1967 (Banking and Currency).
See Digest of H.R. 8820.
*H.R. 8871. Mr. McClory; April 20, 1967 (Banking and Currency).
See Digest of H.R. 8820.
*H.R. 8873. Mr. McDade; April 20, 1967 (Banking and Currency).
See Digest of H.R. 8820.
*H.R. 8876. Mr. Mathias of California; April 20, 1967 (Banking and Currency).
See Digest of H.R. 8820.
*H.R. 8878. Mr. Mayne; April 20, 1967 (Banking and Currency).
See Digest of H.R. 8820.
*H.R. 8880. Mr. Michel; April 20, 1967 (Banking and Currency).
See Digest of H.R. 8820.
*H.R. 8881. Mr. Minshall; April 20, 1967 (Banking and Currency).
See Digest of H.R. 8820.
*H.R. 8884. Mr. Nelsen; April 20, 1967 (Banking and Currency).
See Digest of H.R. 8820.
*H.R. 8885. Mr. Pelly; April 20, 1967 (Banking and Currency).
See Digest of H.R. 8820.
*H.R. 8888. Mr. Quie; April 20, 1967 (Banking and Currency).
See Digest of H.R. 8820.
*H.R. 8889. Mr. Quillen; April 20, 1967 (Banking and Currency).
See Digest of H.R. 8820.
*H.R. 8890. Mr. Railsback; April 20, 1967 (Banking and Currency).
See Digest of H.R. 8820.
* H.R. 8891. Mr. Reid of New York; April 20, 1967 (Banking and Currency).
See Digest of H.R. 8820.
* H.R. 8893. Mr. Riegle; April 20, 1967 (Banking and Currency).
See Digest of H.R. 8820.
* H.R. 8895. Mr. Rhodes of Arizona; April 20, 1967 (Banking and Currency).
See Digest of H.R. 8820.
* H.R. 8896. Mr. Robison; April 20, 1967 (Banking and Currency).
See Digest of H.R. 8820.
* H.R. 8897. Mr. Ruppe; April 20, 1967 (Banking and Currency).
See Digest of H.R. 8820.
* H.R. 8898. Mr. Sandman; April 20, 1967 (Banking and Currency).
See Digest of H.R. 8820.
* H.R. 8900. Mr. Smith of New York; April 20, 1967 (Banking and Currency).
See Digest of H.R. 8820.
* H.R. 8901. Mr. Snyder; April 20, 1967 (Banking and Currency).
See Digest of H.R. 8820.
* H.R. 8904. Mr. Steiger of Wisconsin; April 20, 1967 (Banking and Currency).
See Digest of H.R. 8820.
* H.R. 8906. Mr. Vander Jagt; April 20, 1967 (Banking and Currency).
See Digest of H.R. 8820.
* H.R. 8907. Mr. Wampler; April 20, 1967 (Banking and Currency).
See Digest of H.R. 8820.
* H.R. 8908. Mr. Whalen; April 20, 1967 (Banking and Currency).
See Digest of H.R. 8820.
* H.R. 8909. Mr. Williams of Pennsylvania; April 20, 1967 (Banking and Currency).
See Digest of H.R. 8820.
* H.R. 8910. Mr. Wyatt; April 20, 1967 (Banking and Currency).
See Digest of H.R. 8820.
* H.R. 8911. Mr. Wydler; April 20, 1967 (Banking and Currency).
See Digest of H.R. 8820.
* H.R. 9134. Mr. Andrews of North Dakota; April 25, 1967 (Banking and Currency).
See Digest of H.R. 8820.
* H.R. 9135. Mr. Blackburn; April 25, 1967 (Banking and Currency).
See Digest of H.R. 8820.
* H.R. 9136. Mr. Cleveland; April 25, 1967 (Banking and Currency).
See Digest of H.R. 8820.
*H.R. 9139. Mr. Gude; April 25, 1967 (Banking and Currency).
See Digest of H.R. 8820.
*H.R. 9140. Mr. Johnson of Pennsylvania; April 25, 1967 (Banking and Currency).
See Digest of H.R. 8820.
*H.R. 9124, Mr. Mosher; April 25, 1967 (Banking and Currency).
See Digest of H.R. 8820.
*H.R. 9144. Mr. Schneebeli; April 25, 1967 (Banking and Currency).
See Digest of H.R. 8820.
*H.R. 9145. Mr. Stanton; April 25, 1967 (Banking and Currency).
See Digest of H.R. 8820.
*H.R. 9147. Mr. Wylie; April 25, 1967 (Banking and Currency).
See Digest of H.R. 8820.

Mr. PERCY. As I have noted with regret on previous occasions, section 107 of the Housing and Urban Development Act of 1968, authorizing a National Homeownership Foundation, was never implemented. In retrospect I think it can be said that a great deal of the mismanagement which has plagued the 235 program could have been avoided if the Board of the Foundation had been appointed in timely fashion and if the Foundation's oversight function, as specified in the law, had been fully implemented.

I think it would not be inappropriate at this point, Mr. President, to indicate that the Senator from Illinois inquired of the White House a few years back why this particular portion of the law had not been implemented, why the board had not been appointed after a number of calls had been made by the then Vice President of the United States to people to get them to accept membership and after the Senator from Illinois had been asked to approach certain people who had indicated a reluctance to take on added responsibilities, and was urged to get them to accept membership on the board. Mr. Ehrlichman advised me, first through my own staff and then directly notified me, that the reason this board was not being appointed and that that particular provision of law was not being implemented was because of the vote of the Senator from Illinois on the ABM.

The Senator from Illinois was stunned at this kind of a response, so much so that I not only wrote a letter confirming this action to Mr. Ehrlichman, but also asked for an immediate meeting with him.

I went to the White House and asked why any appointee of the President would fail to implement a law of Congress and

act to appoint a board for oversight of homeownership opportunities for low-income people because of a totally unrelated vote on an ABM system that the Senator from Illinois felt ill-advised, and which subsequent events have certainly indicated to be ill-advised.

It was said to the Senator from Illinois that this was the way the ballgame was played. I was left with only one conclusion: that no matter how you phrased it, that it was the vote on an ABM system that was being taken out of the hide of the poor.

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

Mr. PERCY. May I have 2 additional minutes?

The PRESIDING OFFICER. The Senator is recognized for 2 more minutes.

Mr. PERCY. As we know, there have been scores and scores of indictments growing out of grand jury investigations of FHA programs.

As the Appropriations Committee aptly points out in its report, a great deal of the fraud that was involved in this program was not as a result of the type of program that was designed by Congress, but by the mismanagement of the program, the lack of oversight, the lack of responsibility, and the lack of administrative care taken in implementing a program which has otherwise proven highly successful.

Mr. President, my further remarks will support fully the success the program has had despite the fact that its implementation has been dreadful and its management has been chaotic in many respects. Despite those facts, the program and the quality of the program was such that, as is pointed out on pages 6, 7, and 8 in the report before us, better than 350,000 families, incorporating well over 1 million people, are today regularly paying monthly payments to own their own home.

Some 50,000 families originally subsidized under section 235 so that they could become homeowners, have actually gone off the subsidy altogether.

That was the intent and purpose of it, to give people incentive to say that, "Here is a start in life so that you can own something, be a somebody and have something. But our whole purpose is to use this as a carrot so that you can be weaned away from the subsidies, so that you can upgrade yourself, and have the incentive to do so."

Even in the face of this conspicuous failure in implementing the law, the 235 program has been highly successful. Because the future of this program now is a matter for decision in a conference between the Senate and the House on the terms of the Housing and Community Development Act of 1974, I think it would be helpful to my colleagues—especially to the 27 present Members of the Senate and the 66 present Members of the House who cosponsored the National Homeownership Foundation Act—to provide them at this time with an up-to-date report on the benefits of this program.

The program provided homeownership opportunities to 434,000 families to June 1973 since its inception in 1968. With a median income of about $6,500, few of these families could otherwise have enjoyed the benefits of homeownership.

According to HUD's statistics for 1971, the average monthly income of 235 families was $432; the family's share of the monthly mortgage payment was $95 while the average monthly subsidy was $79.

Initial experience with the program indicates, as I noted a moment ago, that a significant percentage of households which start receiving these subsidies earn their way out of them through higher incomes. In one recertification of income for 235 families, 8 percent stopped receiving any subsidy, 65.8 percent received a reduced subsidy, 13.4 percent had no change, and 20.8 percent received a larger subsidy.

"Housing in the Seventies," the comprehensive study commissioned by the Department of Housing and Urban Development attempting to justify the suspension of several housing programs, including section 235, reached the following conclusions about that program:

First. The program enabled a number of low-to-moderate income families who desired to own homes to achieve that objective;

Second. Only a third of all homeowners nationally have incomes below $7,000, but close to two-thirds of all 235 beneficiaries had incomes below that level;

Third. The 235 program provided substantial benefits to recipients. Housing quality, the study estimated, improved by 35 percent and nonhousing expenditures increased by 8 percent.

Fourth. The study did not demonstrate that section 235 housing cost more than comparable privately built units.

The 235 program has also received high marks in other studies. Dr. Anthony Downs, vice-president of the real Estate Research Corp., came to the following conclusion:

> On balance, we believe that both the Section 235 and Section 236 programs are effective instruments for meeting the key objectives of housing subsidies. . . . We believe their basic designs are sound, although some modifications can improve them. The major inadequacies so far encountered in the execution of these programs 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 deteriorating areas.

During the last 2 or 3 years newspapers and magazines have from time to time given prominent coverage to the real but nonetheless limited cases of fraud and other abuses which have been associated with the 235 program. Seldom did stories of the program's successes find their way into print.

I want to tell you about one successful effort from the city of Chicago.

The Bickerdike Redevelopment Corp. is a nonprofit community housing corporation on the near-northwest side of the city. The corporation was responsible for the building of new single family homes and their sale to the community. These were the first new single family homes built in the community in over 50 years. Most homes were sold to families who qualified for interest subsidies under the 235 program.

From 1970 to 1973, Bickerdike, along with two general contractors, built 65 single family homes. Sixty-three of these were sold under section 235 and two were sold under the 203(b) program.

Seventy percent of the buyers were Latin American. The majority of the families were in the $7,000 to $9,000 income range and most of them had two, three, or four children. Three families have now lived in their homes for over 3 years; 24 families 2 to 3 years, 32 families 1 to 2 years, and 5 families for about a year.

