rate inequities for married persons where both are employed; to the Committee on Ways and Means.

By Mr. MYERS:

H.R. 13440. A bill to amend title 38, United States Code, to increase the rates of disability compensation for disabled veterans, and for other purposes; to the Committee on Veterans affairs.

By Mr. RINALDO:

H.R. 13441. A bill to amend title 5 of the United States Code with respect to the observance of Veterans Day; to the Committee on the Judiciary.

By Mr. SHIPLEY:

H.J. Res. 935. Joint resolution authorizing the President to proclaim the first Sunday in May as "Chaplains' Sunday"; to the Committee on the Judiciary.

By Mr. SNYDER:

H.J. Res. 936. Joint resolution proposing an amendment to the Constitution relating to the continuance in office of judges of the Supreme Court and of inferior courts; to the Committee on the Judiciary.

By Mr. WOLFF (for himself, Mr. DERWINSKI, Mr. ROSE, Mr. BIAGGI, Mr. BAKER, Mr. EDWARDS of California, Mr. DENT, and Mr. BURGENER):

H.J. Res. 937. Joint resolution regarding the status of negotiations with foreign governments in relation to debts owed the United States, and for other purposes; to the Committee on Foreign Affairs.

By Mr. McEWEN (for himself, Ms. ABZUG, Mr. ADDABBO, Mr. BADILLO, Mr. BIAGGI, Mr. BINGHAM, Mr. BRASCO, Mr. CAREY of New York, Mrs. CHISHOLM, Mr. CONABLE, Mr. DELANEY, Mr. DULSKI, Mr. FISH, Mr. GILMAN, Mr. GROVER, Mr. HANLEY, Mr. HASTINGS, Miss HOLTZMAN, Mr. HORTON, Mr. KEMP, Mr. KING, Mr. KOCH, Mr. LENT, Mr. MITCHELL of New York, and Mr. PEYSER):

H. Con. Res. 443. Concurrent resolution expressing the sense of Congress that the United States invites the International Olympic Committee to select Lake Placid, N.Y., as the site of the 1980 Winter Olympic Games; to the Committee on Foreign Affairs.

By Mr. McEWEN (for himself, Mr. PIKE, Mr. PODELL, Mr. RANGEL, Mr. ROBISON of New York, Mr. RONCALLO of New York, Mr. ROSENTHAL, Mr. SMITH of New York, Mr. STRATTON, Mr. WALSH, Mr. WOLFF, Mr. WYDLER, and Mr. MURPHY of New York):

H. Con. Res. 444. Concurrent resolution expressing the sense of Congress that the United States invites the International Olympic Committee to select Lake Placid, N.Y., as the site of the 1980 Winter Olympic Games; to the Committee on Foreign Affairs.

By Mr. O'HARA:

H. Con. Res. 445. Concurrent resolution authorizing additional copies of Oversight Hearings entitled "State Post-Secondary Education Commissions"; to the Committee on House Administration.

By Mr. ESHLEMAN:

H. Res. 972. Resolution relating to the serious nature of the supply, demand, and price situation of fertilizer; to the Committee on Agriculture.

By Mr. HANRAHAN:

H. Res. 973. Resolution declaring the sense of the House with respect to the prohibition of extension of credit by the Export-Import Bank of the United States; to the Committee on Banking and Currency.

By Mr. PEPPER:

H. Res. 974. Resolution amending the Rules of the House of Representatives to provide equal coverage of House Committee meetings by all media and for other purposes; to the Committee on Rules.

By Mr. PRICE of Texas (for himself, Mr. HUNT, Mr. RARICK, Mr. LUJAN, Mr. COCHRAN, Mr. COLLINS of Texas, Mr. KEMP, Mr. DEVINE, Mr. MILLER, Mr. BREAUX, Mr. ROBERT W. DANIEL, JR., and Mr. MICHEL):

H. Res. 975. Resolution in support of continued undiluted U.S. sovereignty and jurisdiction over the U.S.-owned Canal Zone on the Isthmus of Panama; to the Committee on Foreign Affairs.

By Mr. VANDER JAGT:

H. Res. 976. Resolution to express the sense of the House with respect to the allocation of necessary energy sources to the tourism industry; to the Committee on Interstate and Foreign Commerce.

MEMORIALS

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

376. By the SPEAKER: Memorial of the Senate of the State of Arizona, relative to construction of the Hualapai hydroelectric dam in the Colarodo River; to the Committee on Interior and Insular Affairs.

377. Also, memorial of the Legislature of the State of Georgia, relative to research into eye diseases; to the Committee on Interstate and Foreign Commerce.

378. Also, memorial of the Legislature of the Commonwealth of Massachusetts, relative to establishment of a national cemetery in Massachusetts; to the Committee on Veterans' Affairs.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII,

Mr. ROYBAL introduced a bill (H.R. 13442) for the relief of Fidel Grosso-Padilla, which was referred to the Committee on the Judiciary.

PETITIONS, ETC.

Under clause 1 of rule XXII,

403. The SPEAKER presented a petition of Herbert A. Wilson, Baltimore, Md., relative to redress of grievances, which was referred to the Committee on the Judiciary.

SENATE—*Tuesday, March 12, 1974*

The Senate met at 10:30 a.m. and was called to order by Hon. WILLIAM PROXMIRE, a Senator from the State of Wisconsin.

PRAYER

The Reverend Henry L. Reinewald, national chaplain, Veterans of Foreign Wars of the United States, offered the following prayer:

Almighty God, we invoke Your presence and grace upon the United States of America, upon those who are called to govern, especially the Senate of the United States.

Grant to us in this hour the blessing of Your Holy Spirit, that the need of this time may be met in accord with Your will and Your word.

Thank You, Lord, that we as a nation under God seek in all ways to serve You, and to provide for ourselves and our posterity the blessings of life, liberty, and the pursuit of happiness.

By faith, Lord, our forefathers brought into being these United States of America. By faith, Lord, all things are possible for us in this day. In such faith, Lord, guide the Senate of the United States, and all of the people of these United States now and evermore. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., March 12, 1974.

To the Senate:

Being temporarily absent from the Senate on official duties, I appoint Hon. WILLIAM PROXMIRE, a Senator from the State of Wisconsin, to perform the duties of the Chair during my absence.

JAMES O. EASTLAND,
President pro tempore.

Mr. PROXMIRE 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 Monday, March 11, 1974, be dispensed with.

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

COMMITTEE MEETINGS DURING SENATE SESSION

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

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

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. The Senator from Pennsylvania.

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

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

Mr. HUGH SCOTT. Mr. President, I ask unanimous consent that the time heretofore allotted to the distinguished Senator from Delaware (Mr. ROTH) be canceled.

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

PERIOD FOR TRANSACTION OF ROUTINE MORNING BUSINESS

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.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the time for the transaction of routine morning business be extended to 30 minutes.

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

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

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

RESCISSION OF ORDER FOR CONSIDERATION OF S. 1835

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order entered yesterday for the consideration of Calendar 700, S. 1835, immediately following the disposition of S. 872 be vacated.

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

Mr. ROBERT C. BYRD. This will mean, then, that upon the disposition of S. 872, which will come up immediately upon the completion of morning business today, the Senate will proceed to the consideration of S. 1401, a bill to establish appropriate criteria for the mandatory imposition of death sentences.

I suggest the absence of a quorum.

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

The assistant legislative clerk proceeded to call the roll

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

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

ORDER FOR ADJOURNMENT TO 10:30 A.M.

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 10:30 a.m. tomorrow.

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

ORDER OF BUSINESS

Mr. HUGH SCOTT. Mr. President, for the sake of the record, do I correctly understand that at about 11 o'clock today we are going to consider the so-called aircraft piracy amendments, S. 872, and when that is completed, we will proceed to consider the bill, S. 1401, to establish rational criteria for the mandatory imposition of the sentence of death and for other purposes?

I inquire if that is not about all the legislation we contemplate this week.

Mr. ROBERT C. BYRD. Mr. President, as far as I can see, that is correct. There may be one or two other measures on the calendar which could be cleared for action possibly by unanimous consent.

Mr. HUGH SCOTT. I thank the Senator. I think that will be helpful to all Senators in making their plans.

ORDER FOR CONSIDERATION OF AIRCRAFT PIRACY AMENDMENTS OF 1973

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that at the hour of 11 o'clock this morning the Senate proceed to the consideration of S. 872.

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

ENROLLED BILL SIGNED

The ACTING PRESIDENT pro tempore (Mr. PROXMIRE) today signed the enrolled bill (H.R. 5450) to amend the Marine Protection, Research, and Sanctuaries Act of 1972, in order to implement the provisions of the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, and for other purposes, which had previously been signed by the Speaker of the House of Representatives.

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

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

PROPOSED LEGISLATION BY NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

A letter from the Administrator, National Aeronautics and Space Administration, transmitting a draft of proposed legislation to amend section 203(b) of the National Aeronautics and Space Act of 1958, (with accompanying papers). Referred to the Committee on Aeronautical and Space Sciences.

REPORT OF FEDERAL CROP INSURANCE CORPORATION

A letter from the Secretary of Agriculture, transmitting, pursuant to law, a report of the Federal Crop Insurance Corporation for the 1973 crop year (with an accompanying report). Referred to the Committee on Agriculture and Forestry.

REPORT OF OVEROBLIGATION OF AN APPROPRIATION

A letter from the Assistant Secretary for Management, Department of the Interior and the Acting Administrator, American Revolution Bicentennial Administration, reporting, pursuant to law, on the overobligation of an appropriation to the American Revolution Bicentennial Administration. Referred to the Committee on Appropriations.

DONATION BY NAVY OF CERTAIN RAILWAY ROLLING STOCK AND EQUIPMENT

A letter from the Chief of Legislative Affairs, Department of the Navy, Office of Legislative Affairs, transmitting pursuant to law, the intention of the Department of the Navy to donate certain surplus property to the Warren County Chapter of the National Railway Historical Society, Warrenton, N.C. Referred to the Committee on Armed Services.

REPORT ON WORKING CAPITAL FUNDS OF DEPARTMENT OF DEFENSE

A letter from the Deputy Secretary of Defense, transmitting a report on the working capital funds of the Department of Defense for fiscal year ended June 30, 1973 (with an accompanying report). Referred to the Committee on Armed Services.

PROPOSED LEGISLATION BY DEPARTMENT OF AIR FORCE

A letter from the Acting Assistant Secretary, Manpower and Reserve Affairs, Department of the Air Force, transmitting a draft of proposed legislation to amend Public Law 92-477, authorizing, at Government expense, the transportation of house trailers or mobile dwellings, in place of household and personal effects, of members in a missing status, and the additional movement of dependents and effects, or trailers, of those members in such status for more than 1 year, to make it retroactive to February 28, 1961. Referred to the Committee on Armed Services.

REPORT OF DISTRICT OF COLUMBIA GOVERNMENT

A letter from the Mayor-Commissioner, District of Columbia, transmitting, pursuant to law, a report of action by the District of Columbia government on recommendations of the Commission on Organization of the Government of the District of Columbia (with an accompanying report). Referred to the Committee on the District of Columbia.

INTERNATIONAL AGREEMENTS OTHER THAN TREATIES

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

PROPOSED LEGISLATION BY FEDERAL ENERGY OFFICE

A letter from the Administrator, Federal Energy Office, transmitting a draft of proposed legislation to authorize energy conservation programs and end use rationing of fuel (with an accompanying paper). Referred to the Committee on Interior and Insular Affairs.

TEMPORARY ADMISSION INTO THE UNITED STATES OF CERTAIN ALIENS

A letter from the Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting, pursuant to law, copies of orders granting temporary admission into the United States of certain aliens (with accompanying papers). Referred to the Committee on the Judiciary.

REVENUE MECHANISMS FOR FINANCING URBAN MASS TRANSPORTATION

A letter from the Secretary of Transportation, transmitting, pursuant to law, a study of Revenue Mechanisms for Financing Urban Mass Transportation, dated February 1974 (with an accompanying study). Referred to the Committee on Public Works.

PROPOSED LEGISLATION BY ATOMIC ENERGY COMMISSION

A letter from the chairman, Atomic Energy Commission, transmitting a draft of proposed legislation to amend the Atomic Energy Act of 1954, as amended, to provide for approval of sites for production and utilization facilities, and for other purposes. Referred to the Joint Committee on Atomic Energy.

REPORT ENTITLED "DISCLOSURE OF CORPORATE OWNERSHIP"

A letter from the chairman, Committe on Government Operations, transmitting, pursuant to Senate Concurrent Resolution 59, a report to be printed as a Senate document entitled "Disclosure of Corporate Ownership" (with an accompanying report). Ordered to be printed.

PETITIONS

Petitions were laid before the Senate and referred as indicated:

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

Resolutions of the Legislature of the Commonwealth of Massachusetts. Referred to the Committee on Post Office and Civil Service:

[The Commonwealth of Massachusetts]

"RESOLUTIONS MEMORIALIZING THE POSTMASTER GENERAL OF THE UNITED STATES TO SUPPORT A BICENTENNIAL COMMEMORATIVE STAMP DEPICTING THE TOWN OF MARBLEHEAD PAINTING 'SPIRIT OF '76'

"Whereas, Bicentennial stamps depicting courageous and patriotic scenes of the American Revolution will be issued in commemoration of the Birthday of our Nation; and

"Whereas, One of the most stirring of these scenes hangs in the Town Hall of Marblehead, Massachusetts, the painting by Archibald M. Willard of patriots bravely marching to 'Yankee Doodle' entitled 'The Spirit of '76'; and

"Whereas, Hundreds of thousands of Americans have visited the Town of Marblehead to view this inspiring painting, presented to the Town after an enthusiastic showing at the Philadelphia Exposition in celebration of the eighteen hundred and seventy-six Centennial; and

"Whereas, Many brave and fearless Marbleheaders took an active role in the Fight for Independence at Bunker Hill, Long Island, Trenton and on the high seas, greatly contributing to the success of the American Revolution; and

"Whereas, The Marblehead painting 'The Spirit of '76' demonstrates to the Nation and the World the spirit of adventure, patriotism, loyalty and dedication of the original revolutionary Marbleheaders; therefore be it

"*Resolved*, That the General Court of Massachusetts hereby respectfully memorializes the Postmaster General of the United States to support the application of the Marblehead Bicentennial Commission for the issuance of a Bicentennial stamp depicting the Marblehead 'Spirit of '76' painting; and be it further

"*Resolved*, That copies of these resolutions be sent forthwith by the Clerk of the House of Representatives to Postmaster General E. T. Klassen, Director of Stamps Gordon Morison, the Citizens Stamp Advisory Committee, the presiding officer of each branch of Congress and to each member thereof from this Commonwealth.

"House of Representatives, adopted, February 20, 1974."

REPORTS OF COMMITTEES

The following reports of committees were submitted:

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

S. 1353. A bill to deduct from gross tonnage in determining not tonnage those spaces on board vessels used for waste materials (Rept. No. 93-730).

EXECUTIVE REPORTS OF COMMITTEES

As in executive session, the following favorable reports of nominations were submitted:

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

Royston C. Hughes, of Maryland, to be an Assistant Secretary of the Interior.

(The above nomination was reported with the recommendation that the nomination be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

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

By Mr. BELLMON:

S. 3153. A bill to amend the Emergency Petroleum Allocation Act of 1973. Referred to the Committee on Interior and Insular Affairs.

By Mr. RIBICOFF:

S. 3154. A bill to amend the Social Security Act to extend entitlement to health care benefits on the basis of age under the Federal medical insurance program (medicare) to all persons who are citizens or residents of the United States aged 65 or more; to add additional categories of benefits under the program (including health maintenance and preventive services, dental services, outpatient drugs, eyeglasses, hearing aids, and prosthetic devices) for all persons entitled (whether on the basis of age or disability) to the benefits of the program; to extend the duration of benefits under the program where now limited; to eliminate the premiums now required under the supplementary medical insurance benefits part of the medicare program and merge that part with the hospital insurance part; to eliminate all deductibles; to eliminate copayments for low-income persons under the program, and to provide, for others, copayments for certain services or items but only pocket expense limit (catastrophic expense limit): to provide for prospective review and approval of the rates of charges of hospitals and other institutions under the program, and for prospective establishment (on a negotiated basis when feasible) of the schedules for physicians and other practitioners; to revise the coverage of the tax provisions for financing the medicare program and increase the Government contribution to the program; and for other purposes. Referred to the Committee on Finance.

By Mr. YOUNG:

S. 3155. A bill to amend the wheat and feed grain program for the 1975, 1976, and 1977 crops in order to provide for the apportionment of acreage allotments on the basis of more recent acreage histories for such commodities. Referred to the Committee on Agriculture and Forestry.

By Mr. TOWER (for himself and Mr. DOMINICK):

S. 3156. A bill to amend the Vocational Education Act of 1963 to provide for a bilingual vocational training program; and

S. 3157. A bill to amend the Higher Education Act of 1965 with respect to developing institutions. Referred to the Committee on Labor and Public Welfare.

By Mr. SPARKMAN (by request):

S. 3158. A bill to make technical amendments to the Federal Credit Union Act. Referred to the Committee on Banking, Housing and Urban Affairs.

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

S. 3159. A bill to authorize the Secretary of Transportation to make grants for the construction of bikeways in urbanized areas. Referred to the Committee on Public Works.

By Mr. HATFIELD:

S. 3160. A bill to designate certain lands for inclusion in the national wilderness preservation system. Referred to the Committee on Interior and Insular Affairs.

By Mr. BENTSEN:

S. 3161. A bill to amend the provisions of title 23, United States Code, dealing with highway beautification, and for other purposes. Referred to the Committee on Public Works.

By Mr. MONDALE:

S. 3162. A bill for the relief of Suk Hee Yoo. Referred to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BELLMON:

S. 3153. A bill to amend the Emergency Petroleum Allocation Act of 1973. Referred to the Committee on Interior and Insular Affairs.

Mr. BELLMON. Mr. President, a great inequity presently exists in connection with this Nation's effort to meet our energy needs. By passage of the Emergency Petroleum Allocation Act of 1973, Congress has endeavored to equitably distribute the limited supplies of petroleum products among consumers in every State in the Union. However, at the same time, several States presently are enforcing prohibition against the development of potential petroleum resources within areas under their jurisdiction and also the construction of petroleum processing facilities.

This Nation can ill afford such a double standard. It makes no sense to say to the citizens of one State that the petroleum resources of that State shall be developed and processed and transfered into another State which will not allow similar development and processing.

I am today introducing legislation which is intended to end this inequity and in this way hasten the day when the energy needs of citizens of every section of this country can be adequately met.

By Mr. RIBICOFF:

S. 3154. A bill to amend the Social Security Act to extend entitlement to health care benefits on the basis of age under the Federal medical insurance program, medicare, to all persons who are citizens or residents of the United States aged 65 or more; to add additional categories of benefits under the program—including health maintenance and preventive services, dental services, outpatient drugs, eyeglasses, hearing aids, and prosthetic devices—for all persons entitled—whether on the basis of age or disability—to the benefits of the program; to extend the duration of benefits under the program where now limited; to eliminate the premiums now required under the supplementary medical insurance benefits part of the medicare program and merge that part with the hospital insurance part; to eliminate all deductibles; to eliminate copayments for low-income persons under the program, and to provide, for others, copayments for certain services or items but only up to a variable income-related out-of-pocket expense limit, catastrophic expense limit, to provide for prospective review and approval of the rates of charges of hospitals and other institutions under the program, and for prospective establishment—on a negotiated basis when feasible—of fee schedules for physicians and other practitioners; to revise the coverage of the tax provisions for financing the medicare program and increase the Government contribution to the program; and for other purposes. Referred to the Committee on Finance.

COMPREHENSIVE MEDICAL REFORM ACT OF 1974

Mr. RIBICOFF. Mr. President, Today, I am introducing the Comprehensive Medicare Reform Act of 1974. This legislation is the culmination of two decades of efforts to provide full health insurance protection for older Americans.

In 1961, following a decade of debate on health insurance for the aged, the new Kennedy administration took an active leadership role in bringing the medicare debate to legislative reality. As Secretary of Health, Education, and Welfare, I headed a task force to draft a medicare bill. While Congress rejected it in the early 1960's, medicare became law in 1965. As a Senator and a member of the Senate Finance Committee which shapes such legislation I was proud to play a role in developing and supporting medicare.