As of February 1974, two of the homes had been turned back to HUD. One was owned by a single woman with adopted children who simply walked away from the property. The other was turned back because the divorced mother of five children died. Two families in danger of foreclosure survived the crisis because of counseling from Bickerdike.

Beside coordinating the development of the homes, arranging financing, and selling them, Bickerdike worked with the buyers so as to help them become knowledgeable homeowners. Meetings were held on insurance, maintenance, and budgeting for home improvements. A homeowners' association was formed to work on common problems, such as high taxes.

I submit, Mr. President, that success stories like this one exist in every part of the Nation. We should not allow ourselves to be swept away by a few reports of failures. I believe the bill we passed here in the Senate in March, S. 3066, amended the program so that we can be confident of even more and greater successes in the future.

I believe the homeownership program for low- and moderate-income families must be retained in the bill currently being worked out in conference.

Mr. President, I ask unanimous consent that a table indicating the distribution of 235 units by States be included in the RECORD at this point.

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

State and number insured:	
Alabama	12,994
Alaska	688
Arizona	7,521
Arkansas	6,398
California	31,439
Colorado	6,719
Connecticut	1,019
Delaware	434
District of Columbia	759
Florida	31,361
Georgia	20,397
Hawaii	1,746
Idaho	2,210
Illinois	16,911
Indiana	9,340
Iowa	7,232
Kansas	3,309
Kentucky	9,258
Louisiana	23,010
Maine	927
Maryland	1,655
Massachusetts	4,360
Michigan	20,082
Minnesota	3,220

Mississippi	11,026
Missouri	6,096
Montana	1,652
Nebraska	4,543
Nevada	5,980
New Hampshire	1,098
New Jersey	3,293
New Mexico	5,176
New York	4,364
North Carolina	7,244
North Dakota	811
Ohio	16,676
Oklahoma	11,455
Oregon	6,326
Pennsylvania	5,880
Rhode Island	744
South Carolina	16,571
South Dakota	1,498
Tennessee	17,227
Texas	37,755
Utah	6,689
Vermont	340
Virginia	3,777
Washington	13,751
West Virginia	711
Wisconsin	10,440
Wyoming	921
Puerto Rico	9,661
Virgin Islands	0
Guam	129
U.S. Total	434,814

Mr. PERCY. Mr. President, I ask unanimous consent to have printed in the RECORD the section of the Appropriations Committee's report to which I have referred, because I concur with every statement made in that section.

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

TITLE I. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

The Committee is distressed and deeply concerned by the Administration's action to abandon our nation's historic housing program. In 1949, the Congress declared our policy to provide a decent home in a suitable living environment for every American family.

In 1968, Congress set a housing goal of 2.6 million housing units a year for 10 years of which 600,000 were to be for low and moderate income families.

In January 1973, the Administration froze virtually all new starts for low and moderate income families. Some 17 housing programs or programs closely associated with housing were stopped. Except for units already in the pipelines, programs for low income housing were abandoned, and programs for moderate income housing were abandoned as well. This has resulted in additional families in the lower 40 to 50 percent of American income groups being denied access to public housing or the ability to buy a new home.

Exacerbating this situation, due to exceedingly high interest rates, approximately 70 percent of the American people under private enterprise and conventional housing programs have been unable to purchase new homes.

Instead of a total of 2.6 million housing units a year, the annual rate for the first half of 1974 was about 1.5 million units, or over a million units below the national housing goals promulgated by the Congress.

Homebuyers, builders, thrift institutions, and those associated with the housing industry—furniture, durable goods, heating and cooling, among others—have felt the housing moratorium pinch.

The Committee feels that the Administration has justified its actions for a variety of unsupported reasons. Among other things, it has claimed that the programs were not achieving the goals set by the Congress, but by no stretch of the imagination is that correct.

Public housing, for all its particular difficulties, is highly popular and a badly needed program. The waiting lists are exceedingly long. The vacancy rates are exceedingly low. Thus, it may be concluded that public housing provides better housing to millions of Americans, than they could otherwise afford or are now getting.

The Sections 235 and 236 programs suffered from both HUD management, and actual corruption, rather than from any inherent defects in the programs. In cities with good HUD management, and actual corruption, rather than inherent defects in the programs. In cities with good HUD management, such as Milwaukee, the program was a great success. In cities with rampant corruption among housing officials, it, along with other HUD programs, failed. But the failures in certain cities were not peculiar to Section 235 and 236 and, in fact, these programs were not the main ones affected or which failed, contrary to the opinion of the Department and some judicial mistakes of fact. The Department blamed the programs instead of its own mismanagement. As a consequence of this mismanagement, over 400 indictments have been handed down in housing fraud cases

Over 10 percent of the total defaults in the Section 235 program were in two cities, Seattle and Dallas where there was serious unemployment stemming from cutbacks in the air and space industries. In the State of Wisconsin, 97 percent of those assisted have been successful.

In the country as a whole, HUD studies show that the Section 235 program is actuarially sound. There are now 350,000 Section 235 homeowners making their monthly payments. The actual number of defaults has not exceeded the number anticipated and the insurance reserves have covered anticipated claims. By any measurement, the program has been a major success in attaining the objective of assisting those with incomes well below the national median.

More than two-thirds of those receiving assistance receive lower subsidies each year because their incomes are rising, which was a major aim of the program. Some 50,000 Section 235 homebuyers have gone off subsidy altogether and, in the Committee's opinion, these are distinct measures of program success.

The Department has argued that if not everyone could be subsidized under the program, no one should be subsidized. Evidently, they halted the program out of policy distaste rather than from factual evidence.

We are now awaiting action for new and substitute programs. These were delayed by HUD's failure to finish its studies in a timely fashion and to recommend any program at all until September, 1973.

The Department now wishes to rely entirely on what is called the new Section 23 program, a program of leased housing to replace the conventional public housing program, and Sections 235 and 236.

The Committee feels that it would be a tragic error to take this course. First, Section 23 may not work. Second, if it does work, it could take a very long time to go into effect. Third, even if it works, it may not do two important things, namely, service the kind of low income families that public housing helped, and build in the regions or areas where housing is most needed.

Under Section 23, the builders become the housing managers. It would seem that since they must rent out the units, they will seek the elderly, those without children, and the upper reaches of low and moderate income families.

The large poor families and the very poor families, for whom public housing was such a great program, may well be left out in the cold.

For all these reasons, we should not accept the abandonment of the traditional programs as the price for Section 23. The traditional programs and Section 23 should be implemented concurrently.

Hopefully this will be the result of the legislative conference now taking place between the House and the Senate concerning future housing policy and programs. When the pending legislation is finally agreed to, this Committee will examine the Administration's funding request to carry out the will of the Congress.

Mr. McCLELLAN. Mr. President, I rise to discuss briefly the pending amendment, which I understand is the amendment of the distinguished Senator from Wisconsin. Is my understanding correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. McCLELLAN. It is an amendment that contains, I believe, some 23 separate and distinct proposals with respect to cuts in the pending bill.

Mr. President, I may state at the beginning of my remarks that I am not primarily concerned about the amount of the cuts that would result, the amount of reduction that would occur, if this amendment were adopted. I think I have been fairly consistent throughout the years in advocating economy in Government. I have repeatedly stood on the floor of the Senate and pointed out that one of the causes—the prime cause, really—for deficit budgets and for increased spending originates and stems from authorization legislation. Appropriations cannot be made unless Congress has authorized the expenditure.

One of our problems—it is a problem to all of us—in trying to meet our responsibilities here is that once a program is authorized, once Congress says this is something that should be done and we authorize it to be done and we authorize the expenditure of such moneys as may be necessary to carry out the program, or we authorize so many million dollars or billion dollars to get the program carried out, then Congress, itself, has put in motion the expenditure when it makes the appropriation.

The issue that comes before the Appropriations Committee, notwithstanding that Congress has directed that this be done, is, shall we refuse to make the appropriation? That is what it often amounts to. Especially is that true if a budget request comes down for it.

I know that we are all concerned, and rightly so. The country is concerned. We are distressed about the fiscal situation that pertains in our Government. We agonize about the economic situation that prevails in this country. Therefore, it does behoove this Congress, as it did the last and the one before, to try to bring down expenditures, certainly within the amount of revenue our Government will take in. In other words, it is our duty to try to achieve a balanced budget; and as to that objective and on that score, I yield to no Senator and to no Representative. I will continue to strive to do that.

As chairman of the Appropriations Committee, I have set in motion and have made an effort to bring about a reduction in expenditures, last year and this year.

Last year, particularly—we can speak

about that, because we got a response—I suggested that each subcommittee weigh the budget, analyze it, particularly the part that that subcommittee had jurisdiction over, and suggest a target, a ceiling, within which it would submit its appropriation request or make approval of the appropriations. In other words, we undertook to set a target in the beginning, each subcommittee, and then we tried to meet that target. We did that, with some measure of success.

The greatest success achieved in that effort was by the defense appropriation subcommittee. The greatest cuts were made there. Some of those savings were lost because other functions of government were appropriated far in excess of the budget, and thus we lost that advantage to some extent. We were not able to reduce as much as we targeted because some appropriations exceeded the budget.

In a way, we are trying again this year, Mr. President. Just what measure of success we will have ultimately, I do not know.

We have a committee system in Congress. Perhaps it is failing. Perhaps the committee system should be abolished. Perhaps we do not need it any more. Perhaps the way to handle these matters is just on the floor of the Senate.

I want to say for the record that I regard myself as a servant, an agent of the Senate, as I serve on the Appropriations Committee, particularly because I serve as chairman of that committee. If I can ascertain what the policy of the Senate is, how it wants to proceed on these appropriation bills, if I can get instruction along that line, I will try to conform. If it were the policy of the Senate to proceed in a way that I simply could not follow, then I would yield my position on that matter—at least temporarily—to someone else, who could defend and undertake to sustain whatever the policy is.

Mr. President, the Appropriations Committee this year, as in the past, has functioned in good faith. The subcommittees have held long hearings. They have marked up the bills and have brought them to the full committee.

Almost without exception, I have deferred to the judgment and recommendations of the subcommittees. Perhaps there have been one or two exceptions, but I do not recall one at the moment. I have generally supported the Appropriations Committee on the floor of the Senate. Perhaps in one or two exceptions I did not.

I do that not because necessarily I always fully agree with what the Appropriations Committee has recommended. But again I point out that unless it is so adverse and so greatly violates my conviction that I simply cannot compromise, I still try to go along, in the interest of orderly procedure, because we do have the committee system, and I do it in an effort to make this system work.

We have a bill before us today. We went through the due process, the procedures that are established by the rules of the Senate, which were followed and adhered to. This bill came before the full committee on recommendation of the subcommittee.

I supported the recommendations of the committee. In fact, there is one item in the bill that I would not have supported that has been called to my attention. But again, I as chairman of the full committee, and the members of that committee are undertaking to cooperate with our leadership to the end that we may, if we can—and we are making every effort to do it—get these appropriations bills finished before the Senate becomes preoccupied with another problem, another issue that will command its continuing attention and occupy its full time until that matter shall have been disposed of.

When we do these things hastily, we do not do as efficient a job as we would like to, with the Government as big as it is and these appropriations as large as they are, with as many items in them as there are. In fact, as I recall, there are some 16 or 18 thousand items in research and development alone—each one of them could stand some examination. All of the items for which we make appropriations run into the hundreds of thousands. It is absolutely impossible to give attention to each one of them.

In the limited time that we have, and in an effort to expedite this matter, one section of the bill was overlooked. It did not come to our attention and was not called to our attention when the matter came to the full committee. Notice only came that morning, when the committee met that afternoon. That is the item to prohibit funds for the CIA.

I mention at this time, Mr. President, that there are no funds in the appropriation bill for the CIA. Only one bill has funds for the CIA. That is the defense appropriations bill.

I do not know if people want to discontinue the CIA. If we want to cast aspersions on it, we can do it in a bill like this. That is our right, if that is the way we want to do it. But I do not think that is necessarily to our credit.

Mr. PROXMIRE. Mr. President, will the Senator yield at that point?

Mr. McCLELLAN. I am glad to yield.

Mr. PROXMIRE. This was put into the committee report, on page 6, and, of course, it is included in the bill. The reason why it was included is that there was information which this Senator received that a number of appropriations bills might have funds for the CIA.

As chairman of the subcommittee, I thought I had a duty to make sure of what was in the appropriations bill on which I was acting. Furthermore, I asked the agency heads under HUD, Space, and Science, when they appeared before the subcommittee, whether they would mind if I put in this provision, and they said they would not.

I have a letter from Mr. Ash of the Office of Management and Budget, in which he states that there are no CIA funds in the bill. It was my very strong feeling that I had a responsibility to the Senate and to the full committee to find out what was in the bill and to make sure that if there were funds for the CIA, those funds would be identified. I felt that the only way I could be certain of that was to make provision in the bill, which the subcommittee approved, and which I regret was not called to the specific attention of the chairman. But, as I say, it appears at two different places in the report, and appears also in the bill itself.

Mr. McCLELLAN. It is not just the chairman; it is the committee. I just represent a committee as its chairman and its agent. It is nothing personal with me and it is nothing personal against me.

Mr. PROXMIRE. I realize that.

Mr. McCLELLAN. I am talking about proper procedures in the Senate, the integrity of the committee system. If there is no money in the bill and the Senator feels that, notwithstanding that fact, provision ought to be made, I am perfectly willing for the committee to pass on it, to decide whether it should be in or not. I am not arguing about that. Had I known that it was in the bill I would certainly have sought to have it discussed and considered—and I apologize for not knowing, but I make no explanation further than the fact that we are so busy and so occupied with these bills—trying to process them, trying to get them out. I would assume that when a chairman of a subcommittee presents his bill, if there is anything in there that he can conceive might be controversial, we would take it up in the full committee and discuss it.

Maybe that is my responsibility, to have these bills checked and scrutinized most carefully before we ever bring them to the full committee for consideration: If that is correct, I must do that. I shall do my best to do it. But I do feel that in a circumstance where we are operating under such stress of pressure and haste to try to meet the conditions that we have daily here, it would have been well for the Senator to mention this to the full committee so that we might consider it.

At any rate, those things happen, and I am not trying to cast any aspersion on the Senator. I am talking now about the integrity of the committee system and what we need to do. That is the purpose, primarily, of my concern at the moment, although I thought I would mention it, Mr. President, before we went into this other aspect.

Mr. President, I wish to talk now about the pending amendment. There is an amendment pending that has been offered by the distinguished Senator from Wisconsin, who is chairman of the subcommittee which handles the bill, and who is also the manager of the bill on the floor. I have a copy of this amendment. I believe this is a correct copy. It contains some 23 separate amendments to items in the bill, striking the items and reducing the amount.

I am advised by the distinguished Senator from Wisconsin that the total, the aggregate of these amounts is about $160 million in round numbers.

Mr. President, I do not quarrel with a further reduction in this bill of that amount, if we are given the opportunity in committee to examine these proposed cuts and take committee action on them. If the committee then does not recommend the cuts, when the bill comes to the

floor, of course, the Senate can work its will. But if there are amendments that the committee feels are meritorious, the committee should not be bypassed. It should have an opportunity to consider them.

Mr. President, I ask the distinguished Senator from Wisconsin if these amendments which are offered here today were presented by him to his subcommittee.

Mr. PROXMIRE. I say to the chairman that the amendments I offered to the subcommittee were far deeper than the amendments here. I offered amendments in total of $1.4 billion.

I offered a number of other amendments. We had considerable discussion in the subcommittee meeting.

Mr. McCLELLAN. Were they accepted?

Mr. PROXMIRE. Some of the recommendations of the chairman and the ranking member were accepted and some were rejected. Some of these amendments were offered in the subcommittee. Many of them were not offered in the subcommittee.

Mr. McCLELLAN. If they were accepted in the subcommittee, why did they not appear in the Senator's report on the bill?

Mr. PROXMIRE. I say to the Senator that some of the amendments that I brought up in the subcommittee were rejected, and those amendments that were rejected, in some cases, are offered here. I am not saying that any of the amendments that were accepted are here.

Mr. McCLELLAN. Will the Senator identify them for the record when he has the floor directly? I would like to know which ones were considered there.

I ask the Senator, were any of these particular amendments presented to the full committee?

Mr. PROXMIRE. The NSF, HUD, NASA—we are going to identify the ones that were presented to the subcommittee.

In the full committee, we had some eight or nine specific amendments that were offered. I think the Senator will remember that. They were voted on en bloc. We had two or three series of two or three amendments each referring to NASA voted en bloc; some of them are included here. We had one referring to the National Science Foundation, and then three, I think, referring to HUD. We will be happy to identify those at a later time.

Mr. McCLELLAN. Were they presented just as they are presented here?

Mr. PROXMIRE. No, they were presented in somewhat different form.

Mr. McCLELLAN. They were presented in different form.

Mr. President, this is the point I want to make, and I do not want to belabor it. If the committee system is to function with integrity and efficiency, it must have the opportunity—and the Senate, I think, should want it to have the opportunity—to screen proposed cuts or proposed amendments—not only cuts, but amendments that offer to increase the amount of the bill. We have that experience, too, Mr. President; we come to the floor sometimes, without the evidence having been presented to the Appropriations Committee for consideration, and often without having any evidence presented, with offers to increase by a large amount.

Every Senator has the right, on this floor, to offer any amendment he wants to. I concede that right. I defend that right. I would do it myself if I felt a strong enough conviction. But I think I would undertake, especially before the Appropriations Committee—and I am the chairman of that committee—to have the issue clearly presented to the committee, and give them an opportunity to reject it on its merits, or for some other reason, if there was reason for rejecting it, or to approve it, as the case may be.

Mr. President, I compliment the Senator to this extent: This amendment is a marked improvement, in my judgment, over the one offered, I believe last Friday, to the Department of Transportation bill, with a 3.5 percent cut across the board. This, in my judgment, is the way to do it.

And I might say, Mr. President, that I have no doubt that upon these amendments being presented and discussed, I will find some of them that I shall want to support; because I want to cut, if we can, this budget and appropriation in every way we can do so consistently and where it represents the best interests of our country.

I do not like, as I said the other day, the meat-ax approach which is presented across the board. Someone suggested a while ago that maybe we ought to establish that precedent here, so we will all know that we are going to cut them percentagewise across the board.

But what would that do to the committee system, Mr. President? If that is what we are establishing here, we need to know it; but what does it do to the committee system?

If I were handling a committee and I did not want my projects cut much, I would not do any cutting on them in the committee; I would wait and let them get their 3-percent cut up here, if they were going to get it. And some could well increase their amounts, Mr. President, anticipating that they would get a 3-percent cut.

I do not think a 3-percent cut, as such, as a firm and fixed formula, is necessarily the best way to do it. But if we are going to do that, let us take, for example, the Defense bill. It is yet to come up. My distinguished friend here is a member of the Armed Services Committee.

We hear demands here on the floor sometimes, "Cut it $10 billion." Maybe it can stand that; maybe it cannot. But whatever percentage it would be—8½ percent would cut it $10 billion, or 12 percent, or whatever it is that would make a cut of $10 billion—I think it ought to be considered before we slash that way. I do not know what it would come out of.

I do not think that is the way to do it. Let me point this out: I think I can say without any qualification—though I cannot absolutely guarantee it, as everyone knows—speaking of what I think the attitude and disposition of the subcommittee handling the defense bill is, I think it will be cut, if we are left to the selective cutting process, by more than 3½ percent. We did a pretty good job last year of cutting beyond that. I think we can do it again. We are going to try, and I think we will succeed.

But I might say, if this practice is going to be established, to do away with the committee consideration of these things on their merits and let the bill come to the floor, as they work it, and take items that seem to be too much and reduce them, or items that seem to be not enough and increase them, I hope we do not establish a precedent where every time a bill comes up here, we are going to cut it 3½ percent, because anyone who wanted to be sure he got about what he wanted could increase his appropriation, and then come to the floor, receive the cut, and he would have lost practically nothing; whereas another subcommittee, working faithfully and diligently, and examining the items and making reductions on the basis of merit and on the basis of priorities as they see them, would be terribly penalized. So would the function of the department or agency, and so would the service to be performed, and those who benefit from it, if we are to follow that procedure.

I do not think the emergency is such today that we cannot make reductions to bring these appropriations within the revenues, and thus avoid a deficit. I do not believe there is a situation where we cannot function responsibly in that fashion. Maybe we have lost that ability. Maybe we will not face our responsibilities, but I believe we will. I do not believe the process of a 3-percent cut, as such, is really facing up to the issue.

I hope that we will get some order and some orderly process established here, or reestablished, so that we will know what to do when we try to work on appropriation bills, and we will be able to feel that the efforts of the subcommittees and the full committees are going to be respected, and then weighed and examined, rather than just, in effect, discarding the committee's work and saying, "We are going to cut across the board."