Medicare was a major breakthrough in assuring a measure of health protection for one segment of the population. Because it was a new concept, however, Congress limited its coverage. It was, in fact, a financial program to help meet some of the costs of short-term and acute medical care.

Since its enactment in 1965 we have found that the program should be improved and expanded. I have suggested expanding its coverage in a number of ways. Since 1965 we have expanded medicare to cover all disabled persons, those who have chronic kidney conditions and many more. Its services have likewise been expanded to cover a wider range of nonhospital items.

At the same time we have found a need to curb costs and abuses under medicare. Major oversight hearings which we held in 1969 led to improvements in the administration and cost control mechanisms of medicare.

Since medicare's inception in 1965, I have watched its progress and participated in its development at every stage of the way.

It is time to change to medicare from a limited financial program to the program which we originally envisioned—comprehensive national health insurance for all older Americans.

The medicare program I envision is one in which provides a range of care from preventative and diagnostic physician's services to the most acute hospital care. Nursing home, home health care, dental care, eye care, hearing care, prescription drug coverage are just a few of the areas which should be covered. In short, medicare should be a balanced program which encourages the best kind of care with the greatest possible freedom of choice for the patient. And it should be a program that provides reasonably for all the providers in the system—hospitals, doctors and others and at the same time is efficiently administered at the smallest possible cost to the Government.

The American Association of Retired Persons/National Retired Teachers Association has played a leading role in the development of this legislation. The legislation, which has been developed over the past two years, reflects their tireless efforts. The proposal also reflects the recommendations of the 1971 White House Conference on Aging and recommendations made in recent years by one of America's leaders on issues affecting older Americans, Nelson Cruikshank.

PRIORITY ON HEALTH CARE PROTECTION FOR AGED

In dealing with programs to provide comprehensive health coverage for all Americans at a cost which the taxpayers can afford, priorities must be established as to who should be covered.

The population over 65 is in most need of protection. For the most part their income is limited and the costs of illness for them is higher than for the population as a whole.

At the turn of the century there were only 3 million older persons every 25th American. Since that time, the older population has grown faster than the rest of the population. Today there are over 20 million senior citizens—every 10th American. By the year 2000, every ninth American will be over the age 65. It is not a static population. Every day, 4,000 Americans reach age 65.

Unfortunately, however, the median income of older families and individuals is less than half that of their younger counterparts. While the social security benefit increases of recent years have had a dramatic impact in reducing poverty for older Americans, over 2 million older Americans were living below the poverty threshold in 1973.

Most older Americans depend on social security. But social security benefit increases are too often negated by the tide of inflation. Thus, while the Department of Labor estimates that a minimum low budget for a retired couple is $3,442 a year, social security benefits are $118 a year under that bare bones minimum budget.

There are also an estimated additional 2 million aged persons who while not classified as poor because they live in families with incomes above the poverty line, are in fact poor. In sum, while the aged make up 10 percent of the population, they make up 20 percent of the poor. If you are old, you are twice as likely to be poor.

As might be expected, older people, because they have half as much income as younger people, are forced to spend half as much. They must stretch their food, clothing, rent, and medical dollars much farther than the nonpoor. Proportionately, older consumers spend more of their income on these items than do those under 65.

The problems of income are complicated by problems of health. Older Americans have less money but more health problems. Eighty-five percent of those who are over 65 and have at least one chronic condition. Eighty percent have some degree of arthritis. Dental problems, hearing and eye problems and the need for prescription drugs all increase with old age. Drug costs for older Americans, for example, run three times higher than for the younger population. Charges for prescriptions range up to 67 cents higher per prescription for older people, mainly because they often need expensive maintenance drugs.

The major chronic diseases among older persons—heart disease, cancer, strokes, arthritis, diabetes—are costly to older Americans not only in terms of invalidism and pain but also in financial terms.

At the same time that older Americans need more health care, real growth in health care utilization for the elderly has not kept pace with other age groups in recent years. The elderly in America are not utilizing the full range of health services they need because they can't afford to. They are economically forced to wait until they need acute inpatient hospital care. The economically disadvantaged aged population is further discouraged from obtaining health care because they are concentrated in urban centers and rural areas—often geographically distant from health service areas.

MEDICARE PERFORMANCE

Until 1965 older Americans had to depend almost exclusively on their own resources for health care. Since the enactment of medicare, the Federal Government has assumed a portion of the medical costs of older Americans.

During fiscal year 1973, the Nation spent $94.1 billion for personal health care. Persons aged 65 and over accounted for 28 percent of this cost, although they make up only 10 percent of the population.

The average personal health care outlay for the total population was $441 in fiscal 1973. For the senior citizen it was $1,000.

Despite increases in Government and other third party sources such as medicare, average out-of-pocket payment by aged persons was $276 in fiscal 1972, three times the amount paid out of pocket by nonsenior citizens. This $276 out-of-pocket cost is higher than the amount paid for health care by older Americans at the start of 1966, $234, before medicare was enacted. As costs have risen then, medicare is picking up an ever smaller amount of the older Americans' health costs. In 1969, Medicare paid 46 percent of their health bill. Today it pays 42 percent.

The decline in medicare's share of the health bill of the aging is related not only to inflationary factors but to basic problems in the medicare structure.

The time has come to reshape the medicare program—building on its strengths and eliminating its weaknesses.

THE COMPREHENSIVE MEDICARE REFORM ACT OF 1974—PURPOSE

The legislation I am proposing today would restructure the medicare program to provide health care benefits to all older Americans as a matter of entitlement. The bill would broaden the medicare benefit package to meet the full range of medical services needed by older Americans and extend the duration of those benefits which are limited under the present program. It would reduce the out-of-pocket personal health care expenditures of those eligible for medicare coverage, establish a program of income-related catastrophic health insurance protection for senior citizens. And it would improve the administration of medicare while it attempts to control increases in health care costs

STRUCTURE

The bill establishes a single integrated program of comprehensive health insurance for the aged and disabled fi-

nanced out of general revenues. Parts A and B of the medicare program are combined into a single, expanded benefit structure with a single trust fund.

Requirements for premium payments and deductible are eliminated. Minimal coinsurance provisions are designed so that while persons who can afford to pay will do so up to a predetermined maximum level, cost will not be a deterrent to quality health care.

The act also provides coverage for all care and services for the aged presently covered by the medicaid program.

ENTITLEMENT

The new medicare program is expanded to all persons 65 years of age of older regardless of insured status under the social security or railroad retirement cash benefit program. The only requirement is that the individual be a citizen or national of the United States or a legal resident alien. This means that for the first time all public employees, including teachers, policemen and firemen will be automatically eligible for medicare.

The medicare program also provides eligibility to all those who are now eligible for medicare because of special circumstances such as disability.

REIMBURSING SERVICES

The Medicare Reform Act provides a comprehensive range of benefits:

Unlimited inpatient hospital coverage:

Includes pathology and radiology services; and

Includes 150 days of care during a benefit period for a psychiatric inpatient undergoing active diagnosis or treatment of an emotional or mental disorder.

Unlimited outpatient hospital coverage.

Unlimited skilled nursing facility services with no requirement for prior hospitalization.

Unlimited intermediate care facility services, effective July 1, 1978.

Unlimited home health services with no requirements for prior hospitalization.

Certain services offered by public or non-profit private rehabilitation agencies or centers and public or nonprofit private health agencies.

Unlimited physicians' services, including major surgery by a qualified specialist and certain psychiatric services.

Unlimited dental services.

Outpatient prescription drugs—including biologicals such as blood, immunizing agents, etc.—subject to certain limitations to insure quality control.

Medically necessary devices, appliances, equipment and supplies, such as: eyeglasses, hearing aids, prosthetic devices, walking aids. Also included are any items covered under present law.

Services of optometrists, podiatrists and chiropractors.

Diagnostic services of independent pathology laboratories and diagnostic and therapeutic radiology by independent radiology services.

Certain mental health day care services.

Ambulances and other emergency transportation services as well as nonemergency transportation services where essential because of difficulty of access.

Psychological services; physical, occupational or speech therapy; nutrition, health education, and social services; and other supportive services.

COST SHARING

Under this proposal there are no periodic premium payments or deductibles.

There are, however, minimum initial coinsurance payments—based on the type of service—as follows:

Initial coinsurance payments—based upon type of service—are as follows:

TYPE OF SERVICE

First, inpatient hospital services;
Second, skilled nursing facility;
Third, home health services;
Fourth, physicians' services;
Fifth, dentist services;
Sixth, mental health day care;
Seventh, diagnostic outpatient services of independent laboratory or of independent radiology services;
Eighth, devices, appliances, equipment, and supplies;
Ninth, drugs; and
Tenth, ambulance services.

COINSURANCE PAYMENTS

First, $5 per day;
Second, $2.50 per day;
Third, $2 per visit;
Fourth, $2 per visit;
Fifth, 20 percent of approved charges;
Sixth, $2 per day;
Seventh, 20 percent of approved charges;
Eighth, 20 percent of approved charges;
Ninth, $1 per each filling or refilling; and
Tenth, 20 percent approved charges.

CATASTROPHIC HEALTH INSURANCE

While the features of the bill already outlined are designed to deal with the basic health costs, older Americans are more likely than any other segment of the population to incur extraordinarily large costs. Therefore, this legislation also includes a catastrophic health insurance section for older Americans.

Senator RUSSELL LONG and I have already introduced legislation which establishes a catastrophic health insurance program for the nonaged. This provision is complementary in a sense to that proposal. At the same time it contains a novel feature which, while equitable, should be tried out on a smaller scale before being implemented on a full national health insurance program.

I refer to an income-related catastrophic ceiling. Essentially, health costs which are catastrophic to one family may not be as burdensome to a more affluent family. For that reason, families should be able to bear differing burdens of cost for health care depending on their income. This income-related feature will present an administration challenge and should be tested.

REIMBURSEMENT AND COST CONTAINMENT POLICIES

While medicare reimbursement is continuing to grow, some of the new cost containment features in medicare are holding down increased costs. My legislation incorporates all present medicare cost control and utilization review provisions.

Payments will be made only to a "participating provider"—one who has filed a participation agreement with the Secretary of HEW—except for emergency services. Providers will include not only institutions but independent practitioners and suppliers of drugs and medical appliances.

Reimbursement will be made to a participating institutional provider based upon a predetermined schedule of patient care charges. The schedule must be based on a system of accounting and cost analysis in conformity with prescribed standards. Periodic interim payments will be made to institutions during the accounting year on the basis of cost projections, with final adjustments based on the approved schedule of charges.

Reimbursement for services of physicians, dentists, optometrists, podiatrists, chiropractors and other noninstitutional services of licensed professional practitioners will be made in accordance with annually predetermined fee schedules for their local areas. These schedules will be worked out in negotiation with the providers and it is intended that the fees will be reasonable and equitable for provider and patient alike.

One of the problems in the present Medicare program is that physicians are increasingly refusing to accept Medicare assignment because medicare does not provide adequate compensation to them. In fiscal year 1969, the net assignment rate was only 61 percent. In 1972, it declined so that only 56.4 percent of the claims were direct payments to doctors on an assignment basis. Doctors increasingly preferred to bill the patient and have medicare bill the patient directly. this way, the doctors could collect more from the patient above the medicare payment.

While the payment mechanism in this bill requires participating doctors to accept assignment or not participate at all, it also establishes a fair way to set fees.

Fee schedules will be established through negotiation among representatives of government, providers and consumers. Final fee schedules will be established only after public hearing. And the Secretary of HEW is required to make public for each local area the established fee schedules and the names, professional fields, and business addresses of participating practitioners.

To make medicare a full success it must not only provide adequate benefits to beneficiaries but it must adequately compensate those who provide the services under that program. I am hopeful that this legislation will make adequate provisions for all providers.

SUMMARY

The proposal I am making today must be considered together with other Congressional initiatives in the field of national health insurance. Senator KENNEDY, a leader in the health field has proposed legislation which would cost some $80 billion. The President's package would cost $40 billion.

The American taxpayers cannot afford to pay these additional costs. Social security taxes are already as high as they should go. I and Senator LONG, joined by 23 other Senators of both parties, have introduced health insurance legislation which recognizes both that certain

priority health needs must be met—but at a cost which the taxpayer can afford. The Long-Ribicoff bill's cost is less than that of any other health insurance proposal. In part this is because our legislation builds on the existing medicare program and would not create a new Government bureaucracy. It is also less costly because it recognizes that there are certain health care needs which are of a priority nature and it provides coverage for those areas—catastrophic costs, for example, which can financially destroy the average family.

This legislation I am introducing today is likewise designed to meet priority needs of the elderly at the lowest possible cost. It too builds upon the expertise, experience, and mechanisms of the medicare program. And it provides an important and meaningful role for providers of health care—the doctors, hospitals, and insurers.

Passage of this legislation will reduce the cost of national health insurance legislation by billions of dollars. Costs under the Long-Ribicoff bill would be reduced by as much as $4 billion if this legislation is enacted.

The medicare program in 1973 paid out $9.5 billion. The additional costs of this program will be approximately $3 billion in induced Federal costs.

These extra costs should be met by general revenues. In his health message to Congress, the President indicated that the $6 billion Federal cost of the Federal part of his program could be financed out of general revenues with no additional taxes. New induced Federal costs of this proposal can likewise be met by general revenues.

As congressional debate on national health insurance progresses, I hope the concepts embodied in this Comprehensive Medicare Reform Act of 1974 will be considered.

By lowering the price tag for initial health care, older persons will be encouraged to seek the basic medical checkups needed to diagnose and stop an illness before it becomes critical.

Older Americans who have worked their entire lives deserve a measure of security. This legislation will provide them with the assurance that their health needs will be provided for.

I ask unanimous consent that descriptions describing the bill in detail and comparing it with present law be inserted at this point in the RECORD.

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

SUMMARY OF HIGHLIGHTS OF PROPOSED COMPREHENSIVE MEDICARE REFORM ACT OF 1974

TITLE I. REVISION OF MEDICARE STRUCTURE, ENTITLEMENT, BENEFITS, AND FINANCE

A. Replacement of dual insurance program by single program

Instead of two programs—i.e. (1) a hospital insurance program financed only through special wage, payroll, and self-employment taxes, with automatic entitlement for all eligible persons (coupled with a voluntary buy-in provision at full cost for aged persons not otherwise eligible for hospital insurance), and (2) a supplementary medical insurance benefit program, financed by premiums from enrollees and by Government contributions from general revenues, with enrollment by eligible enrollees being voluntary—there would be a single, integrated, comprehensive health insurance program financed from such present social security taxes and from Government contributions, to the benefits of which all eligible persons would be automatically entitled without periodic premium payments.

B. Broadened entitlement based on age

For persons 65 years of age or older, entitlement to health insurance benefits (even with respect to inpatient institutional services) would no longer be conditioned on entitlement to monthly social security (or railroad retirement) cash benefits, so long as the individual is a citizen (or national) of the United States, or is an alien lawfully living here for 30 days. (For disabled persons under 65, the provisions of the recent amendments that condition entitlement to health insurance benefits on prior entitlement to social security (or railroad retirement) disability insurance cash benefits for 24 months or, in the case of persons with chronic renal disease, on insured status or current entitlement under the cash benefit programs or on being a spouse or dependent child of such an insured person, would continue in effect, but such persons would enjoy the benefit of the same extended coverage of services and the same relief from premium payments and deductibles (see below) as aged beneficiaries.)

C. Coverage

1. Covered Institutional Services.[1]

a. Unlimited *inpatient* hospital coverage (except for limit of 150 days of care in a benefit period for a psychiatric inpatient, and then only for active diagnosis or treatment of an emotional or mental disorder).

b. Unlimited outpatient hospital coverage. For psychiatric day care, see #2 and #6 below.

c. Skilled-nursing facility services on unlimited durational basis. No requirement of prior hospital stay.

d. Starting July 1, 1978, care on unlimited durational basis in intermediate-care facilities.

e. Home health services, without limitation as to the number of visits, and without requirement of prior hospital stay.

f. To the extent specified in regulations, if not otherwise covered—

(a) health and health-related services of public or nonprofit private rehabilitation agencies or centers;

(b) health and health-related services of a public health agency or nonprofit private health agency.

g. To the extent specified in regulations, inpatient services of a Christian Science sanatorium.

2. Physicians' Services (not otherwise covered), except that—

(1) major surgery and other specialized services designated in regulations are covered only if furnished by a qualified specialist, and then only if, to the extent specified in regulations, furnished on referral by a general or family practitioner or if they are emergency services.

(2) psychiatric (mental health) services to patients other than inpatients are covered only if furnished by an approved HMO, a hospital, or a mental health center, or (up to 160 days during or following a benefit period) otherwise furnished to a patient of a mental health day care service affiliated with a hospital or approved by the Secretary, or (up to 20 consultations a year) furnished in a psychiatrist's office.

3. Dental Services (not otherwise covered), on unlimited basis, including preventive, diagnostic, therapeutic, and restorative services and items (dentures, etc.).

4. Drugs (including biologicals, such as blood, immunization products, etc.).

a. Covered without limit if furnished to an enrollee of an HMO, or if administered in a hospital's inpatient or outpatient department, or to an inpatient of a skilled nursing facility, or (to the extent provided in regulations) in a facility of a rehabilitation agency or center.

b. Covered if furnished (with or without separate charge) in a physician's or dentist's office as an incident to his professional service, but only if the drug is on a general list, established by the Secretary, designed to provide practitioners with an armamentarium sufficient for rational drug therapy.

c. Drugs otherwise furnished (on prescription), but only if included in a special list established by the Secretary and then only if prescribed for a disease or condition for the treatment of which the drug is specified on that list; except that drugs furnished after June 30, 1981 (beginning with the 6th fiscal year of outpatient drug coverage under the bill) would be covered (without regard to the condition for which they are prescribed) if listed on the Secretary's general list of drugs referred to in the preceding paragraph. (The special list would be primarily for chronic conditions *for which* drug therapy, because of duration and cost, commonly imposes substantial financial hardship.)

5. Devices, Appliances, Equipment and Supplies (prescribed, or certified as medically necessary, by a professional practitioner) if on a list established by the Secretary or if otherwise covered as an institutional service or as an incident to professional services. The list must include, among other items, eyeglasses, hearing aids, prosthetic devices, walking aids, and any article covered under present law. For coverage of dentures, see "Dental Services" above.

6. Other Professional and Supporting Services (if not otherwise covered).

a. Services of optometrists.

b. Services of podiatrists.

c. Chiropractors' services (with respect to manual manipulation of the spine to correct a subluxation demonstrated by X-ray).

d. Diagnostic services of independent pathology laboratories, and diagnostic and therapeutic radiology by independent radiology services.

e. Care (other than psychiatist's services above covered) in a mental health day care service, if furnished by—

(1) a hospital,

(2) an approved HMO,

(3) a community mental health center or other mental health center that furnishes comprehensive mental health services, or

(4) a service affiliated with a hospital or a day care service approved for that purpose by the Secretary. Limited to 160 full days during or following a benefit period if provided under clause (4).

(f) Ambulance and other emergency transportation services, and nonemergency transportation services found essential by the Secretary to overcome special difficulty of access to covered services.

g. When not otherwise covered (e.g., as institutional services or as physician's services), supporting services (such as psychological services, physical, occupational, or speech therapy, and nutrition, social work, and health education services) when, with

[1] The term "institutional services" is defined in the bill as including all services that are furnished, or held out as available, generally to patients or classes of patients of the institution involved and are furnished by the institution or by others under arrangements with them made by the institution, including pathology and radiology services and all other professional and nonprofessional services so furnished or held out as available; except that the term does not include medical, surgical, or dental services by an independent physician or dentist, or podiatry services by an independent podiatrist, furnished to an individual as the practitioner's private patient (as defined by regulation).

Secretary's approval, furnished by an approved HMO, or another organization, institution, or agency. Outpatient physical therapy services are covered only if they meet requirements of existing law, i.e., § 1861 (p) of Social Security Act (as amended by the bill). (Outpatient physical therapy services (other than those in a physician's office) furnished by an independent physiotherapist in his office or the patient's home, are covered only as under the 1972 Amendments, i.e. to the extent of incurred charges therefor not exceeding $100 per calendar year.) Screening services not otherwise covered are covered when furnished in accordance with regulations.