Mr. President, in view of the situation, I want to find out, and I think this will give us a pretty good idea, about how the Senate wants to proceed. I intend to move—others may have discussed it—to recommit the bill to the Appropriations Committee so that we will have the opportunity to discuss these proposed amendments, weigh them, and again report the bill out with the recommendations of the committee.

I yield to the distinguished Senator.

Mr. PROXMIRE. The Senator from Nevada.

Mr. BIBLE. I want to make a brief statement.

Mr. McCLELLAN. I yield.

Mr. BIBLE. I just wanted to make a brief observation. I want to associate myself with what the distinguished chairman of our committee is saying, and I shall support him right down the line.

I hope the motion to recommit it to the committee is agreed to so that we can study these new amendments. They are new to me, and they may be well taken. I have not had the opportunity of looking at them.

I am privileged to handle the Interior Appropriation bill, and that is supposed to be calendared for action on the floor on Wednesday afternoon.

We heard from I do not know how many Senators, but they had 182 amendments. Every one of them was an amendment to add dollars. There was not a single amendment to take any dollars away.

I hope the proponents and leaders in this effort to cut back—and I am sure they are going to make an attack on the Interior bill as well, I do not know why but I think they might do it—will be specific and designate whose projects we take the money out of. That is what I would like to have them do, whether they come from Florida or Georgia or wherever, Wisconsin or Kansas, wherever they might come from, and I would hope they would specify which projects we should take it out of, whichever State they want to take it out of, and I will be happy to oblige. But I hope they are specific when we come to consider this problem on Wednesday, I believe. I think that is the day the leader is attempting to calendar it.

I thank the Senator for yielding. I have a very important appointment this afternoon and I must keep it.

Mr. McCLELLAN. I wish to observe, as chairman of the Appropriations Committee, nearly all of the letters—it is unusual when we get one wanting us to cut one, although we do get some of them—most of them are to increase, and the Senators who write and ask us to increase sometimes are the ones who are voting for these across-the-board cuts and so forth. It is difficult for us to operate, as I say, intelligently, efficiently, and conscientiously where we do not know and we are not privileged to know what the rules are going to be and how, when, they are going to change and be changed.

I want to say this before I conclude: I said in the beginning this is not personal, and it is not, that every Senator is entitled to vote his conscience and his conviction, and I am not pleading today for myself as chairman of the Appropriations Committee; I am pleading for each Senator here, for the people he represents, to maintain and to make operate a system that has been tried and tested and proven over 190 years that we have had this Government. Sure, it is not perfect. But amend the rules if changes must be made.

I hope we will understand that it makes no personal difference to me if we cut this bill 3 percent or 30 percent except insofar as what is best for our country. I will feel the same way when we have the defense appropriation bill up here. Do what is best for the country, and if it takes a 3-percent cut or a 5-percent cut, if the Senators will single out the items where they ought to be cut, keep those that have a priority, that deserve the full financing and reduce the others, I will be satisfied.

I am not insisting on budget appropriations. I am not only willing to cut, but I am cutting. But we need cooperation, we need the Senate's understanding, and if we are not going to recognize the work of our committees then, of course, the only alternative is to do it here on the floor. I know that the great masses of the American people want this budget cut, and they want a balanced budget, and I am willing to work with my colleagues to that end, and if we do not get it the first round—that is where we have this Budget Committee, and I hope it works; I have some doubt about it—we will make some further cuts until we do get it. We can pass a resolution after these bills are all in, weigh it, and make certain then that we treat everything alike, treat them all fairly, and let them take their reductions where they may, if we do not achieve it by the due process long established and long practiced and now followed, undertaken to be followed by those to whom we have entrusted the responsibility as our representatives and as our agents.

I yield to the distinguished Senator from North Dakota (Mr. YOUNG).

Mr. YOUNG. I am in favor of this new economy move in the Senate. For years now for every amendment offered to cut an appropriation bill on the Senate floor that have been 10 offered to increase it. This is with the exception of Defense appropriation bills. I have seen amendment after amendment offered on the Labor HEW bill that raised the bill by as much as one-half billion dollars. This increasing appropriation bill has been going on for years, so I welcome this new economy move.

I am willing to cut $160 million or more if the subcommittee chairman recommends it. In fact, I voted in the committee to—there was only one motion offered, as I recall to cut $43.3 million.

I would like to have this inserted in the RECORD, Mr. President.

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

RECOMMENDED CUTS BY SENATOR PROXMIRE IN SUBCOMMITTEE

NASA

(In millions)

Research and Development	$12.8
Construction of Facilities	5.0
Research and Program Management	1.0
Total	18.8
NSF	8.2

HUD

Comprehensive Planning Grants	10.0
Research and Technology	5.0
Salaries—Research and Technology	1.320
Total	16.320
Grand total	43.3

Mr. YOUNG. Mr. President, I am for this bigger cut. I am willing to make a bigger cut, $200 million, if necessary. But I believe it should be on an item-by-item basis.

This business of going to conference with the House with a "meat-ax" cut of 3 percent or 5 percent causes the Senate to lose all of its bargaining power with the House. The Senate usually accepts most of the House add-ons, particularly on projects, if they are meritorious, and we add on some of our own and make other sizable cuts.

On a "meat-ax" approach, a percentage cut, we lose practically all bargaining power with the House because, first, either we have to persuade them to accept our percentage cut or else subject ourselves to other cuts, mostly imposed by the House.

It is difficult to explain this conference procedure unless a Senator has served on a conference committee with the House at one time or another.

I know there are many of these programs that can be cut, but it would be a serious mistake if we followed this percentage cut route. On Defense Appropriations we will probably cut over $4 billion this year. If another 5 or 10 percent were made on the floor of the Senate it would cripple the Defense Department. For those who have not listened to the hearings—and most of the Senators have not listened to the hearings, we could do serious harm not only to the Defense Department but most other departments of Government.

The committee chairman and the ranking member, oftentimes many of the other committee members, sit for months listening to the testimony of the various departments.

We know better where cuts can be made and where they cannot be made. If more amendments had been offered in the full committee to cut this budget or this bill further I would have voted for it. As I said before, I am willing to cut $160 million or more, but it should be by the Appropriations Committee item by item, or if there are those who want to do it item by item on the Senate floor there is nothing wrong about that. But this percentage cut business is just not the right way of doing things.

It reduces respectability, and even the effectiveness, of the Senate Appropriations Committee to handle bills in this way. At least Members supporting this kind of move ought to tell the Senate Appropriations Committee how much they want to cut, and offer some suggestion as to where to cut.

Mr. McCLELLAN. Will the Senator yield at that point?

Mr. YOUNG. Yes.

Mr. McCLELLAN. Every Senator was invited to come before the Appropriations Committee and make suggestions where he thought it could be cut, every one. This was done twice, once before the Defense Appropriations Subcommittee and once before the full committee, and we set aside days for it, so no one can say he was denied an opportunity to present his views.

Mr. YOUNG. May I say, in closing, I will support the motion by the distinguished chairman of the committee. I would say once again I welcome the economy move. I wish it had happened several years ago because we, in the Senate Appropriations Committee, have been defeated on the floor year after year in almost every appropriation bill except defense. But they always bring them up, and I do not know of a single bill—very few, at least—that were not raised by the Senate itself.

I yield the floor.

Mr. STENNIS. Mr. President, I will be quite brief in what I have to say.

I think we have reached a point already, Mr. President, where our committee system is being seriously jeopardized.

Now I think every major appropriation bill should be examined by those who are familiar with the staff and the Members of this body, that are familiar with the subject matter, and then a bill brought back to the membership with definite recommendations. That is a part of the Senate committee system.

As a whole, it has worked most admirably. The committee must have a chairman, we will not have any effective commitee unless we have a chairman that is effective and really works on it and comes here prepared; also a minority member, so-called ranking minority member, who has the same qualifications and the willingness to work; then come here and every member of that full committee, especially if he had a chance to get into the bill, generally ought to back that committee or get off it.

If he cannot take the heat, just get out of the kitchen on that particular assignment, because to be effective, and as a whole the appropriations committees have been effective in holding things down, they have to work together, and then they have to stand together.

There are exceptions to that from time to time, legitimate, but as a whole if we do not have a system that is positive and definite and willing to fight and the membership filled in, we are not going to be very effective here.

I remember in my very earliest days here, these two men that are now our senior members of this committee, both of them, spent long hours of hard work. Some of my earliest recollections of the Senate when I was just an ex officio member of one subcommittee was the Senator from Arkansas bearing down and talking about a dollar in value for every dollar spent. He did not say some dollars, every dollar. He was very effective in committeeing on this floor, as has been the Senator from North Dakota.

Now, let us not let this matter fall apart.

I am not making an odious comparison. The Senator from Wisconsin is one of the most working men we have in this body and he is effective, too. He knows that I believe that about him, I have told him many times. We are often on opposite sides, but we can do business with each other and have done it many times over, so I am not trying to give him any lecture, nothing except compliments. I think there are some errors in judgment here, but in good faith about this great number of amendments.

I have the privilege of being on this subcommittee. My plea here is if the chairman makes this motion to send this bill back to the committee, I hope the body will just rise up and say, we welcome this, we welcome the disposition of that kind, and I hope the chairman of the subcommittee would agree to it and let us see if we cannot get together, a little better understanding, much better understanding. We are wandering off, splitting up, and we are going to hurt the Senate and hurt the questions we represent as a whole.

I welcome a fight over these bills. I have been in trouble ever since I became chairman of the Armed Services Committee. It is hard, long work to get a bill through here with reference to the authorization. I do not run from it, but I try to be patient and then come back with appropriations. Tackle them, tackle them again. That is what I call a sound legislative process.

I hope we will not have to pass on amendments here that we have not had a chance to really weigh the impact of, some 32 different items in one amendment here.

The Senator from Wisconsin knows all about what it means. I know some of them because I was in part of the markup, but my plea here is for the committee system and the committee work that has been done this year.

All this work now has been going on since January and if we are going to drop the idea of having the committee, there is no end to it. To just come up and vote for a figure or a percentage reduction, that is another way, but let us utilize the work that has been done on these bills this year and further let the committee have a chance to take a look at this bill.

I have taken too much time already, Mr. President. I yield the floor.

The PRESIDING OFFICER. The question is on the amendment.

Mr. McCLELLAN. Mr. President, if the Senator suggests it, would like to have me submit the motion to recommit before he speaks, I send the motion to the desk and ask the clerk to report it.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

I move to recommit H.R. 15572, together with the pending amendment thereto and any proposed amendments thereto at the desk, for further consideration by the committee.

Mr. McCLELLAN. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. McCLELLAN. Will this motion to recommit permit the committee in reconsidering the bill to consider all aspects of it, including amendments that were reported out in the bill by the subcommittee and by the full committee, together with all amendments now pending at the desk?

The PRESIDING OFFICER. That would all be before the committee.

Mr. McCLELLAN. Then what I am asking is just to send it all to the committee and let us try to work it out.

Mr. PROXMIRE. Mr. President, I think we have had a very useful debate here, and I think, as the Senator from Arkansas, the distinguished chairman of the Appropriations Committee, pointed out, all of us are anxious to reduce this burden on the taxpayer, this inflationary Federal spending.

There is very little difference in the attitude of the people in the country or in the Senate on this. It is simply a matter of how we proceed.

I think the Senator from Mississippi, as well as the Senator from Arkansas, made some very proper and appropriate points about how the committees are to function.

I realize how disappointed they are when the subcommittee chairman comes to the floor and proposes an amendment affecting his own appropriation.

Mr. President, this is not the first time this has been done. I recall a very fine Senator from Louisiana (Mr. ELLENDER) who used to do that frequently on foreign aid, and I would support him.

I do not know what a Senator is supposed to do when he, as a subcommittee chairman, is likely to be well informed on what is in the bill. I was the only Senator who sat through every single minute of the hearings, I heard the entire record, and I think I am in a strong position to suggest changes that should be made. I made a fight in the subcommittee, and I lost. I wanted to cut $1.4 billion of the relatively small amount here, $1.4 billion out, and I missed. I was defeated. A fight was made by Senator HOLLINGS in the full committee. I cosponsored his amendments.

I send to the desk a copy of the various amendments. There were three motions made by Senator HOLLINGS affecting seven items.

It is true all these amendments were not offered. Every one of them was defeated. Under those circumstances, I felt it was futile to suggest further cuts in the full committee.

Mr. President, I think that we have a situation in the subcommittee, let us face it, and in the full committee, in which members, for example, of NASA of the Space Committee, are ex officio members of the subcommittee and the full committee for the purposes of voting on this.

Under those circumstances, it is just impossible to cut the space budget in the committee. You cannot do it. I think you might be able to do it on the floor, to a very limited or modest extent, and that is what I am trying to do. What I have done, as the Senator from Arkansas has conceded, is not to make an across-the-board cut in every single item. We have exempted a number of items. We have exempted veterans' benefits; we have exempted the medical care for veterans; we have exempted all the uncontrollable and fixed expenses that we obviously cannot cut and in most cases should not try to cut.

What we have done is, we have specified a series, as the Senator from Mississippi said, of 31 separate amendments. Now the full committee has indicated that they want to consider these amendments, and I believe they are right. I believe this bill should be recommitted, and I will support its recommittal.

Mr. President, I send to the desk an amendment which modifies the motion of the Senator from Arkansas, and ask the clerk that it be stated.

The PRESIDING OFFICER. The amendment modifying the motion of the Senator from Arkansas will be stated.

The legislative clerk read as follows:

At the end of the motion of Mr. McCLELLAN, insert the following: "and to make reductions in the amount of at least $3,000,000,000."

Mr. PROXMIRE. Mr. President, the reason I make that $300 million is I think there has been a great deal of sentiment expressed by Senators on the floor on

both sides of the aisle that there should be a cut of $160 million below the Appropriations Committee figure. There is already a reduction below the House bill of $140 million. This additional $160 million, which many Senators support, with a large number of cosponsors on it, would make it a $300 million reduction below the House. This would leave the Appropriations Committee free to make those reductions wherever they choose to make them. I think the sentiment of the Senate is to make a cut.

I think also the sentiment of the Senate may very well be to leave where that cut is made to the Appropriations Committee. It seems to me that this should be an amendment which the Senate would support. I would hope that the distinguished chairman of the Appropriations Committee, who has made the motion to recommit, can find his way clear to support this amendment.

Mr. McCLELLAN. Will the Senator yield?

Mr. PROXMIRE. I yield.

Mr. McCLELLAN. The $300 million reduction that the Senator's amendment proposes, is that in addition to the bill as it was reported out?

Mr. PROXMIRE. No. There is a $140 million reduction in the bill as reported out. This would add $160 million to that. So it would be in accordance with the amount suggested by the Senator from Wisconsin, but the committee would be free to make those cuts anywhere they wish to and further cuts if they wanted to do so.

Mr. McCLELLAN. Mr. President I have no serious objection to it, if it is the will of the Senate that they want the bill cut this much. I think there may be some items that may get cut that Senators will have to make some adjustments about when the bill gets back up here.

I may say to the Senator that he may recall one of these amendments. There were three amendments offered in the full committee. One of them totaled $18.8 million. I voted against that one.

Another one was for $8.2 million. I voted against that one.

Another one was for $16,320,000, and I voted for that one.

I am willing to vote for some of these amendments. All I am fighting for here today is the opportunity for the committee established by this Congress to look at these things, weigh them, evaluate them, and make its recommendations. Then you may take it or leave it, according to your judgment and discretion. That is all we are asking for.

If the Senate wants to put a limit of $300 million, or make that the minimum, that it has to be reduced that much, that is your privilege. I am not here making a fight against it, if that is what you want to do.

I have fought for the principle of letting the committee look at these proposed amendments so that we can keep an orderly system of procedure and observe rules that make for an orderly procedure in the handling of these bills.

I am not going to argue one way or the other about the $300 million if the Senate wants to do it. I may vote against it, but I am not voting against it on the basis of making it a vital issue.

I think the committee may very well weight them. I do not know whether the committee will come up with that much or not. That is how much of the Senator's amendment that he has offered here today?

Mr. PROXMIRE. That would be precisely the amount.

Mr. McCLELLAN. Precisely the amount?

Mr. PROXMIRE. Yes, that is right. The committee can go higher than that if it wishes to do so, of course.

Mr. McCLELLAN. I think there ought to be some discretion left. I do not think we have gotten to the point yet where we have to put a limit on this. If we are going to put a limit on this, we ought to put one on every bill.

Mr. PROXMIRE. May I explain to the Senator why I wanted to do that? Otherwise, we come back to the floor and we go through the same problem again. The Senator from Wisconsin will feel once again, and I feel very strongly, that we should recommend a bill that is in accordance with the actions taken by the Senate to make a $10 billion reduction in the overall budget. I think this kind of a cut would be consistent with that. Otherwise we come back to the floor.

Say the Appropriations Committee, instead of cutting $160 million, cuts $100 million. I would be constrained to support, perhaps to offer, an amendment to cut another $60 million. We would be right back saying that on the floor the Senators do not have the information, the Senators are not well informed. So this tells the committee that the feeling of the Senate is that we should make this kind of reduction, and then leave it to the committee to be specific as to where it should be done.

Mr. McCLELLAN. I may say this: I am not going to make a committal here to bind the committee. I cannot speak for the committee on that. I will vote against the Senator's amendment. I will do everything in my power, and I think in this way I can speak for the committee, to see that every member of the committee gives every consideration to each proposal and weighs it and, consistent with its purpose, to try to reach a balanced budget and will then vote accordingly. I think it will do that. I have confidence in the committee. I do not believe just arbitrarily it will disregard its responsibility.

But are you going to put a ceiling on here and make this committee proceed? I have the Defense Appropriations, and you might want to do the same thing there; you may want to do the same thing on the bill coming up Wednesday, the Interior Department appropriations, and others. Let us get a system here and follow it. Do not just single out one bill and do something to it that you do not do to all of them.

Mr. PROXMIRE. May I say what I am proposing is that the committee has to cut at least $160 million. It can be higher than that.

Mr. STENNIS. Will the Senator yield?

Mr. PROXMIRE. I yield.

Mr. STENNIS. What was the total amount of all the different clauses and page changes in the Senator's amendment which he has already offered?

Mr. PROXMIRE. $160 million.

Mr. STENNIS. In the two sheets of paper?

Mr. PROXMIRE. That is right. The 31 items add up to $160 million.

Mr. STENNIS. The 31 items add up to $160 million?

Mr. PROXMIRE. That is correct.

Mr. STENNIS. And if this bill is referred back to the committee, of course, the Senator from Wisconsin will be chairman of the subcommittee that will continue to represent the bill before the full committee.

To that extent he will be the No. 1 man and have charge of it.

That is the way we want it to be, and that will be true, of course.

Does the Senator not think that with that position of advantage and, in part, control, and in view of the debate that we have had here if we could have a unanimous action in the Senate to send it back, that that will give the Senator from Wisconsin a chance, and every other member of the committee a chance, to handle the situation in such a way that they can come back here and represent a good, hard judgment of that committee? That is what the committee is for.

This is just another way of making an across-the-board cut, before we have looked into it further. It seems to me, with all due deference, to mandate this amount as a minimum.

Give the committee a little more respect for discretion and consideration, particularly when you are going to be the No. 1 man of action when the bill comes up again. Then if you feel like you should move further in this direction, for one I will have nothing to say.

In mandating this matter at this point, can you not see a disposition in the committee to reconsider the bill?

I respectfully urge that it would be a sound move for the Senate to reconsider and not put a mandate on it. We will all go down together, lock-step here, trying to work out something that is nearer your ideas.

Mr. PROXMIRE. The Senator from Mississippi has always presented a very thoughtful and reasonable position. I think the committee would be guided, and should be guided, by the view of the whole Senate.

We are just an agent of the Senate. That is what the committee is. Otherwise, we are going to come back, it seems to me, if we come back with less than a $160 million cut, and there will be efforts on the floor to make that cut.

I think the committee is in a better position to inform the full Senate as to how we can cut that much. If the Senate decides that it does not want to cut $160 million, that it wants to leave it open to the committee to cut more or less and leave that discretion, it is free to do it.

Under the circumstances, Mr. President, I ask for the yeas and nays on my motion to instruct.

The yeas and nays were ordered.

SEVERAL SENATORS. Vote! Vote!

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Wisconsin.

Mr. McCLELLAN. Mr. President, I ask for the yeas and nays on my motion to recommit.

The yeas and nays were ordered.

Mr. DOMENICI. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. DOMENICI. What is the first vote?