7. Excluded from Coverage (and not abovementioned as excluded are, inter alia:

a. Services furnished outside the U.S., with certain across-the-border exceptions for hospital services and for professional services incident to the hospital services and for professional services incident to the hospital services. (sec. 1819(a) of bill).

b. Services not medically necessary or reasonable or, in the case of health maintenance, not appropriate. However, the bill preserves section 1879, added by the 1972 Amendments, providing for payment for such services under certain circumstances.

c. Personal comfort items.

d. Purely custodial care. However, the bill preserves section 1879, added by the 1972 Amendments, providing for payment for such services under certain circumstances.

e. Cosmetic surgery (with cetrain exceptions).

f. Services furnished or paid for, or required to be furnished of paid for, under a workmen's compensation law. (They may be provisionally treated as covered until a determination has been made under that law, upon which determination payment under Medicare is to be treated as an overpayment.)

g. Services for which the individual has no legal obligation to pay and which no one else (whether by reason of the individual's membership in a prepayment plan or otherwise) has a legal obligation to provide or pay for.

h. Services furnished by a Federal provider, except emergency services, and except (1) services that the provider is providing generally to the public as a community institution (e.g., St. Elizabeths Hospital) or (2) to the extent provided in regulations, services of Public Health Service personnel assigned (under sec. 329(b) of the PHS Act) to an area with a critical health manpower shortage.

i. Services that the provider is obligated by a law or contract with the U.S. to render wholly at public expense.

j. Services paid for directly or indirectly by any governmental entity, except (1) services for which payment is made under any provision of the Social Security Act other than Title XVIII; (2) services paid for under a health insurance plan for the entity's employees (or retired employees) or their families; (3) services provided by a participating State or local government-operated hospital (including a mental or tuberculosis hospital) that serves the general community; (4) services paid for by a State or local agency and furnished as a means of controlling infectious diseases or because the patient is medically indigent; and (5) services provided in such other cases as the Secretary may specify.

D. Payment for covered services (other than payment to an HMO contracting with the Secretary).

1. Payment is made only to a "participating provider" (i.e., one that has filed, and has in effect, a participation agreement with the Secretary under sec. 1866, except in the case of emergency services and covered across-the-U.S. border hospital and related services. The term "provider", under the bill, includes not only institutions but also independent practitioners with respect to their private patients, suppliers who furnish items (e.g., drugs or prostheses or appliances), to an individual in their own right and not on behalf of another, etc.

2. An institutional provider is to be treated as the provider of services to its patients with respect to all institutional services(as above defined), regardless of the legal or financial arrangement between the institution and the person furnishing the services. (Under present law, physicians' services (other than those of interns and residents-in-training under an approved teaching program and (generally) those of teaching physicians in such a hospital) are not covered under part A, but are covered under part B at the "reasonable charge" (or 80% of it) even if the hospital bills and collects for those services and even if the physician is on a salary.)

3. The amount of reimbursement to a participating institutional provider for institutional services is to be made on the basis of a predetermined schedule of patient care charges approved, for an accounting year of the institution, by the Secretary (through a review mechanism under which the fiscal intermediary for the institution generally makes the initial determination) or, in a State that has a State rate review and approval agency operating under equivalent standards, approved by that State agency. (Capitation charges, if submitted by a provider and if meeting standards, may also be approved.) The schedule of charges must be based on a system of accounting and cost finding in conformity with standards prescribed or approved by the Secretary, and on the institution's budget for the accounting year involved, which budget must also be approved by the Secretary or the State rate review and approval agency, as the case may be. A schedule of charges may be approved only if they do not exceed the estimated reasonable cost for the efficient delivery of services, as determined under the definition of "reasonable cost" and implementing regulations. (A revision of an approved schedule of charges during an accounting year would be permitted only under exceptional circumstances, described in the bill.) The bill provides for periodic interim payments to the institution during the institution's accounting year on the basis of projections, with final adjustment (after the close of the accounting year) based on the approved schedule of charges.

A hospital that is not a participating institutional provider, if eligible for reimbursement (see paragraph 1, above), would be paid on a reasonable cost basis (or, if less, in the case of a private hospital, its customary charges). In the case of such a hospital that elects not to claim payment under the program but to collect from the individual, payment would be made to the individual at the reasonable charge rate (less copayment).

4. With respect to noninstitutional services of physicians, dentists, optometrists, podiatrists, and chiropractors, and such other noninstitutional services of licensed professional practitioners as may be specified in regulations, the bill provides for payment in accordance with annually predetermined fee schedules for their local areas and for establishing these schedules, to the extent feasible, on the basis of negotiations with representatives of their professional societies and representatives of associations of retired persons (or associations otherwise representative of Medicare beneficiaries). The final schedule could, however, be established only after public hearing. (This system would apply only to services in the United States and not to the exceptional cases of covered across-the-border services.) The schedules are to be based on a forecast of what would be fair and equitable compensation (not exceeding "reasonable charges") in the area in the applicable fiscal year. Inasmuch as the legislation requires that payment for services in the United States be made only to a participating provider (except in emergency cases) and not to the individual, and a participating practitioner must agree to accept the Medicare payment (plus any copayment) as the full charge for the service, such a practitioner could no longer, by refusing to accept an assignment from the patient and billing the patient directly, require the patient to pay fees in excess of the Medicare reimbursement (plus copayment). A patient of a nonparticipating practitioner in the United States, except in the case of emergency services, would no longer be able to obtain any reimbursement from Medicare. (Even such a practitioner, if he accepts an assignment from the individual for the emergency services, could be paid only the abovementioned established Medicare charge and would be precluded from collecting an added fee from the patient, except the copayment if one applies.) The Secretary would be required to make public, for each local area, the established fee schedules for the area and the names, professional fields, and professional addresses of participating practitioners in the area.

5. In other cases, a participating noninstitutional provider (pharmacy, etc.) is to be paid on a "reasonable charge" basis, except that a nonprofit organization that operates on a prepayment basis may, at its request, be reimbursed under the provisions for payment to institutional providers. In emergencies, if the service in the United States is furnished by such a nonparticipating provider, i.e., one that has not filed a participation agreement with the Secretary, payment of the reasonable charge may be made either to the patient on the basis of an itemized bill, or to the provider on an assignment from the patient if the provider agrees that the reasonable charge is his full charge.

6. *Payment to Health Maintenance Organizations (HMO's).* The bill basically retains (as section 1838), the provisions of section 1876, enacted in 1972, for contracts between the Secretary and HMO's for reimbursement either on a risk-sharing or cost-reimbursement basis, with interim per capita payments during the contract year. In addition to technical corrections, the bill makes a number of clarifying amendments, including amendments to make clear that a medical foundation may qualify as an HMO and provisions somewhat amplifying and clarifying the provision relating to HMO's that arrange with a group or groups of professional practitioners for services to enrollees.

E. Use of carriers, etc., for making determinations, etc., for payment purposes

The bill merges the present part A provisions for use of fiscal intermediaries and part B provisions for use of carriers into a single section providing for use of carriers (including the type of organization which under the present system is a fiscal intermediary under part A) in administering the program, but adding the above-noted new functions relating to budgets and predetermined rates of institutional providers and to the negotiation and establishment of fee schedules for noninstitutional professional services. The Secretary must give priority to the fiscal-intermediary type of organization in selecting "carriers" to act for him with respect to covered services provided by institutional providers for which payment is to be made on an approved charge basis.

F. Cost sharing

1. Periodic Premium Payments would no longer be required for any part of the program.

2. Deductibles. All deductibles would be eliminated.

3. Copayments and Catastrophic Expense Benefits.

a. The bill would establish 5 income classes, with income class 1 being the one for low-income individuals and families. The income ranges for the different income classes would be subject to automatic annual revision in accordance with the Consumer Price Index (CPI), but initially the income ranges would be set as follows:

TABLE OF INCOME CLASSES

Income class	Family size and income ranges			
	Single individual	Family of 2	Family of 3	Family of 4 or more
1	0 to $2,110	0 to $2,730	0 to $3,340	0 to $4,280.
2	$2,111 to $3,160	$2,731 to $4,090	$3,341 to $4,460	$4,281 to $5,340.
3	$3,161 to $4,740	$4,091 to $5,450	$4,461 to $5,570	$5,341 to $6,410.
4	$4,741 to $6,330	$5,541 to $6,810	$5,571 to $6,980	$6,411 to $7,480.
5	Above $6,330	Above $6,810	Above $6,980	Above $7,480.

b. Persons in income class 1 would never be subject to copayments or be subject to coverage limits on certain services referred to below. Persons in income classes 2, 3, 4, and 5 would initially be subject to certain copayments (listed below). (Any copayment amount expressed as a flat dollar amount, rather than a percentage of charges, would be subject to automatic annual revision in accordance with the CPI.) However, copayments would cease when, in a given year and the preceding calendar quarter, a specified out-of-pocket expenditure limit is reached. For income classes 2, 3, and 4, that limit would initially be set at $125, $250, and $375, respectively (but subject to annual revision in accordance with the CPI). In the case of income class 5, the out-of-pocket expenditure limit would be 6 per cent of annual income, or, if lower, $750 (subject to annual revision of the dollar limit in accordance with the CPI). Credited toward the out-of-pocket limits would be not only expenditures incurred for copayments, but also any expenditures incurred for services furnished in excess of the coverage limit in the case of certain psychiatric services; moreover, when the out-of-pocket expenditure limit had been reached, these coverage limits would cease to apply for the rest of the year. These expenditure limits, with consequent termination of copayments and coverage limits, are referred to as catastrophic expense benefits in the bill.

List of Copayments

Type of service

1. Inpatient hospital services covered under section 1813(a)(1).

Copayment

1. $5 per day, unless higher under section 1824.[1]

Type of service

2. Skilled nursing facility services covered under section 1813(a)(2).

Copayment

2. $2.50 per day, unless higher under section 1824.

Type of service

3. Home health services covered under section 1813(a)(4).

Copayment

3. $2.00 per visit (as defined by regulations), unless higher under section 1824.

Type of service

4. Physicians' services covered under section 1814(a) and (c)(3).

Copayment

4. $2.00 per visit unless higher under section 1824; except that 10% of approved combined multivisit charge (when authorized by regulation), as in cases of surgery or obstetrical care, shall apply.

Type of service

5. Dentists' services covered under section 1815.

Copayment

5. 20% of approved charges; except no copayment for oral examination and prophylaxis, including fluoride application, X-rays, and (in accordance with regulations) other preventive procedures.

[1] Section 1824 contains the above-mentioned provisions for adjustment in accordance with the CPI.

Type of service

6. Mental health day care (including physicians' services) covered under sections 1816(a)(4) and 1814(c)(1) or (2).

Copayment

6. $2 per day unless higher under section 1824.

Type of service

7. Diagnostic outpatient services of independent laboratories, or of independent radiology services, covered under section 1816(a)(3) and not part of covered institutional services.

Copayment

7. 20% of approved charges, except when a negotiated rate agreement under section 1836(b)(4) precludes copayment.

Type of service

8. Devices, appliances, equipment, and supplies covered under section 1818.

Copayment

8. 20% of approved charges, except no copayment for examination for glasses or when copayment is waived under section 183(b)(3).

Type of service

9. Drugs covered under section 1817(b)(3).

Copayment

9. $1 per each filling or refilling of a prescription unless higher under section 1824.

Type of service

10. Ambulance services covered by section 1816(a)(6).

Copayment

10. 20% of approved charges.

G. Financing of program

1. The two Medicare trust funds would be merged into a single Medicare Trust Fund. In addition to the special taxes collected under the Internal Revenue Code (see below), and to returns from investment of the fund, a Government contribution would be authorized to be appropriated in whatever amount is necessary as estimated from time to time by the Board of Trustees of the Trust Fund, so that there can be prompt payment of benefits and administrative expenses plus an adequate contingency reserve.

2. If at any time the Board of Trustees reports to the Congress that the Trust Fund is insufficient to make promptly all payments from the Fund required in the next 3 months, and if a request for a Government contribution that would correct the insufficiency is then pending in Congress but an appropriation to make the contribution has not been finally acted on by the Congress, the Managing Trustee (Secretary of the Treasury) would, if the Board so directed be required to borrow (through issuance of Trust Fund notes or other obligations) from the Treasury, which would be empowered to utilize the Second Liberty Loan Act for the purpose.

H. Changes in other law

1. Amends sec. 226 of Social Security Act to establish the broadened entitlement for age referred to under paragraph (B) above. (Repeals sec. 103 of Social Security Amendments of 1965 which contains transitional provisions on Medicare entitlement that would be unnecessary in view of the amendments to section 226.)

2. Limits Railroad Retirement Board's functions for administration of Medicare with respect to railroad retirement annuitants to those annuitants with respect to whom certification to HEW is necessary in order to establish their entitlement to Medicare. Such certification would no longer be necessary in the case of most individuals whose entitlement is based on attainment of age 65. (Continues Railroad Retirement Board's functions for comparable payments to Railroad Retirement annuitants in Canada out of the Railroad Retirement Account.)

3. Repeals provisions in the Railroad Retirement Tax Act (secs. 3201, 3211, and 3221) insofar as they include under that Act the equivalent of the present hospital insurance taxes under the Federal Insurance Contributions Act.

(Reason: These railroad taxes, under another provision of law, now go into the Railroad Retirement Account, on the premise that the Medicare system will get its equitable share under the financial-interchange provisions of the Railroad Retirement Act. However, under the bill, railroad employment will now be taxed for Medicare purposes under the Federal Insurance Contributions Act).

4. Amends Title XIX (Medicaid) of Social Security Act to make Medicaid for the elderly supplemental to Medicare. Makes conforming changes that eliminate provision for the Medicaid agency's payment of premiums and copayments under Medicare (in view of above-stated changes in Medicare).

5. The 1972 enactment of Section 1862(c) of Title XVIII of the Social Security Act, intended to coordinate the federal employee health benefit (FEHB) program with Medicare effective 1/1/75, would be replaced with amendments to the provisions of the FEHB program designed to (a) take account of the above-mentioned structural changes and elimination of premiums in the Medicare program, (b) clarify the intent of the 1972 Amendment, (c) require each FEHB plan to offer to eligible enrollees, under a distinct part of the carrier's overall plan, the option of benefits supplementary to Medicare at a subscription rate actuarially commensurate with that option, and (d) deal with situations where a Federal employee or annuitant is enrolled under the FEHB program for self and family but only some members of the family unit (and possibly excluding the enrollee himself) are entitled to Medicare benefits and the others should be covered under the carrier's overall plan.

TITLE II. CHANGES IN TAX LAW

The present medicare tax remains at its present level. All additional funds come out of general revenues.

Tax rates

Specific rates are to be decided on

Covered services for wage and payroll taxes

Same as present law, except that Federal employment, railroad employment, foreign agricultural workers, and charitable (etc.) organizations would be covered. As to repeal of railroad retirement taxes, see para. H. 3, above.

Note: State and local governmental entities and employees, to the extent covered by Federal-State agreements under the Social Security Act, would be paying the equivalent of these taxes.

DESCRIPTION OF THE COMPREHENSIVE MEDICARE REFORM ACT OF 1974 AND A DETAILED COMPARISON OF THAT BILL WITH CURRENT LAW

A. DESCRIPTION OF THE COMPREHENSIVE MEDICARE REFORM ACT OF 1974

Medicare, known officially as Health Insurance for the Aged and Disabled, has major deficiencies. It is divided into two distinct programs—Hospital Insurance Benefits for the Aged and Disabled and Supplementary Medical Insurance Benefits for the Aged and Disabled. The basis for this division is his-

torical rather than rational; the result is an uneven distribution among the intended beneficiaries of the intended degree of health care protection.

Eligibility for benefits under the Hospital Insurance program is based on insured status under the social security and railroad retirement cash benefit programs, while eligibility under the voluntary Supplemental Medical Insurance program is based on residence or, alternatively, entitlement to Hospital Insurance. The deductibles (inpatient hospital deductible per spell of illness, the annual deductible, and the blood deductibles), coinsurance (with respect to inpatient hospital care and skilled nursing care under Hospital Insurance, and 20% coinsurance under Supplementary Medical Insurance), and premiums (for voluntary enrollees under both programs) reflect rising health care cost and now constitute a substantial burden on low and relatively fixed income aged and disabled persons. The limitations on inpatient hospital and skilled nursing facility care, on home health services, and on the amounts of inpatient and outpatient psychiatric care, and the limitation of skilled nursing facility care and home health services to post-hospital care under the Hospital Insurance program severely restrict the degree of health care protection. Moreover, the exclusion of intermediate facility care, the exclusion of dental care and dentures, of eye glasses and examinations for prescribing them, of hearing aids and examinations therefore, and certain other professional services, and of orthopedic shoes and certain other walking aids, and outpatient drugs (except injectibles when administered to an outpatient in a physician's office or hospital) further limit the protection available under the programs.

Certainly Medicaid, known officially as Grants to States for Medical Assistance Programs, is not a suitable means of compensating for the indefinite future for the deficiencies of the Medicare programs. First, Medicaid imposes, as a condition for eligibility, a means test which should not be imposed for health care of the aged. Also, being a federally-aided rather than a federal program, it is not in effect in every state. Furthermore, many states have not extended the Medicare program to those whose income is above the cash public assistance level but who are medically indigent. Many states, even among those that do not cover the medically indigent, have had great difficulty in meeting their share of costs and have cut back on eligibility and services. Finally, Medicaid varies widely among the states in its benefit coverage and in its eligibility requirements, thus aggravating inequitable distribution of national health care resources among those in need of its benefits.

The Comprehensive Medicare Reform Act of 1974 would revise and expand the Medicare program and would build upon the Medicare cost experience by, among other things, integrating the Hospital and Supplementary Medical Insurance programs into a single benefit structure, with a single trust fund. The program would be financed in full through health insurance taxes on wages and payroll, self-employment income, and unearned income, through government contributions from general revenues, and through earnings from investment of proceeds of these taxes and government contributions.

With respect to eligibility and coverage, this Act would extend the benefits of the program to all aged United States citizens, and to most aged non-citizens living in the United States, without requiring that they be entitled to social security cash benefits and would keep under the program the disabled persons under age 65 added by the 1972 Social Security Amendments but with the benefit of all the new and enlarged services added by these amendments to the same extent as in the case of the aged.

With respect to benefits, this act would preserve the types of benefits presently available under Medicare but would abolish the requirement of prior hospital stay with respect to skilled nursing care and home health services. This act would also provide coverage of intermediate care facility services under the program beginning July 1, 1978, greatly expanded psychiatric care benefits including inpatient, day care patient, and outpatient, dental services on an unlimited basis including preventive, diagnostic, therapeutic, and restorative services and other professional and supportive services such as professional services of optometrists and podiatrists, diagnostic services of independent pathology laboratories and diagnostic and therapeutic radiology furnished by independent radiology services, mental health day care services provided by an HMO, a hospital, or community mental health center, or, to the extent of not more than 160 full days during or following a benefit period, when provided by a service affiliated with a hospital or when provided by a day care service approved by the Secretary of HEW for this purpose, professional services of chiropractors and ambulance and other emergency transportation services.

The legislation would expand the coverage of drugs (including biologicals) so as to include, in addition to those furnished to hospital and skilled nursing facility inpatients or in a physician's or dentist's office, drugs furnished to enrollees of a participating HMO and prescribed drugs dispensed by pharmacies, except that during the first five years, a drug in the last category would be covered only if prescribed for a disease or condition for which it is listed as appropriate in a list, established by the Secretary, designed to provide practitioners with an armamentarium necessary and sufficient for rational drug therapy incident to comprehensive care. Moreover, the present coverage under Medicare of prosthetic and other devices, appliances, and equipment would be extended by these amendments to all others (including eye glasses and hearing aids) listed by the Secretary as important for the maintenance or restoration of health or employability or self-management of individuals.

The comprehensive Medicare Reform Act of 1974 would confront directly the problem of benefit durational limitations under existing law. Present limitations on duration of general inpatient hospital care, skilled nursing facility care, and home health services would be abolished.

The S. 11 would eliminate all requirements for premium-payments, and so-called deductibles and coinsurance. Instead, a system of copayments with respect to inpatient hospital services, skilled nursing services, home health services, physician's and dentist's services, mental health day care, diagnostic outpatient sservices and independent laboratory or independent radiology services, devices, appliances and equipment, certain drugs, and ambulance services would be established. However, these copayments and any remaining limitations on benefits would be subject to a catastrophic protection feature pursuant to which such copayments or limitations would be eliminated in the case of low-income persons and in the case of other persons, would be eliminated after such persons have incurred out-of-pocket expenses in a maximum amount related to their income.