The PRESIDING OFFICER. On the amendment of the Senator from Wisconsin to the motion of the Senator from Arkansas.

Mr. DOMENICI. I thank the Chair.

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

The assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Idaho (Mr. CHURCH), the Senator from Missouri (Mr. EAGLETON), the Senator from Alaska (Mr. GRAVEL), the Senator from Michigan (Mr. HART), the Senator from Indiana (Mr. HARTKE), the Senator from Colorado (Mr. HASKELL), the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Louisiana (Mr. LONG), the Senator from Montana (Mr. METCALF), the Senator from Minnesota (Mr. MONDALE), and the Senator from California (Mr. TUNNEY) are necessarily absent.

I further announce that the Senator from Maine (Mr. MUSKIE), and the Senator from Rhode Island (Mr. PELL) are absent on official business.

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

I further announce that, if present and voting, the Senator from Rhode Island (Mr. PELL), and the Senator from Minnesota (Mr. HUMPHREY) would each vote "nay."

Mr. GRIFFIN. I announce that the Senator from Vermont (Mr. AIKEN), the Senator from Tennessee (Mr. BAKER), the Senator from Oklahoma (Mr. BELLMON), the Senator from Kentucky (Mr. COOK), the Senator from Arizona (Mr. FANNIN), the Senator from New York (Mr. JAVITS), the Senator from Maryland (Mr. MATHIAS), and the Senator from Oregon (Mr. PACKWOOD) are necessarily absent.

I also announce that the Senator from Alaska (Mr. STEVENS) is absent on official business.

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

The result was announced—yeas 27, nays 49, as follows:

[No. 351 Leg.]

YEAS—27

Bartlett	Byrd, Robert C.	Goldwater
Bentsen	Cannon	Hollings
Biden	Chiles	Hughes
Brock	Clark	Johnston
Byrd, Harry F., Jr.	Dole	Kennedy
	Fulbright	McClure
McGovern	Nunn	Scott, William L.
McIntyre	Proxmire	Symington
Metzenbaum	Randolph	
Nelson	Schweiker	

NAYS—49

Abourezk	Griffin	Percy
Allen	Gurney	Ribicoff
Beall	Hansen	Roth
Bennett	Hatfield	Scott, Hugh
Bible	Hathaway	Sparkman
Brooke	Helms	Stafford
Buckley	Hruska	Stennis
Burdick	Inouye	Stevenson
Case	Jackson	Taft
Cotton	Magnuson	Talmadge
Cranston	Mansfield	Thurmond
Curtis	McClellan	Tower
Domenici	McGee	Weicker
Dominick	Montoya	Williams
Eastland	Moss	Young
Ervin	Pastore	
Fong	Pearson	

NOT VOTING—24

Aiken	Gravel	Mathias
Baker	Hart	Metcalf
Bayh	Hartke	Mondale
Bellmon	Haskell	Muskie
Church	Huddleston	Packwood
Cook	Humphrey	Pell
Eagleton	Javits	Stevens
Fannin	Long	Tunney

So Mr. PROXMIRE'S amendment was rejected.

Mr. McCLELLAN. Mr. President, I move to reconsider the vote by which the amendment was rejected.

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

The motion to lay on the table was agreed to.

Mr. PROXMIRE. Mr. President, the Senate has made it clear that it does not want to instruct the Committee on Appropriations. I have served in the Appropriations Committee now for 10 years. I shall be very, very surprised if the Committee on Appropirations, under these circumstances, comes back with anything like the 3-percent cut which I think is the sentiment of the Senate.

I want to make it absolutely clear that when the appropriations bill comes back with a lesser cut than that, I intend to fight and fight to the very best of my ability for at least a $160 million deduction.

Mr. PASTORE. Will the Senator yield?

Mr. PROXMIRE. I will not yield for a minute.

I wish to make it clear that under those circumstances, Mr. President, I shall be willing to step aside and let the Senator from Rhode Island (Mr. PASTORE) or any other member of the committee handle the bill if he wishes to do it, or if that is the way the committee wants to do it.

But I will not do it simply because the Senator from Rhode Island alone asks me to do it, but if a majority of the Committee on Appropriations votes to require me to step aside I would do so. I sat in on every minute of hearings before this subcommittee. The Senator from Rhode Island has not heard any of the record at all. I know he can read fast; perhaps he will read it.

But I think I am in the best position, Mr. President, to discuss this particular bill. I have heard the hearings in detail. I hope the Committee on Appropriations will give me an opportunity to handle the bill when it comes back.

If they do not I will assume they do not want me to handle the bill because they are not interested in cutting it deeply.

Mr. PASTORE. Mr. President, I want the Senate to understand that I am as much of a budget-cutter as anybody else, but I am not a headline-grabber and I do not want to be a tinhorn hero, either.

We stayed on that committee and we marked up this bill. The fact of the matter is that, after the committee had made a decision, we came out on the floor and the manager of the bill has his own idea about where he is going to cut some more money. All we are asking is that we go back to the committee. That is the purpose of the motion to recommit. And we will study these cuts as they should be studied, by the full committee and not by one man, who is going to dictate what the Committee on Appropriations is going to do.

I am ready to vote.

The PRESIDING OFFICER (Mr. HATHAWAY). The question is on agreeing to the motion to recommit of the Senator from Arkansas (Mr. McCLELLAN). On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The second assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Idaho (Mr. CHURCH), the Senator from Missouri (Mr. EAGLETON), the Senator from Alaska (Mr. GRAVEL), the Senator from Michigan (Mr. HART), the Senator from Indiana (Mr. HARTKE), the Senator from Colorado (Mr. HASKELL), the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Louisiana (Mr. LONG), the Senator from Montana (Mr. METCALF), the Senator from Minnesota (Mr. MONDALE), and the Senator from California (Mr. TUNNEY) are necessarily absent.

I further announce that the Senator from Maine (Mr. MUSKIE) and the Senator from Rhode Island (Mr. PELL) are absent on official business.

I further announce that, if present and voting, the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Rhode Island (Mr. PELL), and the Senator from Minnesota (Mr. HUMPHREY) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from Vermont (Mr. AIKEN), the Senator from Tennessee (Mr. BAKER), the Senator from Oklahoma (Mr. BELLMON), the Senator from Kentucky (Mr. COOK), the Senator from Arizona (Mr. FANNIN), the Senator from New York (Mr. JAVITS), the Senator from Maryland (Mr. MATHIAS), and the Senator from Oregon (Mr. PACKWOOD) are necessarily absent.

I also announce that the Senator from Alaska (Mr. STEVENS) is absent on official business.

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

The result was announced—yeas 74, nays 2, as follows:

[No. 352 Leg.]

YEAS—74

Allen	Fong	Nunn
Bartlett	Goldwater	Pastore
Beall	Griffin	Pearson
Bennett	Gurney	Percy
Bentsen	Hansen	Proxmire
Bible	Hatfield	Randolph
Biden	Hathaway	Ribicoff
Brock	Helms	Roth
Brooke	Hollings	Schweiker
Buckley	Hruska	Scott, Hugh
Burdick	Hughes	Scott, William L.
Byrd, Harry F., Jr.	Inouye	Sparkman
Byrd, Robert C.	Jackson	Stafford
Cannon	Johnston	Stennis
Case	Kennedy	Stevenson
Chiles	Magnuson	Symington
Clark	Mansfield	Taft
Cotton	McClellan	Talmadge
Cranston	McClure	Thurmond
Curtis	McGee	Tower
Dole	McGovern	Weicker
Domenici	McIntyre	Williams
Dominick	Metzenbaum	Young
Eastland	Montoya	
Ervin	Moss	
	Nelson	

NAYS—2

Abourezk	Fulbright

NOT VOTING—24

Aiken	Gravel	Mathias
Baker	Hart	Metcalf
Bayh	Hartke	Mondale
Bellmon	Haskell	Muskie
Church	Huddleston	Packwood
Cook	Humphrey	Pell
Eagleton	Javits	Stevens
Fannin	Long	Tunney

So the motion to recommit was agreed to.

The PRESIDING OFFICER. The Senate will be in order.

ADJOURNMENT TO 11:30 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 the hour of 11:30 a.m. tomorrow.

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

ORDER FOR RECOGNITION OF SENATORS McGOVERN, BENTSEN, MANSFIELD, AND ROBERT C. BYRD

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that after the two leaders or their designees have been recognized under the standing order on tomorrow, the following Senators be recognized for not to exceed 15 minutes, and in the order stated: Mr. McGOVERN, Mr. BENTSEN, Mr. MANSFIELD, and Mr. ROBERT C. BYRD.

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

ORDER FOR TRANSACTION OF ROUTINE MORNING BUSINESS TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that following the recognition of Senators on tomorrow, under the order previously entered, there be a period for the transaction of routine morning business of not to exceed 15 minutes, with statements therein limited to 5 minutes each.

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

ORDER TO CALL UP H.R. 14715—WHITE HOUSE EMPLOYMENT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that, on tomorrow, after the conclusion of routine morning business, the conference report on H.R. 14715, White House employment, be called up.

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

Mr. ROBERT C. BYRD subsequently said: Mr. President, I understand following the consent order previously entered concerning the conference report which was to be taken up tomorrow, that the papers accompanying the conference report are not in the Senate, and that there is a question as to whether or not the House will have acted first by the time tomorrow that the Senate was to have proceeded to the consideration of that conference report.

I therefore ask unanimous consent that following the routine morning business on tomorrow, the Senator from Wyoming (Mr. McGEE) be recognized to call up that conference report, and that in the event he is not prepared to do so at that time, the Senate resume consideration of the unfinished business, S. 707, the consumer protection bill.

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

QUORUM CALL

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

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. 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 TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be a period for the transaction of routine morning business with statements limited to 15 minutes therein.

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

INFLATION: THE BURDEN AND THE CHALLENGE

Mr. HARRY F. BYRD, Jr. Mr. President, the United States has had its first year of double-digit inflation, and no relief is in sight.

Consumer prices are rising at an annual rate of 10 percent.

Personal income rose $97 billion in paper dollars during the year ending April 30, but in real income, the American worker is 4.6 percent worse off than a year ago.

These are staggering figures, but inflation is not a new concern for the Senator from Virginia.

On January 8, 1970, in a speech before the Richmond Chamber of Commerce, I said:

My concern with government fiscal affairs is dictated not so much by a bookkeeper's wish for a neat set of figures as by a concern about what Government spending means to the average American citizen.

Vast, unchecked spending programs feed the inflation that deducts from the paycheck of every American worker.

Today, 4½ years later, my concern about inflation has turned to alarm.

In recent weeks I have had the opportunity to discuss the inflation problem with a number of distinguished economists, and I have made it a point to study the observations of other experts.

While of course several points of view have been expressed, I find that a number of the economists are coming to agree with me on at least a few key points:

First, massive deficits in the Federal budget are the chief cause of inflation.

Second, pious rhetoric will not shave a single point from the Consumer Price Index.

Third, given the key role of the Federal budget, and the urgent need for action, it is imperative that Congress and the President work together to cut Government spending.

I have long been convinced that we will make no significant progress in conquering inflation in the economy as a whole until we get Government spending under control.

Not only does Government spending play a major part in the strictly economic side of inflation, but it also has a tremendous impact on the thinking of the people—what has been called "inflationary psychology."

Put it this way:

It is not realistic to ask the people to pinch pennies while the Government plays Diamond Jim Brady.

And the Government must act soon. The principal reason why this is so essential is that inflation has rooted itself so deeply.

Inflation has come to feed on itself: the expectation that prices will continue to rise artificially spurs demand, strains capacity and forces prices still higher.

Every American knows prices are soaring. But not everyone understands how widespread are the ravages of inflation.

Let us look at what is happening in the money market. To do that, we have to look first at the national debt.

The huge deficits which the Government has been running have pushed the national debt up to $475 billion. It will pass the half-trillion-dollar mark in less than a year.

The interest on the debt during the fiscal year that ended June 30 was $29 billion. It took 17 cents of every individual and corporate income tax dollar just to pay the interest on the public debt.

In this situation, the Government must go into the money market—massively and frequently. In fact, 62 percent of all funds available for lending is borrowed by the Federal Government.

During the 8-month period from November 1, 1973, to June 30, 1974, for example, the Treasury issued securities to-

taling $42 billion. Government agencies and Government-sponsored agencies borrowed another $29 billion, for a total of $71 billion.

The impact of this kind of borrowing is enormous. Certainly it made $71 billion unavailable to most of the private sector, and it played a major role in forcing the prime interest rate up to 12 percent.

The scarcity of money and the high prevailing interest rates are serious matters for each citizen when he tries to get funds to buy a house or make any other major purchases involving borrowing.

Government borrowing also intensifies the competitive scramble for funds by corporations seeking to meet soaring demand with increased capacity. Business finds capital expensive and hard to get.

One result of this scramble for money is that some planned expansions of capacity are postponed or abandoned. And naturally that means that an inflationary excess of demand over supply is continued and exacerbated.

The result is the classic result. Prices go up. And up. And up.

Never before in the history of the United States have we had such deficits in peacetime. The only deficits comparable to those we have been running since 1970 are those of World War II, when we had 12 million men under arms and were fighting in both Europe and the Pacific.

This kind of deficit spending cannot be sustained. If continued, it will destroy the economy of this Nation.

Now let us ask, "What is the Government doing to curb inflation?"

A short answer is: Very little.

The Congress is not being helpful. In its first action on a major regular appropriation bill this year, the Senate has just raised spending for agriculture, consumer protection and the environment by 29 percent over last year.

That bill included an increase of $1 billion from $3 billion to $4 billion—for food stamps, a program which has increased a hundredfold in cost since its inception in 1966.

Mr. President, I ask unanimous consent to have printed in the RECORD a table showing annual food stamp expenditures for fiscal years 1965 through 1975, inclusive.

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

ANNUAL FOOD STAMP EXPENDITURES FOR FISCAL YEARS 1965 THROUGH 1975, INCLUSIVE (PREPARED FOR U.S. SENATOR HARRY F. BYRD, JR., OF VIRGINIA)

Year and actual expenditures:

1965	34.4
1966	69.5
1967	114.1
1968	184.7
1969	247.8
1970	576.8
1971	1,567.8
1972	1,909.2
1973	2,207.5
1974 (estimate)	2,992.4
1975 (estimate)	3,926.5
Total figures	13,830.7

It will now cost more just to run the program ($34.5 million), than the whole program cost when it began ($34.4 million.)

Mr. HARRY F. BYRD, JR. Mr. President, the agriculture bill included many worthwhile programs, programs which I have supported in the past. But I could not vote in favor of a 29-percent increase in spending over last year. I voted "No" on the bill, but it was passed by 71 to 15.

What about the administration?

President Nixon made some good points in his address of July 25 on the economy.

I approve of his expressed determination to veto spending bills which "bust the budget."

I think he is correct in opposing tax reductions or further deficit spending as remedies for the effects of inflation.

But the President, so far, has not taken a sufficiently hard line against inflation. He either does not feel, or has not communicated to the public, the sense of urgency which I believe is essential if we are to get inflation under control.

The projected spending in the budget which the President submitted to the Congress in January, covering the year which began July 1, was $305 billion—an increase of $35 billion over last year. The President himself requested this increase, the largest in any single year except World War II.

In his speech the President said he would endeavor to lower that spending figure "toward a goal of $300 billion." But that still would leave an increase in outlays of at least $30 billion over last year.

I do not think this is adequate—nor do I think, given the attitude of the President and the sentiment in the Congress, that even the modest goal of a $5 billion cutback will be attained.

The President also said in his speech that he has ordered a reduction of 40,000 in the total of 2.8 million civilian Federal employees provided for in the budget for the current year. But, in the month of May, the total civilian employment in the executive branch was 46,270 higher than 1 year earlier. Therefore, the President's reduction—which is to be accomplished by attrition—will not even bring Federal civilian employment down to the level of 1973.

Moreover, it was the Congress and not the President that required the largest cutback in civilian Government employment this year. This came in a provision of the military procurement bill requiring a decrease of 32,327 in civilian employment at the Defense Department.

Personally, it is my conviction that major reductions—well beyond those so far instituted—can be achieved in both civilian and military personnel without sacrificing either Government efficiency or national security.

The truth is that neither the Congress nor the President so far has shown the will to get spending under control.

This will must be found—and soon.

The job of cutting the budget to fight inflation is not a pleasant one. But as Alan Greenspan has observed, the Nation has run out of easy and simple solutions to the problem of inflation. Painful decisions lie ahead.

Every program in the Federal budget has its constituency, and the politicians in the administration and the Congress naturally dread the job of making major spending reductions. Every cutback will raise an outcry.

Yet we must not shrink from this task. The reductions are necessary for the good of all the people, because all the people are taking a beating from inflation.

Indeed, in the latest Gallup poll released today, more than 50 percent of the people blame Government for the inflation; they are wise and right.

One prime area for reduction in the budget is foreign aid.

Spending for foreign aid totals about $10 billion a year. The foreign assistance appropriations bill never is that large, but aid programs are buried in many other money bills.

At a time of rampant inflation and massive deficits, I cannot see the justification for sending billions of dollars a year overseas.

So far this year we have moved in exactly the wrong direction on foreign aid. The administration proposed, and the Congress approved, a new contribution of $1.5 billion by the United States to the Internatinoal Development Association. This was in addition to previous contributions of $2 billion. The United States has contributed 40 percent of the total financing of IDA, which makes long-term loans at virtually no interest to developing countries.

To get the $1.5 billion to be paid to IDA, the U.S. Government will have to go into the money market and borrow at about 8 percent—yet the loans disbursed by IDA carry less than 1 percent interest. The countries to which IDA makes loans then loan the funds to their own citizens, at rates of from 12 to 20 percent.

In addition to the cost of the IDA contribution—$1.5 billion—the taxpayer is stuck with the bill for the interest on the borrowed money.

The Government simply must stop saddling the taxpayers with this kind of expenditures.

Besides foreign aid, there are other areas which must be investigated closely for possible reductions in spending.

In the budget of the Department of Defense, we should take a hard look at manpower costs. Two-thirds of the military budget goes for personnel and personnel-related expenditures.

The concept of the All-Volunteer Armed Forces is that a hard core of skilled men and women, dedicated professionals, should be attracted to the services.

By upgrading the quality of personnel in the services, it should be possible to make a reduction in the total number of those in uniform.

So far, it has not worked that way. Secretary of the Army Callaway said last week that the Army, in order to meet its quota, did most of its recruiting in the ghettos. The result of that policy was that while the numerical quota was met, the caliber of incoming personnel declined.

I think the Congress should put pressure on the military to adopt policies that will raise the quality of the Armed

Forces, and at the same time reduce the sheer size of the Military Establishment.

The taxpayers will be better off, and our defense posture will be enhanced, if we have fewer personnel in the armed services than if we continue to fill large recruiting quotas with unqualified persons.

In the budget of every department, Congress must look carefully for major program increases like the billion dollar boost in food stamp funds, a 33-percent increase in 1 year. This is just not the time for major spending increases.

Moreover, we must stop initiating new programs. The few that may appear to have justification should be tried out on a small-scale pilot basis before major commitments of funds are approved.

In these ways, Congress can make a contribution to reducing Federal spending and getting inflation under control. Ultimately, however, it is not possible for the 435 Members of the Congress to take the lead in budget reduction without a firm commitment to cuts in spending from the President.

The President must take a hard line. He must propose budgets that are in balance or in surplus. He must veto spending measures which are clearly out of line.

I derive a measure of encouragement from the recent statements of some of the President's economic advisers.

I already have quoted Alan Greenspan, incoming Chairman of the Council of Economic Advisers, who seems to me to be dedicated to major budget reductions.

I also am pleased at the attitude of Secretary Simon, who has taken a similar stand.

And at the Federal Reserve Board, Chairman Arthur Burns has made clear his warnings against continued deficit spending.

Speaking of the Federal Reserve Board, I think that Chairman Burns and his fellow members are making a genuine effort to combat inflation with their monetary policies. It is a difficult job: too liberal a policy would worsen inflation, while too tight a policy could choke of all growth. I think the Board is doing its best.

So there are some grounds for hope.

The hope will not be realized, however, until Congress and the President, working together, dedicate themselves to cutting Government spending.

The President, as I have said, must take the lead by enunciating a firm policy.

The Congress must have the will to hold the line.

If we are going to get the cost of living under control we must first get the cost of Government under control.

I ask unanimous consent to insert at this point in the RECORD three financial statements.