All providers of services, not merely institutional providers as under present law, would be required to qualify as participating providers (except in emergencies and certain cross-the-United States-border hospital services). The term "provider" would be defined to include independent practitioners with respect to their private patients and suppliers who furnish items (e.g., drugs, or prostheses or appliances) to an individual in their own right and not in behalf of another.

Pursuant to this Act, participating hospitals and other institutional providers would be required to submit annually a budget and schedule of proposed rates and charges, based on the cost of efficient delivery of services, for approval to the Secretary of HEW or to the state rate review agency in any state that has an equivalent institutional rate review and approval law; reimbursement for services to such providers would be based on the predetermined approved rates, thus providing incentives for efficiency and economy for such providers. Moreover, physician and other services generally available to institution patients, whether performed by employed staff or under arrangements made by the institution, would be treated as institutional services, except for services by physicians, dentists, or podiatrists with respect to their private patients.

With respect to non-institutional services of independently practicing physicians, dentists, podiatrists, or other licensed professional practitioners, payment would be provided in accordance with annually predetermined fee schedules for local areas. These schedules would be established, to the extent feasible and subject to public hearing, through negotiations of representatives of appropriate professional societies and representatives of associations of retired persons (or associations otherwise representative of Medicare beneficiaries) and based on a forecast of fair and equitable compensation (not exceeding "reasonable charges") in the area in the applicable fiscal year.

Finally, with respect to reimbursement procedures, a provider would be required, as a condition precedent to participation, to agree to accept the Medicare payment (plus any copayment) as the full charge for the services.

Under this proposal beneficiaries would have the option of having all covered care provided (or, in the case of emergencies or urgent out-of-area services paid for) by an HMO, including within the definition thereof a medical foundation, with which the Secretary would contract and which, as under present law, would be reimbursed either on a risk-sharing or cost reimbursement basis, with interim per capita payments during the contract year.

This Act would also amend the present Medicaid program to make it, in the case of those entitled to health care benefits under this Act, supplementary to Medicare on a transitional basis, primarily for long-term care, until all durational limitations in Medicare have expired or been appealed.

Finally, under Title III of this Act, studies and reports to Congress would be required with respect to a comprehensive plan or plans for making long-term health and health-related institutional care readily and appropriately available to all who need such care. Studies would also be required with respect to the need for, and the most equitable means of meeting the cost of, additional facilities of various kinds for the long-term institutional care of persons who, because of age or disability or other cause, are unable to live at home without assistance as well as with respect to the need for additional services to enable such persons (if possible) to live in their own homes and the best way to provide and finance such services.

B. DETAILED COMPARISON OF THE COMPREHENSIVE MEDICARE REFORM ACT OF 1974 WITH CURRENT LAW

1. In general

a. Present Law

Title XVIII of the Social Security Act, known officially as Health Insurance for the Aged and Disabled, contains two programs of medical care—Hospital Insurance Benefits for the Aged and Disabled and Supplementary Medical Insurance Benefits for the Aged and Disabled. Each of these programs has its own eligibility requirements, benefit

package, limitation and cost-sharing features, reimbursement procedures, financing mechanism, and trust fund.

b. The Comprehensive Medicare Reform Act of 1974

The propsal would repeal Parts A and B of Title XVIII, except Section 1817 (provisions governing the Federal Hospital Insurance Trust Fund) and replace the two Medicare programs with a single, comprehensive health insurance program for the aged and for those persons who are disabled and presently covered for purposes of Medicare.

2. Entitlement and duration of entitlement

a. Present Law

Under Section 226 of the Social Security Act, Hospital Insurance benefits are provided for an individual who is age 65 or over and who is entitled to monthly Old Age or Survivors Insurance benefits under Section 202 of Title II of the Social Security Act or who is a "qualified railroad retirement beneficiary." Entitlement to Hospital Insurance benefits begins with the first day of the month in which he reaches age 65 and ends with the month he ceases to be entitled to social security section 202 benefits or ceases to be a qualified railroad retirement beneficiary. In the case of an individual who is not or ceases to be entitled to social security 202 cash benefits and is not or ceases to be a qualified railroad retirement beneficiary, entitlement to Hospital Insurance benefits will depend upon his meeting the requirements for "transitional entitlement" or, failing that, the requirements for voluntary enrollment.

An uninsured individual will be deemed entitled to social security 202 benefits for purposes of entitlement to Hospital Insurance benefits (transitional entitlement) provided he attained the age of 65 before 1968 or attained the age of 65 after 1967 and has not less than three social security or railroad retirement quarters of coverage for each year elapsing after 1966 and before the year in which he reached age 65. Hospital insurance protection begins with the month in which the requirements are met and ends with the month before the first month in which the individual is entitled to social security 202 benefits, or becomes certifiable as a qualified railroad retirement beneficiary, or with the month of his death.

Hospital insurance is available to an individual under the age of 65 who has been entitled for not less than 24 consecutive months to social security or railroad retirement benefits on the basis of a disability. In this case, Hospital Insurance protection would begin with the 25th consecutive month of entitlement to social security or railroad retirement disability benefits or July, 1973 whichever is later. Entitlement continues until the end of the month following the month of which notice of termination of disability status is mailed or, with the end of the month before the month of attainment of age 65, whichever is earlier.

Hospital Insurance benefits are also available to an individual under age 65 and medically determined to have chronic renal disease and to require hemodialysis or renal transplantation, who is either fully or currently insured for social security benefits or entitled to monthly social security benefits or is the spouse or dependent child of an individual who is so insured or so entitled. Eligibility begins with the third month after the month in which a course of renal dialysis is initiated and ends with the twelfth month after the month in which the individual has a renal transplant or the course of dialysis is terminated.

Finally, Hospital Insurance protection is available on a voluntary basis to an individual who is 65 or over, and not otherwise entitled under the regular or transitional provisions of the law. However, he must be a resident of the United States, a citizen of the United States or an alien lawfully admitted for permanent residence who has continuously resided here for not less than five years immediately preceding the month of application. In addition, he must also be enrolled under the Supplementary Medical Insurance program. In general, the provisions governing enrollment and coverage under the Supplementary Medical Insurance program are also applicable to enrollment in the Hospital Insurance program.

An individual eligible to enroll in the Supplementary Medical Insurance program or deemed to have automatically enrolled is limited to an individual entitled to Hospital Insurance benefits or to one age 65 or over who is a resident of the United States and a citizen of the United States or an alien lawfully admitted for permanent residence or a resident for a five year period immediately preceding the month of application.

Except in the case of enrollment under a federal-state agreement, an individual may enroll in the Supplementary Medical Insurance program, only during an enrollment period. In the case of an individual meeting the enrollment requirements before March 1, 1966, the "initial general enrollment period" began on September 1, 1965 and ended May 31, 1966. Otherwise, the "initial enrollment period" for an individual begins with the third month before the month in which the eligibility requirements are met and ends seven months later. In the case of an individual who failed to enroll in the "initial general enrollment period" or in his "initial enrollment period" or in the case of an individual who wants to reenroll, there was "a general enrollment period" from October 1, 1967, to March 31, 1968, and beginning with 1969 there was and will be a general enrollment period from July 1 to March 31 of each year.

In the case of an individual who voluntarily enrolls, or is automatically enrolled in the Supplemental Medical Insurance program, coverage begins in accordance with the provisions of Section 1837 of the Social Security Act, but in no event before July 1, 1966 (or July 1, 1973 in the case of a disabled individual).

Entitlement to benefits under the Supplementary Medical Insurance program continues until the individual's enrollment is terminated. Such termination will be effected by the death of the individual, the filing of a termination notice, or as a result of nonpayment of premiums, whichever first occurs. The termination of coverage by notice will take effect at the close of the calendar quarter following the calendar quarter in which such notice is filed. Termination for non-payment of premiums will take effect with the end "of the grace period" during which overdue premiums may be paid and coverage continued.

In the case of an individual entitled to Hospital Insurance benefits and consequently Supplementary Medical Insurance benefits, on the basis of disability, coverage ends with the close of the last month for which he is entitled to Hospital Insurance benefits.

b. The Comprehensive Medicare Reform Act of 1974

The Act would greatly simplify the confusing network of eligibility and coverage requirements of present law. Under these Amendments, every individual who, at the time any service covered under Title XVIII is furnished to him, has attained the age of 65 and is a citizen or national of the United States, or is an alien lawfully admitted for permanent residence and is living in the United States, or is an alien and has been on a continuing basis, for a period of not less than 30 days immediately preceding the furnishing of that service, lawfully present in the United States, or is an alien entitled to social security section 202 benefits or qualified as a railroad retirement beneficiary would be entitled to Health Insurance benefits with respect to that service. The provisions of current law with respect to entitlement and duration of coverage of disabled individuals are retained.

With respect to an individual who is under age 65 and who is medically determined to have chronic renal disease requiring renal dialysis or kidney transplantation, such an individual would be entitled to Health Insurance benefits provided that he is entitled to monthly cash benefits under Title II of the Social Security Act or to an annuity under the Railroad Retirement Act of 1937 or is a fully or currently insured individual or is the spouse or dependent child of such a person. Coverage would begin with the third month after the month in which eligibility requirements are met and a course of renal dialysis is initiated and would end with the twelfth month after the month in which the individual receives a kidney transplant or in which the course of renal dialysis terminated.

3. Health care benefits and durational limitations

a. Present Law

The benefits provided to an individual by the Hospital Insurance program of present law consist of entitlement to have payment made on his behalf for inpatient hospital services (including psychiatric and tuberculosis hospitals), post-hospital extended care services provided by a skilled nursing facility and post-hospital home health services. These services are limited in duration, however, in accordance with the beginning or ending of a "spell of illness."

Inpatient hospital services are covered for up to 90 days per spell of illness. In addition, each beneficiary has a lifetime reserve of 60 days of additional coverage after exhaustion of the 90-day period. Post hospital extended care services furnished by a skilled nursing facility are covered for only 100 days during a spell of illness. Post hospital health services are covered for up to 100 visits provided during a one-year period beginning after the commencement of a spell of illness and ending before the commencement of the next spell. Finally, services provided by a qualified Christian Science Sanitorium are covered for up to 180 days in the same spell of illness—up to 150 days of hospital services, and up to 30 days of extended care services.

Supplementary Medical Insurance, as a separate program, has its own package of covered services which builds upon, reinforces, and to some extent, duplicates Hospital Insurance benefits. The benefits provided to an enrolled individual consist of entitlement to have payment made to him or on his behalf for "medical and other health services" (including physician's services) and entitlement to have payment made on his behalf for home health services for up to 100 visits per year (no prior hospital stay requirement), "medical and other health services" furnished by a provider of services (hospital, skilled nursing facility or home health agency), excluding, however, most physician's services and outpatient physical therapy services.

b. The Comprehensive Medicare Reform Act of 1974

Health care protection would be far more comprehensive under the new proposal. New services would be covered and limitations on services already covered would be reduced or eliminated.

Under the Medicare amendments of 1974, entitlement of an individual to benefits would consist of the right to have payment made on his behalf or to him when so specified, for covered institutional services including inpatient and outpatient hospital services and including such services in a psychiatric or tuberculosis hospital or other specialized hospital, skilled nursing facility services, intermediate care facility

services (furnished after June 30, 1978), home health services, health and health-related services and items for the rehabilitation of handicapped individuals, inpatient services of a Christian Science sanitorium, and health, health-related services and items that are furnished to an individual by an institution that is a public health agency or non-profit private health agency or furnished by others under arrangements.

Covered non-institutional services for purposes of the Medicare Amendments of 1974 include the following: professional services of a physician (when not covered as institutional services), services, materials, and supplies (including drugs), furnished as an incident to a physician's professional services and commonly furnished in the physician's office with or without separate charge, psychiatric (mental health) services to patients other than inpatients, but only if furnished by an approved HMO, a hospital, or a mental health center or (up to 60 days) by a mental health day care service affiliated with a hospital or approved by the Secretary, or (up to 20 consultations a year) by a psychiatrist in his office, dental services (when not covered in institutional services) including preventive, diagnostic, therapeutic, and restorative services, professional services of an optometrist and podiatrist, diagnostic services of independent pathology laboratories and diagnostic and therapeutic radiology furnished by independent radiology services, chiropractor services, ambulance and other emergency transportation services, and non-emergency transportation services found essential by the Secretary to overcome special difficulty of access to covered services, and supporting services not otherwise covered (such as inpatient and outpatient psychological, physical, occupational, or speech therapy services, and nutrition, social work, and health education services).

Drugs are covered under the Medicare Amendments of 1974 as an institutional or non-institutional service as the case may be when furnished, in the manner hereinafter set forth, by or on prescription of a physician or dentist participating as a provider or acting on behalf of a participating provider. However, the drug must be furnished to an enrollee of an HMO or administered by a hospital's inpatient or outpatient department or administered to an inpatient of a skilled nursing facility or to a patient in a rehabilitation agency or center. A drug may also be furnished in a physician's or dentist's office as an incident to his professional service (with or without separate charge) but only if the drug is on a general list, established by the Secretary, designed to provide practitioners with an armamentarium sufficient for rational drug therapy, or if furnished (on prescription) but only if included in a special list established by the Secretary and then only if prescribed for a disease or condition for the treatment of which the drug is specified on that list, except that a drug furnished after June 30, 1981 (beginning with the sixth fiscal year of outpatient coverage under the law) would be covered (without regard to the condition for which it is prescribed) if listed on the Secretary's general list of drugs.

Devices, appliances, equipment and supplies, not otherwise covered, would be covered under these Amendments if prescribed or certified as medically necessary by a professional practitioner participating as a provider or acting on behalf of a participating provider and if included on a list established by the Secretary. This list must include, among other items, eyeglasses, hearing aids, prosthetic devices, walking aids, and durable medical equipment.

The only durational limits applicable to benefits under the Medicare Amendments of 1974 are a limit of 150 days of care in a benefit period for psychiatric inpatient care, a 160-day limit on psychiatric (mental health) services furnished to a patient of mental health day care service affiliated with the hospital or approved by the Secretary, and a 20 consultation a year limit on psychiatric (mental health) services furnished in a psychiatrist's office.

The services which are excluded under current law and which would continue to be excluded under the act include services furnished outside the United States (with certain across-the-border exceptions for hospital services and for professional services incident to the hospital services), services not medically necessary, reasonable or appropriate, personal comfort items, custodial care, cosmetic surgery, services furnished or paid for under workmen's compensation laws, services for which the individual has no legal obligation to pay, and most services furnished by a federal provider.

4. Cost sharing

a. Present Law

Under the Hospital Insurance program, inpatient hospital services are subject to an inpatient hospital deductible for each spell of illness. The amount of the deductible (presently $84) is determined by the year in which the spell of illness begins.

Inpatient hospital services after the 60th day and before the 91st day during a spell of illness, are subject to daily coinsurance equal to one-fourth of the inpatient hospital deductible. Inpatient hospital service after the 90th day and through the 150th day during a spell of illness are subject to daily coinsurance equal to one-half of the inpatient hospital deductible.

Whole blood or packed red blood cells received by a beneficiary as part of the services furnished to him under the Hospital Insurance program during any spell of illness are subject to a deductible equal to the cost of the first three pints. However, the patient may not be charged for these first three pints if he arranges for their replacement on a pint-for-pint basis.

Post-hospital extended care services after the 20th day during a spell of illness are under the Hospital Insurance program subject to daily coinsurance equal to one-eighth of the inpatient hospital deductible.

Persons who voluntarily enroll in the Hospital Insurance program must pay monthly premiums. The premium is set at $33.00 a month for each month before July 1974 subject, however, to subsequent adjustment. The amount of this premium will be increased for delinquent enrollment in the same manner and to the same extent as it is for premiums under the Supplementary Medical Insurance program (see below).

Coverage under the Supplementary Medical Insurance program is contingent upon the payment of a monthly premium (presently $6.30). In the case of an individual whose Supplementary Insurance coverage period begins pursuant to enrollment after his "initial enrollment period" or who reenrolls after a termination of coverage, the monthly premium amount otherwise applicable will be increased by ten percent for each full twelve months in which he could have been, but was not enrolled.

Under the Supplementary Medical Insurance program, there is also an annual deductible of $60.00 and a 20 percent coinsurance feature that requires a sharing of expenses above the deductible amount. This annual deductible and coinsurance amounts are not, however, applicable to cover expenses incurred each year for radiology or pathological services furnished to a hospital inpatient by a physician. After October 30, 1972 they are not applicable with respect to diagnostic tests performed in a laboratory for which payment is made to the laboratory at a negotiated rate. Finally, there is no 20 percent coinsurance amount imposed in respect to home health benefits, effective with respect to services furnished in accounting periods beginning after 1972.

Like the Hospital Insurance program, the Supplementary Medical Insurance program imposes a deductible equal to the expenses incurred for the first three pints of whole blood or packed red blood cells.

b. The Comprehensive Medicare Reform Act of 1974

The Act would eliminate completely premium payments and all deductibles. However, these Amendments would establish a system of copayments with respect to inpatient hospital services ($5.00 per day), skilled nursing facility services ($5.00 per day), home health services ($2.00 per visit), physician's services ($2.00 per visit), dentist's services (20% of approved charges except no copayment for certain services), mental health day care ($2.00 per day), diagnostic outpatient services of independent laboratories or independent radiology services not otherwise covered as institutional services (20% of approved charges except when a negotiated rate agreement precludes copayment), devices, appliances, equipment and supplies (20% of approved charges except no copayment for examination for glasses or when copayment is waived), drugs ($1.00 per filling or refilling of a prescription), and ambulance services (20% of approved charges).

The incurring of copayments by an individual entitled to health insurance protection under the Medicare Amendments of 1974 would be subject to a catastrophic protection feature related to income. These Amendments would establish five income classes, with income class I including all low income individuals and families. The income ranges for the different income classes would be subject to automatic annual revision in accordance with the consumer price index, but initially the income ranges would be set as follows;

TABLE OF INCOME CLASSES

Income class	Family size and income ranges			
	Single individual	Family of 2	Family of 3	Family of 4 or more
1	$0 to $2,110	$0 to $2,730	$0 to $3,340	$0 to $4,280.
2	$2,111 to $3,160	$2,731 to $4,090	$3,351 to $4,460	$4,281 to $5,340.
3	$3,161 to $4,740	$4,091 to $5,450	$4,461 to $5,570	$5,341 to $6,410.
4	$4,741 to $6,330	$5,451 to $6,810	$5,571 to $6,980	$6,411 to $7,480.
5	Above $6,330	Above $6,810	Above $6,980	Above $7,480.

Persons in income class 1 would never be subject to copayments (or be subject to coverage limits, to the extent there are any, on services). Persons in income class 2, 3, 4 and 5 would initially be subject to the copayments described above. However, copayments would cease when, in a given year and the preceding calendar quarter, a specified out-of-pocket expenditure limit is reached. For income classes 2, 3 and 4, that limit would initially be set at $125, $250, and $375 respectively (but subject to annual revision in accordance with the CPI). In the case of income class 5, the out-of-pocket expenditure limit would be 6 per cent of annual income or, if lower, $750 (subject to annual revision of dollar limit in accordance with the CPI). Credit towards the out-of-pocket limits would be made for expenditures incurred for copayments, and any expenditures incurred for services furnished in excess of the coverage limits (in case of certain psychiatric services). Moreover, when the out-of-pocket expenditure limit has been reached,

these coverage limits would cease to apply for the rest of the year.

5. Conditions of and limitations on payment for services

a. Present Law

Under the hospital insurance program, payments for services furnished an individual may be made only to providers of services and only if a written request for payment has been made by the individual (or in certain cases, by someone acting on such individual's behalf), a physician certifies (recertifies where such services are furnished over a period of time) the necessity for certain services covered under the program, and, in the case of inpatient hospital services and post hospital extended care services, such services were not found to be medically unnecessary under the system of utilization review.

The amount paid to any provider with respect to services for which payment may be made under the program is the lesser of the "reasonable cost" of such services, the customary charges with respect to such services, or (if such services are furnished by a public provider of services free of charge or at nominal charge to the public), fair compensation.

Existing law provides, in general, that the reasonable cost of any service is the cost actually incurred and is to be determined under regulations establishing the method or methods to be used and the items to be included in determining such cost for various types and classes of institutions, agencies and services. These regulations must take into account the principles developed and generally applied by national organizations or established prepayment organizations in computing the amount of payment to be made by third parties to providers of service. These regulations must also take into account direct and indirect cost to providers in order that costs incurred with respect to individuals covered by the Hospital Insurance and Supplementary Medical Insurance programs will not be borne by individuals not so covered, and the costs incurred with respect to individuals not covered will not be borne by the Insurance programs. Also, the regulations must provide for making retroactive corrective adjustments where reimbursement during a fiscal period proves to be less than or more than reasonable cost.

The Social Security Amendments of 1972 introduced important limitations in determining reasonable cost. These limitations require the exclusion from the recognition of "reasonable cost", any cost in excess of that actually incurred and incurred cost "found to be unnecessary in the efficient delivery of health care services."

Important provisions designed to avoid the use of federal funds to support unjustified capital expenditures and to encourage planning activities for health facilities and services in the various states were also added. Under these provisions, the Secretary of HEW is authorized to withhold or reduce amounts otherwise reimbursable to providers of services and HMO's under Health Insurance for depreciation, interest and, in the case of proprietary providers, the return on equity capital when certain capital expenditures are determined to be inconsistent with state or local health facility plans.

These Amendments also added provisions for demonstration projects to determine the feasibility of prospective reimbursement under Health Insurance. These projects are to develop methods and techniques to provide positive financial incentives for providers to use their facilities and personnel more efficiently, thereby reducing their own as well as Health Insurance costs while maintaining or improving the quality of the health care. Both capital planning and the demonstration projects should be facilitated by additional requirements which are also added to the law. After March 1973, a hospital and other participating providers of services must have, as a condition of participation of the Hospital Insurance program, a written overall plan and budget reflecting an annual operating budget and capital expenditures plan.

As general rule, the Hospital Insurance program will pay only for semi-private accommodations in connection with inpatient hospital or skilled nursing care. Payment will be made for more expensive accommodations only when medically necessary. Finally, effective for periods beginning after final regulations are adopted, present law contains special provisions concerning the amount a provider may be paid as reasonable cost with respect to the services of a physical, occupational, or speech therapist or the services of another health specialist. Under these provisions, payment for the reasonable cost of these services, furnished under arrangements with the provider, may not exceed an amount equal to the salary and other cost that would reasonably have been payable if the services had been performed in an employment relationship plus the cost of such other incidental expenses.

As a general rule, reimbursement under the Supplementary Medical Insurance program is on the basis of "reasonable charges". Payment will generally be made to the extent of 80 per cent of the reasonable charges amount. and will be made on the basis of an itemized list to the individual or on the basis of an assignment to the one who furnished the services. In the case of expenses incurred in any calendar year for physician's services and items and supplies in connection with the treatment of mental, psychonumerologic, and personality disorders of an individual who is not an inpatient at the time the expenses are incurred, payment under the program will take into account only the lesser of $312.50 or 62½ per cent of such expenses.

With respect to services for which an enrolled individual is entitled to have payment made on his behalf (home health services, medical and other health services) furnished by a provider of services or by others under arrangement (except most physician services and outpatient physical therapy services), payment will be in amounts equal to, in the case of home health services, 100 per cent, and with respect to other services, 80 per cent of the lesser of the reasonable cost of such services, the customary charges with respect to such services, or (in a case where the services are provided by a public provider of services free of charge or a nominal charge to the public) fair compensation.

Certain limitations also apply with respect to payments under the program. No payment will be made with respect to any service furnished individuals to the extent that such individuals are entitled to have payment made with respect to such services under the Hospital Insurance program. No payment will be made where information and records necessary to determine the amount of payment has not been provided. In the case of the purchase or rental of durable medical equipment, special provisions and procedures apply for purposes of payment. In the case of covered outpatient physical therapy services furnished by a physical therapist in his office or in the individual enrollee's home, no more than $100 per year will be considered incurred expenses for purposes of determining payment under the program.

Under the Supplementary Medical Insurance program, payment will be made to providers (hospital, skilled nursing facility, and certain clinics, rehabilitation agencies, and public health agencies) for services provided to enrolled individuals pursuant to written request and physician's certification procedures similar to those applicable under the Hospital Insurance program.

The law governing the determination of "reasonable charges" for purposes of the Supplementary Medical Insurance program, requires that a carrier administrating the program take necessary action to assure that, where payment is to be made for services on a cost basis, cost is reasonable cost and where payment is to be made on a charge basis, such charge will be reasonable and not higher than the charge applicable, for a comparable service and under comparable circumstances, to the policyholders and subscribers of the carrier. In determining the reasonable charges for services, the "customary charges" for similar services as well as the "prevailing charges" in locality "for similar services" must be taken into account. The 1972 Social Security Amendments expanded these requirements so that no charge may be determined to be reasonable after December 31, 1970 if it exceeds the higher of the prevailing charge recognized by the carrier for similar services in the same locality in administrating the program on December 31, 1970 or the prevailing charge leveled that would cover 75 per cent of the customary charges made for similar services in the same locality during the calendar year preceding the start of the fiscal year in which the bill is submitted or request for payment is made. The prevailing charge levels determined for this latter purpose for fiscal years beginning after June 1973 may not exceed in the aggregate the levels for fiscal year 1973 except to the extent justified by economic changes reflected in the appropriate economic index data.

The 1972 Social Security Amendments also added a provision under which, in the case of medical services, supplies, and equipment that do not generally vary significantly in quality from one supplier to another, the charges incurred after 1972 and determined to be reasonable may not exceed the lowest charge level at which these services, supplies, and equipment are widely and consistently available in a locality except under the circumstances specified by the Secretary.

b. The Comprehensive Medicare Reform Act of 1974

The proposed Act in order to better restrain using health care costs, would build upon the conditions and limitations on payment for services under current law. While existing features such as utilization review, professional standards review organizations, and institutional planning would be retained, there would be superimposed on this existing structure a prospective reimbursement procedure to a participating institutional provider (with reimbursement based on a prospectively approved budget and derived schedule of charges) and to a participating non-institutional provider (with reimbursement based on negotiated rates). Such positive stimulation should lead to more rational and efficient utilization of health care facilities and personnel.

Under these Amendments, payment is to be made only to "a participating provider" (when it has filed and has in effect, a participation agreement with the Secretary). The term "provider" includes not only institutions but also independent practitioners with respect to their private patients, suppliers of who furnish items (drugs or prosthetics), to individuals in their own right and not on behalf of another. Inasmuch as the legislation requires that payment for services in the United States be made only to a participating provider (except in emergency cases) and not to the individual, a participating practitioner must agree to accept the Medicare payment (plus any copayment) as the full charge for the service, such that the practitioner could no longer, by refusing to accept an assignment, bill the patient directly and thus require the patient to pay fees in excess of the Medicare reimbursement (plus copayment). A patient of a nonparticipating practitioner in the United States except in the case of emergency services, could no longer be able to obtain any

reimbursement from Medicare (even such a practitioner, if he accepts an assignment from an individual for emergency services, could be paid on the "reasonable charge" basis and would be precluded from collecting additional amounts from the patient except the copayment if one applies).

An institutional provider is to be treated as a provider of services to his patients with respect to all institutional services OSC is to be made on the basis of a predetermined schedule of patient care charges approved for an account year of the institution by the Secretary (or a review mechanism under which fiscal intermediary for the institution generally makes the initial determination) or, in a state that has a state review and approval agency operating under equivalent standards, approved by that state agency. (Capitation charges if submitted by a provider and if meeting standards, may also be approved.) The schedule of charges must be based upon a system of accounting and cost finding in conformity with standards described or approved by the Secretary, and on the institution's operating and capital budget in the accounting year involved, which budget must also be approved by the Secretary or the state rate review and approval agency, as the case may be. A schedule of charges may be approved only if they do not exceed the estimated reasonable cost for the efficient delivery of services as determined under the definition of "reasonable cost" and implementing regulations. A revision of the approved schedule of charges during an accounting year would be permitted only under exceptional circumstances. Periodic interim payments would be made to the institution during the institution's accounting year on the basis of projections, with final adjustments (after the close of the accounting year) based on the approved schedule of charges.

A hospital that is not a participating institutional provider, if eligible for reimbursement, would be paid on a reasonable cost basis or, if less, in the case of a private hospital, its customary charges. In the case of a non-participating hospital that elects not to claim payment under the program but to collect from the individual, payment would be made to the individual at the reasonable charge rate (less copayment).

With respect to non-institutional services of a physician, dentist, optometrist, podiatrist and chiropractor and such other non-institutional services of a licensed professional practitioner as may be specified in regulations, the Medicare Amendments of 1974 provide for payment in accordance with annually predetermined fee schedule for the local areas and provide for establishing these schedules, to the extent feasible, on the basis of negotiations with representatives of the professional societies and representatives of associations of retired persons or associations otherwise representative of Medicare beneficiaries. The final schedule could, however, be established only after public hearing. This system would apply only to services in the United States and not to exceptional cases of across-the-border services. These schedules are to be based on a forecast of what would be fair and equitable compensation not exceeding "reasonable charges" in the area in the applicable fiscal year.

The Secretary of HEW would be required to make public for each local area the established fee schedule for the area, and the names, professional fields and professional addresses of the participating practitioners in the area.

In other cases, a participating non-institutional provider (pharmacy, etc.) is to be paid on a "reasonable charge" basis, except that a non-profit organization that runs on a prepayment basis may on its request be reimbursed under the provisions for payments to institutional providers. In emergencies, if the service in the United States is furnished by a non-participating provider, (one that has not filed a participation agreement with the Secretary), payment of the "reasonable charge" may be made either to the patient on the basis of an itemized bill, or to the provider on assignment from the patient if the provider agrees that the reasonable charge is his full charge.

The legislation merges the present Hospital Insurance provisions for use of fiscal intermediaries and the Supplementary Medical Insurance provisions for the use of carriers into a single section providing for use of carriers, "including the type of organization which under the present system is a fiscal intermediary under Hospital Insurance in the administration of the program, but adding the above-noted new functions relating to budgets and predetermined, approved rates for institutional providers and the negotiation and establishment of fee schedules for non-institutional services. The Secretary must give priority to the fiscal intermediary types of organizations in selecting "carriers" to act for him with respect to covered services provided by institutional providers for which payment is to be made on an approved charge basis.

6. Payments to health maintenance organizations

a. Present Law

Under present law, as amended by the Social Security Amendments of 1972, the reimbursement to health maintenance organizations is made either on a risk-sharing or cost reimbursement basis, with interim per capita payments during the contract year.

b. The Comprehensive Medicare Reform Act of 1974

Under the legislation, the provisions of present law are retained. However, in addition to technical corrections, these Amendments make a number of clarifying changes, including amendments to make clear that a medical foundation may qualify as an HMO and provisions somewhat amplifying and clarifying the provisions relating to an HMO that arranges with a group or groups of professional practitioners for services to enrollees.

7. Other changes to coordinate the availability and delivery of health care protection to the aged and disabled (Federal employee health benefit plans)

a. Present Law

With the enactment of the Health Insurance for the Aged and Disabled in 1965, it was intended that the Hospital Insurance and Supplementary Medical Insurance programs would provide basic health protection for the aged and that it would pay its beneficiaries, or on their behalf without regard to any other benefits that might be payable under an employee health benefits plan. Such plans were expected to adjust their benefit policies to supplement and compliment the protection provided under Medicare, rather than duplicate benefits.

Under present law, federal employees and annuitants who enroll for federal employee health benefits may also be covered under the Health Insurance for the Aged and Disabled programs.

The Federal Government has not adjusted the health insurance protection it makes available to its employees and annuitants to make such protection supplementary to Hospital and Supplementary Medical Insurance. The FEHB plans consequently duplicate many benefits. In cases where health care expenses are covered under Hospital and/or Supplementary Medical Insurance and an FEHB plan, the Hospital and/or Supplementary Medical Insurance benefits are paid first and the FEHB plan then pays in an amount which, when added to the benefit amounts already payable, may not exceed 10 per cent of the expenses allowable under the FEHB.

The law was amended, effective after 1974, to assure that no payment will be made under Hospital Insurance or Supplementary Medical Insurance, for any item or service that is also covered and furnished under an FEHB program. This provision will not apply if, prior to date, an item or service is furnished, the Secretary of HEW determines and certifies that the FEHB program has been modified to assure that there is available to federal employees or annuitants one or more FEHB plans that supplement the combined protection of both the Hospital and Supplementary Medical Insurance program, the Hospital Insurance program alone, and the Supplementary Medical Insurance program alone. Moreover, the FEHB program must be found to be making a contribution towards the health insurance of each federal employee or annuitant that equals its contribution for high option coverage under the government-wide FEHB plans. The contribution, whether by the federal government or by the individual plan, may be in the form of a contribution towards the supplementary FEHB program or a payment to or on behalf of the individual employee or annuitant to offset the cost of his purchase of Medicare protection, or a combination of the two.

The new act would replace the 1972 provisions to take into account the structural changes in the law and the elimination of premiums under the Health Insurance program and clarify the intent of the 1972 Amendments. Specifically, each FEHB plan would be required to offer to eligible enrollees, under a distinct part of the carrier's overall plan, the option of benefits supplementary to Health Insurance at a subscription rate actuarially commensurate with that option, and to deal with situations where a federal employee or annuitant is enrolled under the FEHB program for himself and family but only some members of the family unit (and possibly excluding the enrollee himself) are entitled to Health Insurance benefits and others should be covered under the carrier's overall plan.

8. The financing of health care benefits

a. Present Law

Under the Hospital Insurance program, Hospital Insurance benefits available to individuals who are entitled to monthly social security benefits or who are qualified railroad retirement beneficiaries, are financed from taxes imposed under Internal Revenue Code §§ 3101(b), 3111(b) and 4101(b). In the case of uninsured individuals who are transitionally entitled to Hospital Insurance protection, benefits are financed out of appropriations from the Federal Government. In the case of voluntary enrollees under the Hospital Insurance program, benefits are financed from the payment of premiums.

Under the Supplementary Medical Insurance program, benefits to voluntary enrollees are financed from premium payments by the enrollees, together with contributions from funds appropriated by the Federal Government.

b. The Comprehensive Medicare Reform Act of 1974

Under the proposal, health care benefits would be continued to be financed by taxes imposed by Internal Revenue Code §§ 3101(b), 3111(b) and 4101(b), except that the taxes would be called health insurance taxes and in the case of the taxes imposed under Internal Revenue §§ 3101(b), such taxes would be imposed on the amount of the social security tax base for that particular year.

To supplement the revenue which would be generated through the present medicare tax, the proposal would provide for a Federal Government contribution to the Medicare Trust Fund out of general revenues.

By Mr. TOWER (for himself and Mr. DOMINICK):

S. 3156. A bill to amend the Vocational Education Act of 1963 to provide for a bilingual vocational training program. Referred to the Committee on Labor and Public Welfare.

Mr. TOWER. Mr. President, I am today introducing a bill entitled the Bilingual Vocational Training Act of 1974. The distinguished Senator from Colorado (Mr. DOMINICK) has joined me in authoring this bill and presenting it to the Senate for its consideration. The bill represents a modification of S. 414, the Bilingual Job Training Act, which we introduced last year with the cosponsorship of 18 other Senators. Since that time we have continued our efforts to promote Federal support to increase opportunities for Spanish-speaking peoples. Through these efforts we have determined that the Vocational Education Act offers a tremendous resource to achieve our goal of equal educational and employment opportunities for all of our citizens.

This is not to say that either Senator DOMINICK or myself are dissatisfied with the provisions relating to bilingual job training in the Concentrated Employment and Training Act that was recently enacted into law. That piece of legislation represented a progressive step forward in the field of manpower training. The bill contains a number of important provisions that will promote the goal of employment opportunities for Americans with limited English-speaking ability. I supported the legislation and am confident its implementation will result in more employment opportunities for bilingual citizens.

Nevertheless, vocational education represents another means at approaching the problem. While the Bilingual Education Act has proved to be successful in those areas where it has been funded it has not come close to eliminating the educational problems faced by Spanish-speaking Americans in a predominantly Anglo society. Education is the key to advancement in our society and if equal educational opportunity is to be a national goal, we cannot tolerate the high dropout rate that exists among our Spanish-speaking community and which is directly related to the fact that their average family median income is nearly $3,000 below that of the general population as a whole.

The legislation offered today is intended to build a bold new partnership between vocational education and bilingual education. It is primarily focused upon the disadvantaged bilingual person who, for variety of reasons, finds himself outside the confines of the traditional educational establishment. The bill provides for three primary types of funding: bilingual vocational training programs to be targeted at persons who are not currently enrolled in an elementary or secondary school and who may or may not have already entered the labor market but who desire additional vocational training; instructor vocational training programs which are desperately needed to fill the current void in this kind of educational endeavor; and instructional material programs which, as is in the case of instructional personnel, is currently in great need of development to meet the unique needs of bilingual persons in the United States.

Mr. President, as in the case of my previous proposal, there will no doubt be some questions raised about my proposing a federally directed categorical program. However, due to the enormous problems facing the bilingual community in achieving a position of equality of opportunity, some kind of Federal direction is needed to get the kind of program I am proposing off the ground.

Furthermore, Mr. President, I am confident that State and local communities and community based organizations will play the major role in the vocational job training program. A number of State vocational education agencies have already brought to my attention their interest in this kind of program. Naturally, such community based organizations as Operation SER, Jobs for Progress, will provide the needed expertise that would be required. It must be kept in mind that the purpose of this legislation is to provide equal opportunity for bilingual persons while allowing them and their communities the opportunity to thrive within their own cultural background and heritage. The Spanish-speaking American's culture is a rich one, and without its recognition this kind of program could not be successful.

Mr. President, this bill will soon be offered in the Senate Labor and Public Welfare Committee as an amendment to S. 1539, the Education Amendments of 1974. I am confident that the committee, which has worked tirelessly in developing a reform of our Federal education efforts last year and this year in conjunction with S. 1539, will approve this proposal.

Senator DOMINICK, a distinguished member of that committee, has done a great deal to advance this legislation in the committee. He was particularly helpful in developing the proper formula so that the necessary coordination between the Secretary of Labor, responsible for the Concentrated Employment and Training Act, and the Commissioner of Education is achieved.

I urge my colleagues to give this most important proposal their utmost consideration. I ask unanimous consent that the text of the bill be printed in the RECORD at this point.

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

S. 3156

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

SEC. 2. (a)(1) Section 120 of the Vocational Education Act of 1963 is amended by adding at the end thereof the following new paragraphs:

"(14) The term 'vocational training' means training or retraining which is conducted as part of a program designed to prepare individuals for gainful employment as semiskilled or skilled workers or technicians or subprofessionals in recognized occupations and in new and emerging occupations, but excluding any program to prepare individuals for employment in occupations which the Commissioner determines, and specifies by regulation, to be generally considered professional which requires a baccalaureate or higher degree; such term includes guidance and counseling (either individually or through group instruction) in connection with such training or for the purpose of facilitating occupational choices; instruction related to the occupation or occupations to which the students are in training or instruction necessary for students to benefit from such training; the training of persons engaged as, or preparing to become instructors in a vocational training program; travel of students and vocational training personnel while engaged in a training program; and the acquisition, maintenance, and repair of instructional supplies, aids, and equipment, but such term does not include the construction, acquisition, or initial equipment of buildings or the acquisition or rental of land.

"(15) The term "postsecondary educational institution' means an institution legally authorized to provide postsecondary education within a State for persons 16 years of age or older, who have graduated from or left elementary or secondary school."

SEC. 3. (a) Section 191 of the Vocational Education Act of 1963, and all references thereto, is redesignated as section 189.

(b) Title I of such Act is amended by adding at the end thereof the following new part:

"Part J—BILINGUAL VOCATIONAL TRAINING

"Subpart 1—GENERAL PROVISIONS

"STATEMENT OF FINDINGS

"SEC. 191. The Congress hereby finds that one of the most acute problems in the United States is that which involves millions of citizens, both children and adults, whose efforts to profit from job training is severely restricted by their limited English-speaking ability because they come from environments where the dominant language is other than English; that such persons are therefore unable to help fill the critical need for more and better trained personnel in vital occupational categories; and that such persons are unable to make their maximum contribution to the Nation's economy and must, in fact, suffer the hardships of unemployment or underemployment. The Congress further finds that there is a critical shortage of instructors possessing both the job knowledge and skills and the dual language capabilities required for adequate vocational instruction of such language-handicapped persons, and a corresponding shortage of instructional materials and of instructional methods and techniques suitable for such instruction.