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

DEFICITS IN FEDERAL FUNDS AND INTEREST ON THE NATIONAL DEBT 1956–75 INCLUSIVE

[In billions of dollars]

Year	Receipts	Outlays	Surplus (+) or Deficit (−)	Debt Interest
1956	65.4	63.8	+1.6	6.8
1957	68.8	67.1	−1.7	7.3
1958	66.6	69.7	−3.1	7.8
1959	65.8	77.0	−11.2	7.8
1960	75.7	74.9	+.8	9.5
1961	75.2	79.3	−4.1	9.3
1962	79.7	86.6	−6.9	9.5
1963	83.6	90.1	−6.5	10.3
1964	87.2	95.8	−8.6	11.0
1965	90.9	94.8	−3.9	11.8
1966	101.4	106.5	−5.1	12.6
1967	111.8	126.8	−15.0	14.2
1968	114.7	143.1	−28.4	15.6
1969	143.3	148.8	−5.5	17.7
1970	143.2	156.3	−13.1	20.0
1971	133.7	163.7	−30.0	21.6
1972	148.8	178.0	−29.2	22.5
1973	161.4	186.4	−25.0	24.2
1974[1]	181.8	199.5	−17.7	29.4
1975[1]	201.4	221.3	−19.9	31.5
20-yr. total	2,200.4	2,429.5	−229.1	300.4

[1] Estimated figures.

Note: Prepared by Senator Harry F. Byrd, Jr., of Virginia.

Source: Office of Management and Budget and Department of he Treasury, June 1974

ANALYSIS OF FEDERAL RECEIPTS AND EXPENDITURES, FISCAL YEARS 1968–75

(Prepared by Senator Harry F. Byrd, Jr., of Virginia, June 1974)

	1968	1969	1970	1971	1972	1973	1974[1]	1975
	Receipts in billions							
Individual income taxes	$69	$87	$90	$86	$95	$103	$118	$131
Corporate income taxes	29	37	33	27	32	36	40	44
Subtotal income taxes	(98)	(124)	(123)	(113)	(126)	(139)	(158)	(175)
Excise taxes (excluding highway)	10	11	11	10	11	10	10	11
Estate and gift	3	3	4	4	5	5	5	6
Customs	2	2	2	3	3	3	4	4
Miscellaneous	3	3	3	4	4	4	5	5
Total Federal fund receipts	116	143	143	134	149	161	182	201
Trust funds (Social Security and Highway, less interfund transactions)	38	44	51	54	60	71	84	93
Total	154	188	194	188	209	232	266	294
	Expenditures in billions							
Federal funds	$143	$149	$156	$164	$178	$186	$200	$221
Trust funds (less interfund transactions)	36	36	40	48	54	61	70	84
Total	179	185	196	212	232	247	270	305
Unified budget surplus (+) or deficit (−)	−25	+3	−2	−24	−23	−15	−4	−11
Federal funds deficit	−27	−6	−13	−30	−29	−25	−18	−20

[1] Estimated figures.

GOVERNMENT BORROWING

	Treasury securities issued	Government agency and government-sponsored agency borrowings	Total
November 1973 to February 1974 (4 mo)	22.7	13.5	36.2
March 1974 to May 1974 (3 mo)	19.3	15.7	35.0

Note: Prepared by Harry F. Byrd, Jr., of Virginia.

Source: U.S. Treasury Department.

U.S. GOLD HOLDINGS, TOTAL RESERVE ASSETS, AND LIQUID LIABILITIES TO FOREIGNERS

[Selected periods; in billions of dollars]

	Gold holdings	Total assets	Liquid liabilities
End of World War II	20.1	20.1	6.9
Dec. 31, 1957	22.8	24.8	15.8
Dec. 31, 1970	10.7	14.5	47.0
Dec. 31, 1973	11.7	14.4	92.6
Apr. 30, 1974	11.7	14.9	97.5

ORDER FOR RECOGNITION OF SENATOR BENTSEN TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on tomorrow after the Senator from South Dakota (Mr. MCGOVERN) has been recognized and prior to the recognition of Mr. MANSFIELD under the order entered, the distinguished Senator from Texas (Mr. BENTSEN) be recognized for not to exceed 15 minutes.

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

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, I state the program for tomorrow.

The Senate will convene at 11:30 a.m. The two leaders will be recognized under the standing order, after which the fol-

lowing Senators will be recognized, each for not to exceed 15 minutes, and in the order stated: Mr. McGOVERN, Mr. BENTSEN, Mr. MANSFIELD, and Mr. ROBERT C. BYRD.

There will then be a period for the transaction of routine morning business of not to exceed 15 minutes, with statements limited to 5 minutes each, at the conclusion of which the Senate may take up the conference report on H.R. 14715, White House employment. Presumably there will be a rollcall vote on the adoption of that conference report.

At some point during the session tomorrow Mr. RIBICOFF, I am advised, will offer a motion to invoke cloture on the consumer protection bill, S. 707. The vote on that motion to occur on Thursday next.

ADJOURNMENT TO 11:30 A.M.

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move in accordance with the previous order that the Senate stand in adjournment until the hour of 11:30 a.m. tomorrow.

The motion was agreed to; and at 5:57 p.m. the Senate adjourned until tomorrow, Tuesday, August 6, 1974, at 11:30 a.m.

NOMINATIONS

Executive nominations received by the Senate August 5, 1974:

NATTIONAL CORPORATION FOR HOUSING PARTNERSHIPS

Henry F. Trione, of California, to be a member of the Board of Directors of the National Corporation for Housing Partnerships for the term expiring October 27, 1977. (Reappointment)

IN THE AIR FORCE

The following officer under the provisions of Title 10, United States Code, Section 8066 to be assigned to a position of importance and responsibility designated by the President under Subsection (a) of Section 8066, in grade as follows:

To be lieutenant general

Maj. Gen. Richard F. Shaefer, xxx-xx-... FR (major general, Regular Air Force), U.S. Air Force.

HOUSE OF REPRESENTATIVES—*Monday, August 5, 1974*

The House met at 12 o'clock noon.

The Chaplain, Rev. Edward G. Latch, D.D., offered the following prayer:

Fear the Lord and serve Him in truth with all your heart; for consider what great things He has done for you.—I Samuel 12: 24.

Almighty and eternal God, our refuge and strength in times of trouble, look with Thy favor upon all who serve in the Congress of our United States of America. Grant unto them wisdom to walk worthily in Thy wonderful ways and so direct their decisions and elevate their endeavors that justice may be done at home and abroad, that peace may come to our world, and that good will may be established among the nations.

Make us strong in spirit as a republic, great in goodness as a people, and firm in our faith in Thee as Thy children.

In the spirit of Christ 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 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, bills of the House of the following titles:

H.R. 12884. An act to designate certain lands as wilderness;

H.R. 14723. An act to amend the Agricultural Act of 1970 to change the date on which the President must report to Congress concerning Government assisted services to rural areas;

H.R. 14883. An act to amend the Public Works and Economic Development Act of 1965 to extend the authorizations for a 2-year period, and for other purposes;

H.R. 15155. An act making appropriations for public works for water and power development, including the Corps of Engineers—Civil, the Bureau of Reclamation, the Bonneville Power Administration and other power agencies of the Department of the Interior, the Appalachian regional development programs, the Federal Power Commission, the Tennessee Valley Authority, the Atomic Energy Commission, and related independent agencies and commissions for the fiscal year ending June 30, 1975, and for other purposes; and

H.R. 15405. An act making appropriations for the Department of Transportation and related agencies for the fiscal year ending June 30, 1975, and for other purposes.

The message also announced that the Senate insists upon its amendments to the bill (H.R. 15155) entitled "An act making appropriations for public works for water and power development, including the Corps of Engineers—Civil, the Bureau of Reclamation, the Bonneville Power Administration and other power agencies of the Department of the Interior, the Appalachian regional development programs, the Federal Power Commission, the Tennessee Valley Authority, the Atomic Energy Commission, and related independent agencies and commissions for the fiscal year ending June 30, 1975, and for other purposes" disagreed to the House; requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. STENNIS, Mr. MCCLELLAN, Mr. MAGNUSON, Mr. BIBLE, Mr. ROBERT C. BYRD, Mr. PASTORE, Mr. HATFIELD, Mr. YOUNG, Mr. HRUSKA, Mr. CASE, and Mr. RANDOLPH to be the conferees on the part of the Senate.

The message also announced that the Senate insists upon its amendments to the bill (H.R. 15405) entitled "An act making appropriations for the Department of Transportation and related agencies for the fiscal year ending June 30, 1975, and for other purposes," disagreed to by the House; requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. ROBERT C. BYRD, Mr. MCCLELLAN, Mr. MAGNUSON, Mr. PASTORE, Mr. BIBLE, Mr. MANSFIELD, Mr. EAGLETON, Mr. CASE, Mr. YOUNG, Mr. COTTON, Mr. STEVENS, Mr. MATHIAS, and Mr. SCHWEIKER to be the conferees on the part of the Senate.

The message also announced that the Senate disagrees to the amendments of the House to the bill (S. 821) entitled "An act to improve the quality of juvenile justice in the United States and to provide a comprehensive, coordinated approach to the problems of juvenile delinquency, and for other purposes" agrees to a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. BAYH, Mr. EASTLAND, Mr. MCCLELLAN, Mr. HART, Mr. BURDICK, Mr. HRUSKA, Mr. HUGH SCOTT, Mr. COOK, and Mr. MATHIAS to be the conferees on the part of the Senate.

The message also announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 2296) entitled "An act to provide for the Forest Service, Department of Agriculture, to protect, develop, and enhance the environment of certain of the Nation's lands and resources, and for other purposes."

The message also announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 14012) entitled "An act making appropriations for the legislative branch for the fiscal year ending June 30, 1975, and for other purposes" and that the Senate agreed to the amendments of the House to the amendments of the Senate numbered 31, 37, 69 and that it receded from its amendment numbered 51, to the foregoing bill.

The message also announced that the Senate had passed bills, joint and concurrent resolutions of the following titles, in which the concurrence of the House is requested:

S. 857. An act to authorize the Smithsonian Institution to plan museum support facilities;

S. 2189. An act to amend section 602 of the Agricultural Act of 1954;

S. 3537. An act to modify section 204 of the Flood Control Act of 1965 (79 Stat. 1085);

S. 3578. An act for the relief of Anita Tomasi;

S.J. Res. 230. Joint resolution to salute Chautauqua Institution on the occasion of its one hundredth anniversary; and

S. Con. Res. 106. Concurrent resolution authorizing the printing of additional copies of Senate hearings entitled "Public Finnacing of Federal Elections."