"GENERAL RESPONSIBILITIES OF THE COMMISSIONER

"SEC. 192. (a) The Commissioner and the Secretary of Labor together shall—

"(1) develop and disseminate accurate information on the status of bilingual vocational training in all parts of the United States;

"(2) evaluate the impact of such bilingual vocational training on the shortages of well-trained personnel, the unemployment or underemployment of persons with limited English-speaking ability, and the ability of such persons to contribute fully to the economy of the United States; and

"(3) report their findings annually to the President and the Congress.

"(b) The Commissioner shall consult with the Secretary of Labor with respect to the administration of this part. Regulations and guidelines promulgated by the Commissioner to carry out subpart 2 of this part shall be consistent with those promulgated by the Secretary of Labor pursuant to section 301(b) of the Comprehensive Employment and Training Act of 1973 and shall be approved by the Secretary of Labor before issuance.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 193. There are authorized to be appropriated $40,000,000 for the fiscal year ending June 30, 1975; $60,000,000 for the fiscal year ending June 30, 1976; and $80,000,000 for the fiscal year ending June 30, 1977, to carry out the provisions of subparts 2, 3, and 4, of this part, except that 65 per centum of such amounts shall be available only for grants and contracts under subpart 2 of this part, 25 per centum shall be available only for grants and contracts under subpart 3 of this part, and 10 per centum shall be available only for grants and contracts under subpart 4 of this part.

"Subpart 2—BILINGUAL TRAINING PROGRAMS

"AUTHORIZATION OF GRANTS

"SEC. 194. (a) From the sums made available for grants under this part pursuant to section 193, the Commissioner is authorized to make grants to and enter into contracts with appropriate State agencies, local educational agencies, postsecondary educational institutions, private non-profit vocational training institutions, and to other non-profit community-based organizations especially created to serve a group whose language as normally used is other than English in supplying training and employment in recognized occupations and new and emerging occupations, and to enter into contracts with private for-profit agencies and organizations, to assist them in conducting bilingual vocational training programs for persons of all ages in all communities of the United States which are designed to insure that vocational training programs are available to all individuals who desire and need such bilingual vocational training.

"(b) The Secretary shall pay to each applicant which has an application approved under this part an amount equal to the total sums expended by the applicant for the purposes set forth in that application.

"USE OF FEDERAL FUNDS

"SEC. 195. Grants and contracts under this part may be used, in accordance with applications approved under section 199B, for—

"(1) bilingual vocational training programs for persons who have completed or left elementary or secondary school and who are available for training by a postsecondary educational institution;

"(2) bilingual vocational training programs for persons who have completed or left the labor market and who desire or need training or retraining to achieve year-round employment, adjust to changing manpower needs, expand their range of skills, or advance in employment; and

"(3) training allowances for participants in bilingual vocational training programs subject to the same conditions and limitations as are set forth in section 111 of the Comprehensive Employment and Training Act of 1973.

"Subpart 3—INSTRUCTOR TRAINING PROGRAMS

"AUTHORIZATION OF GRANTS

"SEC. 196. (a) From the sums made available for grants and contracts under this part pursuant to section 193, the Commissioner is authorized to make grants to and enter into contracts with States, or educational institutions, either public or private, to assist them in conducting training for instructors of bilingual vocational training programs, and whenever the Commission determines that it will contribute to carrying out the purposes of this part, to make grants to, and enter into contracts with, States or educational institutions, either public or private, to assist them in conducting training for instructors in bilingual vocational educational programs.

"(b) The Commissioner shall pay to each applicant which has an application approved under this part an amount equal to the total sums expended by the applicant for purposes set forth in that application.

"USE OF FEDERAL FUNDS

"SEC. 197. Grants and contracts under this subpart may be used, in accordance with applications approved under section 199B, for—

"(1) providing preservice training designed to prepare persons to participate in bilingual vocational training or vocational education programs as instructors, aides, or other ancillary personnel such as counselors, and inservice and development programs designed to enable such personnel to continue to improve their qualifications while participating in such programs; and

"(2) fellowships or traineeships for persons engaged in such preservice or inservice training.

"Subpart 4—DEVELOPMENT OF INSTRUCTIONAL MATERIALS, METHODS, AND TECHNIQUES

"AUTHORIZATION OF GRANTS

"SEC. 198. (a) From the sums made available for grants and contracts under this part pursuant to section 193, the Commissioner is authorized to make grants and enter into contracts with States, public and private educational institutions, and to other appropriate non-profit organizations, and to enter into contracts with private for-profit individuals and organizations, to assist them in developing instructional material, methods, or techniques for bilingual vocational training.

"(b) The Commissioner shall pay to each applicant which has an application approved under this part an amount equal to the total sums expended by the applicant for the purposes set forth in that application.

"USE OF FEDERAL FUNDS

"SEC. 199. Grants and contracts under this part may be used, in accordance with applications approved under section 199B, for—

"(1) research in bilingual vocational training;

"(2) training programs designed to familiarize State agencies and training institutions with research findings and successful pilot and demonstration projects in bilingual vocational training;

"(3) experimental, developmental, and pilot programs and projects designed to test the effectiveness of research findings; and

"(4) other demonstration and dissemination projects.

"Subpart 5—APPLICATIONS FOR ASSISTANCE

"APPLICATIONS

"SEC. 199A. (a) A grant or contract for assistance under this part may be made only upon application to the Secretary, at such time, in such manner, and containing or accompanied by such information as the Secretary deems necessary. Each such application shall—

"(1) provide that the activities and services for which assistance under this part is sought will be administered by or under the supervision of the applicant;

"(2)(A) in the case of assistance under subpart 2, set forth a program for carrying out the purposes described in section 195,

"(B) in the case of assistance under subpart 3, set forth a program for carrying out the purposes described in section 197, and

"(C) in the case of assistance under subpart 4, set forth a program for carrying out the purposes described in section 199;

"(3)(A) in the case of assistance under subpart 2, set forth a program of such size, scope, and design as will make a substantial contribution toward carrying out the purposes of this part;

"(B) in the case of assistance under subpart 3—

"(A) describe the capabilities of the applicant institution, including a listing of the vocational training or vocational education courses offered by that institution, together with appropriate accreditation by regional or national associations, if any, and approval by appropriate State agencies of the courses offered,

"(B) set forth the qualifications of the principal staff who will be responsible for the training program, and

"(C) contain a statement of the minimum qualifications of the persons to be enrolled in the training program, a description of the selection process for such persons, and the amounts of the fellowships or traineeships, if any, to be granted to persons so enrolled; and

"(5) in the case of assistance under subpart 4, set forth the qualifications of the staff who will be responsible for the program for which assistance is sought.

"(b) No grant or contract may be made under subpart 2 directly to a local educational agency or a postsecondary educational institution or a private vocational training institution, or any other eligible agency or organization unless that agency, institution, or organization has submitted the application to the State board established under part B of this title, or in the case of a State that does not have such a board, the similar State agency, for comment and includes the comment of that board or agency with the application.

"APPLICATION APPROVAL BY THE COMMISSIONER

"SEC. 199B. (a) The Commissioner may approve an application for assistance under this part only if—

"(1) the application meets the requirements set forth in subsection (a) of the previous section;

"(2) in the case of an application submitted for assistance under subpart 2 to an agency, institution, or organization other than the State board established under part B of this title, the requirement of subsection (b) of the previous section is met;

"(3) in the case of an application submitted for assistance under subpart 3—

"(A) the Commissioner determines that bilingual vocational training or vocational educational programs requiring the services of the persons to be trained have been or will be actually conducted in any State being served and that enrollees will be selected from or for such programs;

"(B) the Commissioner determines that the applicant institution actually has an ongoing vocational training program in the field for which persons are being trained; and that the applicant institution can provide instructors with adequate language capabilities in the language other than English to be used in the bilingual job training program for which the persons are being trained; and

"(4) in the case of an application submitted for assistance under subpart 2 or subpart 3, the Commissioner determines that the program is consistent with criteria established by him, where feasible, after consultation with the State board established under part B of this title, for achieving equitable distribution of assistance under the appropriate subpart within that State.

"(b) An amendment to an application shall, except as the Secretary may otherwise provide, be subject to approval in the same manner as the original application."

By Mr. TOWER (for himself and Mr. DOMINICK):

S. 3157. A bill to amend the Higher Education Act of 1965 with respect to developing institutions. Referred to the Committee on Labor and Public Welfare.

Mr. TOWER. Mr. President, I am to-

day introducing much needed legislation to improve title III of the Higher Education Act relating to Developing Institutions. The distinguished Senator from Colorado, Senator DOMINICK, joins me as a coauthor of this legislation.

Title III of the Higher Education Act provides Federal support for institutions truly in a developing stage of existence—"struggling for survival and isolated from the main currents of academic life." Basically, the Federal support assists 4-year colleges awarding bachelors degrees and junior and community colleges for projects that could not ordinarily be started and financed without Federal support. There are many of these developing institutions in Texas and the funds have been used effectively to improve the caliber of education. To a great extent these funds have assisted a great number of schools that have large minority enrollments. Nevertheless, the program's funds have not been equitably distributed in a manner that benefits postsecondary institutions serving large Spanish-speaking populations.

I do not believe this problem has been caused by inadequate administration of the program. Instead, I have concluded there is a legislative deficiency which needs to be cured. Since title III program began in 1966 only 4 percent of the funds have been channeled to Spanish-speaking students. The program needs to serve a broader base of the student population.

The bill I am today introducing would reduce from 5 to 3 years the operational requirement which an institution must meet in order to qualify for funding. I have concluded that this requirement is counterproductive and restricts those institutions which are struggling to stay alive, but, at the same time, have given evidence through their educational development in their first year or so that they are deserving of Federal support and are in fact most representative of the type of school Congress intended to assist.

Allowing schools to obtain funding eligibility after 3 years instead of 5 will broaden the base of the program. In the Southwest, it will particularly allow greater access for community and junior colleges serving large numbers of Spanish-speaking students. Additionally, it should benefit many developing, predominantly black schools that, like the institutions in the general category, face enormous financial constraints in their beginning years.

The second change I propose in the title III program would authorize the Commissioner of Education to waive the term of years requirement in toto in the case of institutions located in or near communities with a large Spanish-speaking population if he determines that such action will increase higher education for Spanish-speaking students. Naturally, this proposed change is directly related to the program's current failure to serve this Nation's Spanish-speaking community.

I believe that the statistical fact by itself that such a small amount of funding has served Spanish-speaking students demands that this waiver provision be made part of the title III program. This waiver provision is nearly identical to the Indian waiver provision which Congress enacted in 1972.

Mr. President, as the Federal Government enlarges its commitment to bilingual education at the elementary and secondary level, there is a need to carry forth this commitment at the postsecondary level. This bill I am introducing today will serve to advance this goal without enlarging the Federal bureaucracy nor authorizing additional expenditures. Instead, the proposal calls for further improvement of a proven program for all developing institutions with particular attention given to Spanish-speaking students.

I urge my colleagues to give this legislation their most careful consideration. I ask unanimous consent that the text of the bill be printed in the RECORD at this point.

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

S. 3157

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 302(a)(1)(B) of the Higher Education Act of 1965 is amended by striking out "five" and inserting in lieu thereof "three".

(b) Section 302(a)(2) of such Act is amended by adding at the end thereof the following new sentence: "The Commissioner is authorized to waive the requirements set forth in clause (C) of paragraph (1) in the case of applications for grants under this title by institutions located in or near communities with large numbers of Spanish-speaking people if the Commissioner determines such action will increase higher education for Spanish-speaking people."

By Mr. SPARKMAN (by request):

S. 3158. A bill to make technical amendments to the Federal Credit Union Act. Referred to the Committee on Banking, Housing and Urban Affairs.

Mr. SPARKMAN. Mr. President, I introduce, by request, a bill entitled "Federal Credit Union Act Amendments of 1974." This bill would broaden the operation of Federal Credit Unions. I ask unanimous consent that a summary of the bill be printed in the RECORD at this point.

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

SUMMARY OF FEDERAL CREDIT UNION AMENDMENTS ACT OF 1974

1. Permits Federal credit unions to purchase conditional sales contracts and similar instruments of their members. (Sec. 1).

2. Permits overseas sub-offices of military Federal credit unions to maintain checking accounts in foreign banks that have a correspondent relationship with a U.S. bank. (Sec. 2).

3. Removes the mandatory entrance fee requirement while vesting the board of directors with discretion to determine whether an entrance fee and an annual membership fee shall be paid. (Sec. 3).

4. Permits the executive committee to act for the board in all respects and not just for the purchase and sale of securities, the borrowing of funds, and the making of loans to other credit unions.

5. Permits the board of directors to appoint an investment committee or an investment officer to have charge of making investments. (Sec. 4).

6. Permits the board of directors to appoint more than one membership officer. (Sec. 4).

7. Changes the requirement for the supervisory committee to make a semi-annual audit to a requirement for an annual audit. (Sec. 5).

8. Makes the Federal Credit Union Act applicable to the trust territories of the United States. (Sec. 6).

9. Exempts federally insured credit union funds invested in federally insured credit unions from the premium charge for federal share insurance. (Sec. 7).

10. Permit a federally insured state chartered credit union to convert to nonfederal insured status. (Sec. 8).

11. Permits the Administrator to assist in the voluntary liquidation of a solvent credit union to the same extent as a credit union in danger of involuntary liquidation. (Sec. 9).

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

S. 3159. A bill to authorize the Secretary of Transportation to make grants for the construction of bikeways in urbanized areas. Referred to the Committee on Public Works.

BICYCLE STATEMENT

Mr. BUCKLEY. Mr. President, I am introducing a bill to demonstrate Federal support for the bicycle as a realistic means of easing transportation problems in our urban areas.

In the Federal-Aid Highway Act of 1973, Congress provided for substantial Federal assistance to States and cities wishing to design and build bikeway systems and for Federal study of ways to improve bicycle safety. Those provisions reflected congressional recognition of the potentially important role of the bicycle as a means of transportation, as well as recreation.

The bill I am introducing is designed to complement last year's action, and to provide an incentive to States to seriously consider bicycles as one way to satisfy transportation demands.

Existing Federal provisions for bikeway planning and construction are primarily tied to the Federal-aid highway program. In most instances this means that funds available for bikeways must come out of a State's highway apportionment so that money spent for a bikeway is not available for road work. Sometimes State law regulating use of the State's highway funds and sometimes reluctance on the part of State officials blocks a city's efforts to gain approval of a bikeway project.

Also, existing law requires that bikeways funded with highway funds serve traffic which otherwise would have used a Federal-aid route. This requirement could thwart a city's or State's development of a rational areawide bikeway system.

In a recent hearing before the Transportation Subcommittee of the Senate, the Commissioner of Transportation of my own State of New York testified that a more liberal Federal program, giving the State more flexibility in use of funds for bikeways, was desirable, especially in light of the current drive to conserve energy.

The bill I am introducing would, to a large degree, overcome these obstacles

to a community or State's inclusion of bicycles in its transportation planning. I propose a $20 million fund specifically for bikeway construction, to be available to States or municipalities in urbanized areas until expended. Bikeway projects funded under my proposal would not have to be directly related to a Federal-aid route. I do, however, believe it is important to assure that bicycle projects financed with Federal money be an integrated part of an area's comprehensive transportation program, and it is for this reason that I propose to require that any project submitted to the Secretary for his approval be shown to have been developed in accordance with the overall transportation planning process currently required by law to be carried on in each urbanized area.

Mr. President, I do not envision the program I am proposing today as a permanent Federal undertaking. Rather, I urge that this is the opportune moment to discover if there is a significant place for the bicycle in our urban transportation picture. The funding I propose is in the nature of "seed" money to encourage bicycle planning and use in those areas ripe for such development. I ask unanimous consent to have printed in the RECORD the text of the bill.

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

S. 3159

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purpose of this Act the term—

(1) "Secretary" means the Secretary of Transportation;

(2) "bikeway" means a bicycle lane or path, or support facility, a bicycle traffic control device, a shelter or a parking facility to serve bicycles and persons using bicycles;

(3) "urbanized area" means an area so designated by the Bureau of the Census, within boundaries to be fixed by responsible State and local officials in cooperation with each other, subject to approval by the Secretary. Such boundaries shall, as a minimum, encompass the entire urbanized area within a State as designated by the Bureau of the Census; and

(4) "State" means any one of the fifty States, the District of Columbia, or Puerto Rico.

SEC. 2. (a) The Secretary is authorized to make grants to States and to municipalities wholly or partly within urbanized areas for projects for the construction of bikeways. Such bikeways shall be for commuting and for recreational purposes and shall be located in urbanized areas.

(b) The Federal share of any project for the construction of a bikeway shall be 80 percent of the total cost of such project. The remaining 20 percent of such cost shall be paid by the grantee.

(c) No grant shall be made under authority of this Act unless such bikeway project is in accordance with continuing comprehensive transportation planning process carried on cooperatively by States and local communities in accordance with section 134 of title 23 of the United States Code.

(d) The Secretary shall establish by regulation, construction standards for bikeway projects for which grants are authorized by this Act, and shall establish by regulation such other requirements as may be necessary to carry out this Act.

SEC. 3. Grants made under this Act shall be in addition to, and not in lieu of, any sums available for bicycle projects under section 217 of title 23, United States Code.

SEC. 4. There is authorized to be appropriated to the Secretary to carry out this Act, $10,000,000 per fiscal year out of the Highway Trust Fund, and $10,000,000 per fiscal year out of any other money in the Treasury not otherwise appropriated.

By Mr. HATFIELD:

S. 3160. A bill to designate certain lands for inclusion in the national wilderness preservation system. Referred to the Committee on Interior and Insular Affairs.

Mr. HATFIELD. Mr. President, today I am introducing the Oregon Omnibus Wilderness Act. Included in this legislation are about 465,070 acres of forest land in Oregon and about 127,500 acres in the State of Washington.

Introduction of this legislation follows many months of study and consultation with the various individuals and groups who are concerned about the future of our forests. I first began circulating a list of proposed areas in the fall of 1972.

Mr. President, I believe that we must examine wilderness issues in a more comprehensive manner than we have in the past. Moving only on an area-by-area basis often has resulted in a failure to consider any single wilderness proposal in the larger perspective of our overall needs: economic, recreational, wildlife, and even spirituals.

I want to caution all of those concerned about this legislation that final decisions on specific boundaries and areas will not be made until after thorough hearings are held on the bill. I do believe that each of the general areas included deserves special consideration and the introduction of this proposal insures that they will receive such a review.

Mr. PACKWOOD. Mr. President, today Senator HATFIELD is introducing his Omnibus Wilderness bill. A great deal of time and effort has gone into this proposal, and it is a product which I know is being met with enthusiasm on the part of Oregon's environmentalists and conservation-minded citizens. While I would very much like to join with Senator HATFIELD in cosponsoring his bill, I will not be doing so at this time for the simple reason that I have not seen some of the areas embodied in the proposal. My decision not to cosponsor this proposal now does not, however, foreclose my support later on after I have had the opportunity to gain some firsthand knowledge of those areas with which I am not familiar. I want to stress my own enthusiasm for the concept behind this omnibus effort; it is a recognition that Oregon has many unique and scenic areas which are unheralded in their beauty, yet Oregon in the past has had a very small percentage of its acreage designated as wilderness compared to other States. It is time that such recognition be embodied in an omnibus proposal such as that which Senator HATFIELD has brought forward today, and I look forward in the weeks and months ahead to becoming better acquainted with the areas his measure encompasses.

By Mr. BENTSEN:

S. 3161. A bill to amend the provisions of title 23, United States Code, dealing with highway beautification, and for other purposes. Referred to the Committee on Public Works.

Mr. BENTSEN. Mr. President, I am today introducing the Highway Beautification Act of 1974. This is essentially the same legislation that passed the *Senate* last year.

During the protracted conference on the highway bill, the conferees were unable to agree on language concerning highway beautification. Hopefully, that matter can be resolved this year.

The Highway Beautification Act originally passed Congress in 1965, largely due to the efforts of Mrs. Lyndon Johnson. Its purpose was to remove the unsightly clutter of billboards and junkyards along our highways and to provide Federal funds for landscaping and scenic enhancement.

However, progress under the law has been slow. Because of the reluctance of Congress to provide funds, the sign removal program never really got off the ground until 1971. Confusing Federal directives led many States to complain that the law was unworkable, and that bureaucratic interpretations violated the intent of Congress. The end result has been that neither the business community nor the States nor the environmentalists believe that the law has been effective.

This year, we intend to clarify the Highway Beautification Act and to move the program back on course. The bill I introduce today extends effective control of billboards beyond the 660 foot limit now in law, a limit which has led to the erection of thousands of "jumbo" signs just over 660 feet from the highways.

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

It also guarantees just compensation for all signs erected under State law prior to the enactment of this bill. Moreover, it removes the so-called "moratorium" on sign removal in previous bills, which would have slowed the program down unacceptably.

My Subcommittee on Transportation will receive written and oral statements on this bill and on the administration's proposal, when it is submitted. I might add that I have been seeking the administration bill for some time, so that we can discuss it in the hearings. Again today, I ask that it be promptly submitted to my subcommittee.

Now that the Commission on Highway Beautification has completed its report, there is little excuse for further delay in moving this legislation. The bill I introduce today can serve as the basis for our discussions.

Mr. President, I believe the American people want a highway system known for its beauty as well as its utility. With the enactment of this bill, we can accelerate the process of making American highways safer and more pleasing to the American public.

At this point, I ask unanimous consent to insert the text of the Highway Beautification Act of 1974 in the RECORD.

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

S. 3161

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

CONTROL OF OUTDOOR ADVERTISING

SEC. (2). (a) The first sentence of subsection (b) of section 131 of title 23, United States Code, is amended by inserting after "main traveled way of the system," the following: "and Federal-aid highway funds apportioned on or after January 1, 1975, or after the expiration of the next regular session of the State legislature, whichever is later, to any State which the Secretary determines has not made provision for effective control of the erection and maintenance along the Interstate System and the primary system of those additional outdoor advertising signs, displays, and devices which are more than six hundred and sixty feet off the nearest edge of the right-of-way, visible from the main traveled way of the system, and erected with the purpose of their message being read from such main traveled way,".

(b) Subsection (c) of section 131 of title 23, United States Code, is amended to read as follows:

"(c) Effective control means that such signs, displays, or devices after January 1, 1968, if located within six hundred and sixty feet of the right-of-way and, on or after July 1, 1975, or after the expiration of the next regular session of the State legislature, whichever is later, if located beyond six hundred and sixty feet of the right-of-way, visible from the main traveled way of the system, and erected with the purpose of their message being read from such main traveled way, shall, pursuant to this section, be limited to (1) directional and official signs and notices, which signs and notices shall include, but not be limited to, signs and notices pertaining to natural wonders, scenic and historical attractions, which are required or authorized by law, which shall conform to national standards hereby authorized to be promulgated by the Secretary hereunder, which standards shall contain provisions concerning lighting, size, number, and spacing of signs, and such other requirements as may be appropriate to implement this section, (2) signs, displays, and devices advertising the sale or lease of property upon which they are located, and (3) signs, displays, and devices advertising activities conducted on the property on which they are located."

(c) Subsection (d) of section 131 of title 23, United States Code, is amended by striking out the first sentence thereof and inserting the following in lieu thereof:

"In order to promote the reasonable, orderly and effective display of outdoor advertising while remaining consistent with the purposes of this section, signs, displays, and devices whose size, lighting and spacing, consistent with customary use is to be determined by agreement between the several States and the Secretary, may be erected and maintained within areas adjacent to the Interstate and primary systems which are zoned industrial or commercial under authority of State law, or in unzoned commercial or industrial areas as may be determined by agreement between the several States and the Secretary."

(d) Subsection (e) of section 131 of title 23, United States Code, is amended to read as follows:

"(e) Any nonconforming sign under State law enacted to comply with this section shall be removed no later than the end of the fifth year after it becomes nonconforming, except as determined by the Secretary."

(e) Subsection (f) of section 131 of title 23, United States Code, is amended by inserting the following after the first sentence: "The Secretary may also, in consultation with the States, provide within the rights-of-way of the primary system for areas in which signs, displays, and devices giving specific information in the interest of the traveling public may be erected and maintained."

(f) Subsection (g) of section 131 of title 23, United States Code, is amended by striking out the first sentence and inserting the following in lieu thereof:

"Just compensation shall be paid upon the removal of any outdoor advertising sign, display, or device lawfully erected under State law prior to the date of enactment of the Highway Beautification Act of 1974."

(g) Subsection (m) of section 131 of title 23, United States Code, is amended to read as follows:

"(m) There is authorized to be apportioned to carry out the provisions of this section, out of any money in the Treasury not otherwise appropriated, not to exceed $20,000,000 for each of the fiscal years 1966 and 1967, not to exceed $2,000,000 for the fiscal year 1970, not to exceed $27,000,000 for the fiscal year 1971, not to exceed $20,500,000 for the fiscal year 1972, and not to exceed $50,000,000 for the fiscal year ending June 30, 1973, and, out of the Highway Trust Fund, $50,000,000 for the fiscal year ending June 30, 1974, $50,000,000 for the fiscal year ending June 30, 1975, and $50,000,000 for the fiscal year ending June 30, 1976. The provisions of this chapter relating to the obligation, period of availability, and expenditure of Federal-aid primary highway funds shall apply to the funds authorized to be appropriated to carry out this section after June 30, 1967."

CONTROL OF JUNKYARDS

SEC. 3. (a) Subsection (j) of section 136 of title 23, United States Code, is amended by striking out the first sentence and inserting in lieu thereof the following:

"(j) Just compensation shall be paid the owner for the relocation, removal, or disposal of junkyards lawfully in existence at the effective date of State legislation enacted to comply with this section."

(b) Subsection (m) of section 136 of title 23, United States Code, is amended to read as follows:

"(m) There is authorized to be appropriated to carry out this section out of any money in the Treasury not otherwise appropriated not to exceed $20,000,000 for each of the fiscal years 1966 and 1967, not to exceed $3,000,000 for each of fiscal years 1970, 1971, and 1972, not to exceed $5,000,000 for the fiscal year ending June 30, 1973, and, out of the Highway Trust Fund, not to exceed $15,000,000 for the fiscal year ending June 30, 1974, $15,000,000 for the fiscal year ending June 30, 1975, and $15,000,000 for the fiscal year ending June 30, 1976. The provisions of this chapter relating to the obligation, period of availability, and expenditure of Federal-aid primary highway funds shall apply to the funds authorized to be appropriated to carry out this section after June 30, 1967."

AUTHORIZATIONS

SEC. 4. There are authorized to be appropriated for the purpose of carrying out section 319(b) of title 23, United States Code (relating to landscaping and scenic enhancement), out of the Highway Trust Fund, $15,000,000 for the fiscal year ending June 30, 1974, $15,000,000 for the fiscal year ending June 30, 1975, and $15,000,000 for the fiscal year ending June 30, 1976.

ADDITIONAL COSPONSORS OF BILLS

S. 2900

At the request of Mr. MONTOYA, the Senator from Iowa (Mr. HUGHES), and the Senator from Minnesota (Mr. HUMPHREY) were added as cosponsors of S. 2900, to improve the safety of motor vehicle fuel systems.

S. 3006

At the request of Mr. PROXMIRE, the Senator from Arkansas (Mr. MCCLELLAN), and the Senator from Idaho (Mr. CHURCH) were added as cosponsors of S. 3006, the Fiscal Note Act.

S. 3073

At the request of Mr. Moss, the Senator from California (Mr. TUNNEY) was added as a cosponsor of S. 3073, to amend the Higher Education Act of 1965 with respect to certain determinations concerning expected family contributions for basic educational opportunity grants.

S. 3096

At the request of Mr. CRANSTON, the Senator from Minnesota (Mr. HUMPHREY) was added as a cosponsor of S. 3096, a bill to amend the Small Business Act to provide for loans to small business concerns affected by the energy shortage.

S. 3098

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

S. 3140

At the request of Mr. MCCLURE, the Senator from North Carolina (Mr. HELMS) was added as a cosponsor of S. 3140, to prohibit increases in rates of pay to Members of Congress until fiscal balance is achieved.

LIVESTOCK EXPORT HEALTH AND SAFETY ACT OF 1973—AMENDMENTS

AMENDMENT NO. 1018

(Ordered to be printed, and referred to the Committee on Agriculture and Forestry.)

Mr. BELLMON submitted amendments, intended to be proposed by him, to the bill (S. 2522) to extend the application of the act of March 3, 1891, relating to accommodations for the export of animals by vessels, to aircraft and other means of conveyance, and for other purposes.

CAPITAL PUNISHMENT—AMENDMENTS

AMENDMENT NO. 1019

(Ordered to be printed.)

Mr. HASKELL proposed an amendment to the bill (S. 1401) to establish a rational criteria for the mandatory imposition of the sentence of death, and for other purposes.

AMENDMENT NO. 1020

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

Mr. KENNEDY (for himself and Mr. JAVITS) submitted an amendment, intended to be proposed by them, jointly, to Senate bill 1401, supra.

ADDITIONAL COSPONSOR OF AMENDMENT

AMENDMENT NO. 1003

At the request of Mr. MONTOYA, the Senator from Oklahoma (Mr. BARTLETT) was added as a cosponsor of amendment No. 1003 to S. 3066.

ANNOUNCEMENT OF HEARINGS ON S. 6, THE EDUCATION OF ALL HANDICAPPED CHILDREN ACT

Mr. RANDOLPH. Mr. President, as chairman of the Senate Subcommittee on the Handicapped, I announce that our subcommittee has scheduled hearings on S. 6, the Education for All Handicapped Children Act. The hearing will be held on Monday, March 18, in Hearing Room 1, Pennsylvania Public Utility Commission, ground floor of the North Office Building, Harrisburg, Pa.; it will begin at 10 a.m. Senator SCHWEIKER will chair this hearing.

Persons wishing to testify should contact Mrs. Patria Forsythe, professional staff member of the Subcommittee on the Handicapped, 202—225–9077.

NOTICE OF AN EXECUTIVE HEARING

Mr. MAGNUSON. Mr. President, I wish to announce that the Special Joint Subcommittee on Deepwater Port Legislation, composed of five members each from the Senate Committees on Commerce, Interior and Insular Affairs, and Public Works, has scheduled a meeting in closed executive session for April 2, 1974. The meeting will begin at 10 a.m. in room 6202 of the Dirksen Senate Office Building.

This Special Joint Subcommittee was established early last year by the three committees to facilitate consideration of legislation that is needed before deepwater port facilities proposed beyond 3 miles offshore can be built. This membership of the subcommittee is as follows: Senators MAGNUSON, LONG, HOLLINGS, STEVENS, and BEALL from the Commerce Committee; Senators JACKSON, METCALF, JOHNSTON, FANNIN, and HATFIELD from the Senate Interior Committee; and Senators GRAVEL, BENTSEN, BIDEN, BUCKLEY, and SCOTT from the Committee on Public Works.

To date, the subcommittee has conducted 6 days of hearings, heard testimony from approximately 65 witnesses, and compiled a hearing record of 1,400 pages. We are now in a position to assess the record already made, and to determine if further hearings are warranted or whether the subcommittee should proceed to the markup of legislation. For further information, please contact Bud Walsh, staff counsel for the Senate Commerce Committee, at 225–9347.

ADDITIONAL STATEMENTS

ALFRED SELBY'S 60TH ANNIVERSARY IN THE SENATE

Mr. MONTOYA. Mr. President, we in the Senate are great venerators of seniority. We select as our President pro tempore he of the majority party who has weathered the greatest number of campaigns. We award the chairs of committees and the best seats in this Chamber to those who have sat in them, or near them, the longest. We even use seniority as the basis on which to allocate the privilege of choosing the most junior of people found around here—the pages.

Therefore, it is especially fitting that all 100 Senators should today pay special respect to the man with by far the greatest seniority in and about this Chamber, Mr. Alfred Selby, who today celebrates the 60th anniversary of his employment in the Senate.

Mr. Selby first came here in March 12, 1914, under the patronage of Francis G. Newlands of Nevada. Henry Cabot Lodge was a Senator in that year, the 2d session of the 63d Congress, as were Robert LaFollette, George Norris, William Borah, and Elihu Root.

They are all gone, but Mr. Selby is still here.

One can hardly imagine all the effort which Mr. Selby has put into making this Senate a pleasant place to be. Mr. Selby makes things easier for us, and we need people like that.

Mr. President, I have spoken in a somewhat lighthearted manner, but I do not want this manner to disguise in any way the affection in which all of us hold Mr. Selby and the gratitude which all of us owe him.

I hear rumors that Mr. Selby may retire in several months. He surely deserves his retirement, but I cannot help feeling a little saddened to think that he will no longer be here. He has been a great friend and a great help to all of us, and, if these rumors are true, we certainly will miss him.

Until that time, however, all of us might profitably look at Mr. Selby and his work here and draw a lesson from what we see. Mr. Selby has been here for 30 Congresses, and in those years he has more than satisfied this hard-to-please constituency. I think that is one reason he has attained so much seniority. His constituents just do not want him to leave.

Mr. President, if any of us were half as popular with our constituencies as Mr. Selby is with his, we would all be here for 30 Congresses, too. But, of course, none of us is. That is a distinction for Mr. Selby to enjoy, and for the rest of us to honor.

Mr. McCLELLAN. Mr. President, I wish to associate myself with the remarks of the distinguished Senator from New Mexico. I have nothing to add to his remarks; I think he covered it sufficiently. I am proud to associate myself with his sentiments.

Mr. BIBLE. Mr. President, I wish to associate myself with the remarks of the distinguished Senator from New Mexico. If memory serves me correctly, I believe Mr. Selby came here under the auspices of Senator Newlands of my State. Is that correct?

Mr. MONTOYA. The Senator is correct.

Mr. BIBLE. I congratulate Mr. Selby on his many years of service.

Mr. HART. Mr. President, I welcome this opportunity to wish well one who has been friend to many of us, Alfred Selby. Senator MONTOYA spoke for me in expressing thanks. And having been fortunate enough to meet and know Mrs. Selby, I would want her to know we realize the enormous strength and help she has given her husband over these many years. So, to wish Mr. and Mrs. Selby: all best wishes.

Mr. HUGH SCOTT, Mr. President, today begins the 61st year our good friend Alfred Selby has worked for the U.S. Senate.

I am particularly pleased to offer these comments because Mr. Selby was born in South Philadelphia and has so diligently and faithfully served this body.

Mr. Selby came to Washington as a young lad. He went to Armstrong High School and in 1941 was appointed to the Senate staff by the late Senator Francis G. Newlin of Nevada.

We know Alfred Selby as a kind man, a generous man and a quiet man.

Those who have enjoyed his friendship over the years have been touched by a warm human being.

With my colleagues I extend the warmest wishes of good health to Mr. Selby and his wife Mary as they journey together friends of the U.S. Senate.

THE ENERGY BILL

Mr. HUGH SCOTT. Mr. President, today's editorial in the Philadelphia Inquirer recounts with perception the recent congressional action on the rollback provision of the energy bill. The editorial puts in perspective our need for constructive, responsive legislation, as opposed to hasty measures enacted solely for public relations purposes.

I ask unanimous consent that this editorial be printed in the RECORD.

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

[From the Philadelphia Inquirer, Mar. 12, 1974]

ROLLBACK BILL DESERVED DEFEAT

It was something of a shame that abandonment by the House of Representatives of the die-hard scheme to roll back domestic crude oil prices had to have the appearance of capitulation to a veto threat by the Nixon Administration. For in the vote last Thursday, a welcome breath of reason swept the House.

Mr. Nixon on Wednesday had properly vetoed an emergency energy bill which reflected the theory that legislative popularity is better served by doing something in the face of serious problems—even if the something is the wrong thing. A Senate attempt to override the veto failed. In killing another attempt—one to tack a crude rollback provision on an energy office housekeeping bill—the House stepped back from a dangerous momentum.

Public resentment is high, for the fuel shortages are grossly inconvenient. Resentment, like pigeons, tends to find a roost in the most visible public place.

The two most obvious roosting places right now are the major oil companies, which have reported astronomically increased profits, and the government—for failing to do something about the mess, or perhaps just because it's the government.

A great number of people in Congress have been urgently trying to prove to their constituents that they don't belong to the government on which public blame will fall. This, we believe, accounts for much of the enthusiasm for the rollback—which would have only exacerbated an already crippled market, but could give the appearance of slapping the industry.

With the veto and the House vote now behind us, there is substantial encouragement to believe that passions are cooling, and attention may begin to turn to the job of constructive legislation.

House passage Thursday of the bill pulling

together the authority of the Federal Energy Office was an undramatic step in that direction. It now goes to conference and then, we hope smoothly, to the White House.

Then, with the foundations for regulating authority laid, Congress and the administration must press on to fill the still yawning gaps in petroleum information reporting and auditing. Firm facts will then become available to attack the entire tax and incentive structure, the failure of which must be primarily held to account for America's energy woes.

THE FAIRNESS DOCTRINE

Mr. THURMOND. Mr. President, I would like to call to the attention of my colleagues in the Senate an application by the Federal Communications Commission of the so-called fairness doctrine in a manner that appears to be grossly unfair.

Several years ago, the Faith Theological Seminary purchased radio station WXUR in Media, Pa. Transfer of the station to the seminary, which is headed by Dr. Carl McIntire, was approved by the FCC in 1965, and the station began operation in spite of the objections of many individuals who opposed Dr. McIntire because of his outspoken views on a number of controversial issues.

The license came up for its regular renewal a little more than a year later, and the station came under renewed criticism. Hearings on the license renewal began in October 1967, and continued through June 1968, with more than 15,000 pages of testimony being taken during the course of the proceedings. At the end of the hearings, the FCC examiner ruled that the license of WXUR should be renewed. This decision was taken to the full Commission and was reversed on July 1, 1970.

Basic to the Commission's denial of the license renewal was its opinion that the station had not abided by the Commission's concept of the fairness doctrine—for example, WXUR had failed, in the Commission's estimation, to present both sides of controversial issues to the public. However, the Commission also held that the station had failed to satisfy promises made to the Commission to abide by the fairness doctrine in that it failed to present specifically named programs designed to balance the station's religious and public programing.

These alleged "misrepresentations" on the part of WXUR with regard to its program planning—again, basically, alleged breach of promises made pursuant to the Commission's own interpretation of the fairness doctrine—proved to be the only common ground on which the two concurring judges could base their opinion in the ensuing court appeal by WXUR of the Commission's decision to deny its license. The Supreme Court subsequently denied certiorari.

It is clear from the facts in this case that the FCC chose to apply highly technical rules to this single station, and that the courts chose to uphold the Commission's decision in what amounts to a callous disregard of the first amendment rights of this radio station and its listeners.

Mr. President, in my opinion, the fairness doctrine must be reexamined in view of this decision. If it is to remain with us, it must be restructured to remedy its serious constitutional defects. Its chilling effect on broadcast journalism must be removed, at least in the area of radio broadcasting. We must not allow any group desiring to deny a radio station its license, the ability to do so simply because that group does not agree with the station's approach to the issues, or because of the controversial nature of the station's programing.

The fairness doctrine had as its rationale the assumption that since broadcast outlets are so scarce, they must be regulated to insure balanced presentations of controversial issues. This assumption may have had some validity in 1949, when there were only 2,777 radio stations in this country, but it is of questionable validity today, when there are some 7,549 stations operating.

Competition among radio stations is great—competition for advertisers as well as listeners. Most listeners are able to receive numerous radio signals in their locale, and they can hear competing views concerning controversial issues. It is, therefore, the entire media market in any given locale, rather than any given radio station in that market area, to which we should look in order to determine whether there is an adequate presentation of competing viewpoints.

This is a crucial point, Mr. President. The fairness doctrine as it is now applied, and as it was applied to radio station WXUR, requires no such examination of the entire marketplace in which any given radio station competes and puts forth its ideas and opinions. The doctrine now looks solely to individual stations.

There must be a reconsideration of this concept if freedoms that this Nation cherishes—freedom of speech, of expression, of the press—are to be preserved and protected from bureaucratic manipulation. As the fairness doctrine now is applied, it has a chilling effect on a radio station's inclination to present controversial listening matter to the public.

Mr. President, in my opinion the "fairness doctrine" must be reexamined.

THE FUTURE OF NEW HAMPSHIRE'S RAILS

Mr. McINTYRE. Mr. President, last week the Interstate Commerce Commission held public hearings in Boston to receive comments on the Department of Transportation's Preliminary Report for Reorganizing Rail Service in the Midwest and Northeast regions. These hearings represent the second phase of a year long process to determine the most expeditious and economical means of improving rail service in the Northeast corridor.

New Hampshire is greatly affected by this reorganization. The preliminary report recommended a cut of 49 percent in rail service in the Granite State. The Rail Reorganization, as passed in January, set up criteria for judging future rail service. Had each of these guidelines been given equal weight, I feel New Hampshire would never have been slashed to a mere 400 miles of rail service.

Many representatives of State and local governments, industries, and public interest groups in New Hampshire offered their views at the Boston hearings. I was pleased at the response and know that this will add to the success of the reorganization.

Mr. President, I, therefore, ask unanimous consent that my testimony at the ICC hearings in Boston be printed in the RECORD.

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

STATEMENT BY U.S. SENATOR THOMAS J. McINTYRE

Mr. Chandler:

I am very pleased to see the Interstate Commerce Commission actively assume the role developed for them by the "Regional Rail Reorganization Act." The hearings in Boston have afforded an opportunity for interested parties in New Hampshire and in the entire New England region to speak on the future of rail transportation in the Northeast. Since this reorganization will play a vital role in determining economic and social growth patterns for the next several decades, it is vital that all potential avenues of information be investigated and an integrated review be made, including not only economic feasibility of rail service but also potential impact on the state's economy, environmental quality, and rail and employment maintenance wherever possible.

I was saddened and dismayed to read Secretary Brinegar's report on Rail Service in the Midwest and Northeast Region particularly as it pertains to New Hampshire. The proposed 49% cut in rail service is greater than in any other state in the entire report. With a total of 830 miles of existing rail track in New Hampshire, it is impossible for me to understand this proposal which attempts to reduce New Hampshire to a rail system of more than 400 miles.

The report states that the economic impact of this reorganization will be minimal. I view this as a complete disregard for the impact on New Hampshire. If the proposed plan is implemented, it could cause industrial relocation—working havoc with growth patterns which originally grew around transportation lines. In terms of the entire project New Hampshire's rail lines may seem small, however, considering the impact on the state and local economy insurmountable problems are presented.

Many industries in New Hampshire cannot exist without rail service. In New Hampshire, at least 12,000 industrial jobs producing a $187 million payroll and 5,000 farm-related jobs producing a $65 million payroll are dependent on railroads. The loss of these jobs would cost state and local governments at least $20 million in lost taxes and welfare payments. A loss of Boston and Maine service in New Hampshire would increase the prices of essential consumer goods 1–5%, hiking fertilizers, grain and feed prices even higher. New Hampshire farmers are already paying more in areas that have experienced cutbacks in rail service.

The proposed cutbacks would leave many areas completely dependent on highway transportation for freight and passenger service. At a time when our energy situation is so extremely unpredictable, the reliability of highway transportation each day becomes more and more tenuous. It would force more trucks on our overburdened highways and retard the growth of high wage industries in my state. Fuel costs, rationing and shortages may sooner or later curtail the immense volume of long-haul highway trucking which has played such an important role in the distribution of goods. The advantages of rail over motor carrier are lower costs, the alternative of converting to non-petroleum electric motor power, and the potential of fast long-haul transit times. Energy efficiency in rails is 2 to 5 times that of motor carriers in long-haul service. Yet this preliminary re-

port, if enacted, would deny these energy-saving economic incentives to my home state.

The Department of Transportation claims that "alternative means of transportation by motor carrier/rail combinations will be available for those few shippers who could no longer be located on a direct rail line." Yet nowhere do I see any guarantees that such service would be a reality. Lines abandoned now will probably never be reactivated, leaving many areas forever dependent on gasoline transportation—a situation directly opposed to present goals of curtailing our energy dependency.

At a time when the recreation industry in New Hampshire needs a shot in the arm due to the drastic effect of gasoline shortages, we are instead adding another potential barricade to this industry. The long term effects of this reorganization will hopefully lead to improved rail passenger service as well. To leave rural sections of New Hampshire heavily used for recreational purposes and visited by over 60 million people last year alone without rail service is inconceivable. Improved rail service offers not only energy savings but a positive environmental impact by drastically reducing the auto emission levels. This should be a consideration in the decision making process.

The Department of Transportation has chosen an arbitrary carload level to determine feasibility of service. Many of the short-haul, lower carload lines are profitable—a fact not reflected in the report. This is a major oversight. An arbitrary calculation of this kind reflects the neglect that New Hampshire's rail situation has received in the Department's evaluation.

Far more disturbing, however, was the realization that the eight goals established by section 206 of P.L. 93-236 could not possibly have been given equal consideration in the formulation of New Hampshire's plan. Five of these goals were neglected in determining New Hampshire's future rail system. They are:

The establishment and maintenance of a rail service system adequate to meet the rail transportation needs and service requirements of the region;

The preservation, to the extent consistent with other goals of existing patterns of service by railroads, and of existing railroad trackage in areas in which fossil fuel natural resources are located, and the utilization of those modes of transportation in the region which require the smallest amount of scarce energy resources and which can most efficiently transport energy resources;

The attainment and maintenance of any environmental standards, particularly the applicable national ambient air quality standards and plans established under the Clean Air Act Amendments of 1970, taking into consideration the environmental impact of alternative choices of action;

The movement of passengers and freight in rail transportation in the region in the most efficient manner consistent with safe operation, including the requirements of commuter and intercity rail passenger service; the extent to which there should be coordination with the National Railroad Passenger Corporation and similar entities; and the identification of all short-to-medium distance corridors in densely populated areas in which the major upgrading of rail lines for high-speed passenger operation would return substantial public benefits; and

The minimization of job losses and associated increases in unemployment and community benefit costs in areas in the region presently served by rail service.

The New Hampshire Department of Resources and Economic Development identified the core rail system in New Hampshire as North-South service along the Merrimack River to the base of the White Mountains serving Nashua, Manchester, Concord, and Laconia; North-South service out of Dover for industrial areas of Strafford County and lower Carroll County; East-West service out of Portsmouth through Rockingham County to Manchester; service tying the Keene industrial area into main line service along the Connecticut River; and North Country service along lines serving Woodsville, Littleton, Lancaster, Groveton and Berlin.

The North-South line along the Merrimack is the main commuter line to Boston. Parts of Southern New Hampshire have recently been included in the greater Boston metropolitan area identifying many of these southern cities and towns as residences for workers in Massachusetts. What better opportunity to take these people from the highways and transport them by mass transit. This line also represents a major link to the White Mountain National Forest; accessible to over 60 million people. The Bretton Woods Development in North Woodstock seeks to service numerous visitors for recreation and convention purposes.

The North-South Dover line bisects the fastest growing area in the country, according to the last census. This is not the time to deprive this southeastern corner of New Hampshire of a modern, efficient transportation system. The East-West link between Portsmouth and Manchester is a vital link between two of the most populated areas in the State.

The Connecticut River has played a major role as a transportation line for all of New England. Shipping on the Connecticut River is no longer a modern means of transportation yet this North-South corridor is a natural transportation line allowing a link between the New England seacoast and the interior section of five states.

Highway transportation through the White Mountains has long been a source of great concern. Seasonal weather conditions as well as topographical limitations have served as very real barricides to providing efficient links to New Hampshire's northern most cities and towns. As these areas struggle to keep abreast with our National economic growth, a denial of rail service would plunge this area into a serious economic depression.

I will not presume to be able to make specific rail line recommendations for New Hampshire's future rail service. However, I think we can both agree that the plan as it was presented in February is unacceptable to New Hampshire. My recommendation today is that a new look be given to New Hampshire with a clear understanding of the economic threat this plan proposes and with equal importance given to the eight goals set forth in the Reorganization Act. Only after both of these criteria are met could a feasible, and acceptable plan be proposed for New Hampshire.

DR. MORTIMER J. ADLER

Mr. PERCY. Mr. President, 34 years ago while attending the University of Chicago, I participated for 1 year in the Robert Hutchins-Mortimer J. Adler course in Humanities on the Great Books. This began a friendship with two remarkable educators who have continued to contribute immensely to man's better understanding of the world in which we live and the civilization from which we have sprung.

Both have been active for years with Encyclopaedia Britannica, among many other significant activities. Working over the past 15 years, Dr. Adler has designed the new 15th edition of this popular work. Divided into three parts, a Macropaedia, Micropaedia, and Propaedia, the 30-volume edition is no ordinary encyclopaedia. These three sections, each approach educational material from a different viewpoint and scale to provide an easier and more complete access to information.

It was, therefore, with great pleasure that I read of Dr. Adler's more recent efforts toward revitalizing one aspect of the educational process, making learning more interesting and enjoyable for all.

I ask unanimous consent that an article by Diana McLellan of the Washington Star-News, March 2, be printed in the RECORD.

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

"A" IS FOR ADLER IN THIS BRITANNICA

(By Diana McLellan)

Nobody could blame Dr. Mortimer J. Adler for looking a little smug. It suits his face, which combines elements of Alfred Hitchcock and Robert Morley. Besides, he has a lot to be smug about.

Dr. Mortimer J. Adler has, over the past 15 years, fathered, mothered, midwifed and reared the brand-new, all-new, totally revolutionary 15th edition of the Encyclopaedia Britannica, the first completely new edition of that revered reference work since 1929.

He was in his room at the Madison yesterday, expansively assessing the impact of his 32-million-dollar baby on the world, and explaining how this 30-volume edition of the E.B. is completely unlike any of its forerunners, or anything else for that matter, anytime, anywhere, anyhow.

Dr. Adler, you should know, has not only been on the Britannica Board of Editors since 1947, but heads the Institute for Philosophical Research in Chicago, helped put together the Great Books of the Western World project, including its famous Syntopicon, and has been director of planning and chief coordinator for this Britannica project for 15 years, as well as being Chairman of its editorial executive committee, and has dreamed of it since 1948.

He is a man accustomed to booming to a packed lecture hall. His gestures could easily be observed by craning standers-in-the-back of a crowd, and he exudes confidence in great rolling waves, which churn toward and crash over a lone listener like Atlantic breakers.

"Now," he said sonorously, transfixing a reporter in her chair with a wagging finger and a bird-bright glare, "We have completely reconstructured the whole thing. Look, if you will, at the three different functions of an encyclopaedia."

His audience of one essayed an alert, willing expression.

"First, it's a look it up book. Suppose you want to know the date Napoleon crowned himself Emperor, or the parturition period for an elephant. In an ordinary encyclopaedia, what do you do?"

The reporter began a faint gesture to indicate thumbing through a large book, but the question had been rhetorical.

"In an ordinary encyclopaedia, you'd thumb down the article on Napoleon or elephants, hoping to find exactly what you're after. And you'd be irritated as hell if you didn't find it the first time. And rightly so!" he cried.

Not with the "Britannica 3," which is the name of the new encyclopedia.

"No. Ten complete volumes of Britannica 3 are called the Micropaedia. As you well know, 'encyclopaedia' comes from the Greek, and means 'circle of learning.' So Micropaedia means small-learning. So you'd turn to the Micropaedia article on Napoleon or Elephants, as the case may be. And there, in one of 102,000 articles perhaps 750 words long, you'd find any facts you might wish to know, arranged for simple reference.

"Now, should you want to know a great deal about Napoleon or elephants, you turn to the proper reference in the 19-volume Macropaedia. Macro, large or great. This is the second function of an encyclopedia

complete essays on major subjects. Knowledge in depth.

"The third purpose of an encyclopaedia is, or should be, as a tool to educate oneself. But how can one, for example, educate oneself completely on a topic such as music in an ordinary alphabetical encyclopaedia?"

It was a stern query.

There was no answer from the floor. Dr. Adler settled back with a beatific beam, steepled his fingers triumphantly and pronounced: "Now, there is the Propaedia."

The Propaedia ("Pro." of course, is "before,") is, as Dr. Adler said as modestly as he could under the circumstances, seeing he invented it, "a remarkable invention."

"It is," he said, his features bathed in the glow one saw on Mark Spitz's father's face after the Olympics, Bella Abzug's husband's after the last Congressional race, "a systematic, topical outline of the whole of human knowledge."

Without pausing to let the claim settle in the charged air, he went on, counting on his fingers.

"First, Matter and Energy. Then, The Earth. Life on Earth. Human Life. Human Society. Art. Technology. Religion. The History of Mankind. And, finally, the Branches of Knowledge."

In the one-volume Propaedia, which Dr. Adler happened to have with him, one looks in the appropriate section of the ten-part volume and finds, among the 15,000 major or minor subjects, more than 45,000 references to articles in the Macropaedia or the Micropaedia.

"This, of course, is radically different from any other encyclopaedia in the way it is constructed." Before a single article was written, the Outline of Knowledge, or Propaedia, was written. "This took two years, with all the editors working together. Then we were able to tell the writers, not what to write, but exactly what to write about. A complete reversal of the usual haphazard, not-quite-rational procedures usually employed. And then the actual work took another five years or so."

If it's radically different from the last Encyclopaedia Britannica—the one put out in 1929 and simply revised annually since then—it's staggeringly different from the very first one that was published by "a Society of Gentlemen" in Edinburgh, Scotland in 1771, after three years of labor.

The editor, William Smellie, assembled several hundred alphabetically-arranged, dictionary-like entries and 44 major treaties on subjects considered important at the time, into a 2,718-page, three-volume work with 160 copperplate illustrations.

"Utility ought to be the principal intention of every publication," Smellie proclaimed in his preface. To that end, he included a 40-page article on midwifery, which was promptly censored: King George III's Royal Chamberlain ordered all citizens to rip the offending pages from their volumes, and the engraving plates were destroyed. About 3,000 bound sets were sold.

The 10-volume Second Edition, (1777–1784) included history and biography. The 18-volume Third Edition began the practice of using authors outside the small staff—specialists in their fields, who were to include, in later editions, Sir Walter Scott (on chivalry,) Malthus on population, and, later still, Albert Einstein, Sigmund Freud, Leon Trotski, George Bernard Shaw, and H. L. Mencken.

It wasn't until 1911 that the Encyclopaedia Britannica was published in both the United States and England, and it was this now-famous 11th Edition, often called the Scholars' Edition, that was first dedicated not only to the king of England but to the president of the United States as well.

It was with the 1929 14th edition that the continuous revision program, which has been operating annually, began. It's now published with editorial advice of faculties of the University of Chicago, committees from Oxford, Cambridge, London, Edinburg, Toronto, Tokyo and Australian National Universities.

"The first printing of the 15th Edition," says Dr. Alder with his beatific smile, "Looks as though it just might be sold out already. Quite recently, some 370 editors, working week after week for 26 months, were working on as many as 400,000 words a week. I understand that Time Magazine only processes 60,000 words a week.

"For a short time there, back in last March, the production problems were so severe we were far from sure that we were going to make it."

There will be, he said, an annual Britannica yearbook.

"But another edition?" For a brief moment, the labor and setbacks of the last 15 years hung in front of Dr. Adler's confident eyes.

"Oh, lady," he cried. "Not in this century."

THE 250TH ANNIVERSARY OF THE BIRTH OF HENRY LAURENS

Mr. HOLLINGS. Mr. President, as we approach the 200th anniversary of the United States, the interests of our people are being increasingly drawn to the history of the early years of our Nation.

One milestone that was recently recalled in South Carolina is the 250th anniversary of the birth of Henry Laurens, the distinguished South Carolinian who was President of the Continental Congress in 1777 and 1778. The date was celebrated at a reception held in the National Archives Building here in Washington on February 25.

At the same time, an exhibition containing documents illustrating Henry Laurens' distinguished career as President of the new United States and as one of the negotiators of the Treaty of Peace with Great Britain in 1783 was opened by the Archivist of the United States, Mr. James B. Rhoads, and by the executive director of the National Historical Publications Commission, E. Berkeley Tompkins. The occasion also marked the 40th anniversary of the establishment of the National Historical Publications Commission, which has done such splendid work in bringing a knowledge of our Nation's past to millions of American citizens.

Mr. Rhoads and Mr. Tompkins have both encouraged the project to publish the "Papers of Henry Laurens," and special mention ought also be made of Mrs. Elizabeth Hamer Kegan, the widow of Dr. Philip M. Hamer—a distinguished scholar and the first editor of the "Papers of Henry Laurens." Today the project continues, under the capable editorship of George C. Rogers, Jr., and David R. Chesnutt, the assistant editor, and Peggy J. Clark, editorial assistant. Their work is a signal contribution to American history, and on this occasion of the 250th birthday anniversary of Henry Laurens, we join in recalling his contributions to our Nation, and his chroniclers public service in keeping those contributions before the public eye.

CREATION OF THE OFFICE OF FEDERAL PROCUREMENT POLICY

Mr. ROTH. Mr. President, I rise to compliment the Senate on the passage of S. 2510, a bill to create the Office of Federal Procurement Policy. This bill, which I was happy to cosponsor, will give Congress a necessary "foot in the door" toward the enactment of a full slate of procurement reform measures which will be of great benefit to the American people through a greater return for the moneys expended in the purchase of the vast amounts of goods and services required by the Federal Government.

On March 4, 1974, the distinguished Senator from Florida (Mr. CHILES) addressed a briefing conference on Government contracts sponsored by the Federal Bar Association in cooperation with the Bureau of National Affairs in Philadelphia, and eloquently explained some of the problems inherent in procurement reform.

As ranking member of the Ad Hoc Subcommittee on Federal Procurement, I share the concern of the Senator from Florida (Mr. CHILES) who serves as the chairman. Like the chairman, I deplore the fact that wasteful procurement practices all too often drain away not only tax dollars but also public confidence in the way the Government does business.

I think my colleague touched on some matters that will be of primary significance to Members of the House of Representatives as they now consider S. 2510 and also to Members of this great body.

Mr. President, I ask unanimous consent that the speech by the Senator from Florida (Mr. CHILES) be printed in the RECORD.

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

SPEECH BY SENATOR LAWTON CHILES OF FLORIDA BEFORE THE BRIEFING CONFERENCE ON GOVERNMENT CONTRACTS

First off I want to thank you for rearranging the schedule of the program so that I could speak a little earlier. It's important for me to get back to Washington for some votes this afternoon on Federal pay raises and I didn't think there would be enough of you in the audience from Florida to explain to all the voters back home why I missed the vote.

Let me also thank you for inviting me to speak here today on Federal Procurement and Government Contracting. It's a subject that, for the most part, strikes people as being purely in the realm of bureaucrats and Government specialists and has been looked at this way for many years.

But I think we're seeing a basic change in how we regard Federal Procurement and some new thinking on how important the process for spending $60 billion a year really is to the country, not just in providing the goods and services for the Federal government to do its daily chores but also in some larger perspectives:

The ability of the American taxpayer to get a dollar's worth for every dollar the government spends;

The heavy impact procurement policies have on the character of business in this country, the growth of stagnant industries and the ability of business—both large and small—to *do* business with their government;

The impact of procurement practices on the free enterprise system that we've always thought we've enjoyed in this country;

The realization that the Congress has not been playing its full role in shaping and executing of the procurement function; and

The realization that perhaps the time has already passed when we should be taking a brand new, fresh look at just how the government goes about meeting public needs through the procurement process.

All these vital issues are now starting, I

hope, to come to mind to Congressmen when they hear the word "procurement." In other words, procurement is far more important to far more people than contract negotiators and lawyers debating a particular contract clause. I think that realization is coming in full force to the Congress and I would encourage procurement specialists to continue to constantly think in terms of the larger implications their actions have on the economic and political climate of the nation.

Another reason why I particularly appreciate having the opportunity to be here today—and why I would like to congratulate you all on having this Briefing Conference—is that when you consider what's at stake, there's a particularly urgent need to communicate the importance of procurement to the general public.

Just last Wednesday, the Joint Committee on Congressional Operations held hearings on the problem of communicating the business of Congress to the public. Senator Muskie, in the course of his testimony, cited our legislation to create an Office of Federal Procurement Policy as a prime example of important legislation developing in the Congress which somehow manages to escape the attention of the press and the public despite its far-reaching effects on the expenditure of billions and billions of dollars of taxpayers' money.

One of the difficulties in maintaining an informed and interested body of public opinion, outside professional circles, is that any movement, such as this one to reform procurement, that is initiated and sponsored by the Congress, is often a slow, stuttering and invisible process.

As all of you know, where we're at today stems all the way back to where we were in 1966 when the Government Operations Committees began investigation hearings into what was wrong with procurement and what needed to be done to fix it.

It wasn't until 1969 that we had a public law to create the Commission on Government Procurement and it wasn't until December of 1972 that the Commission delivered its report and recommendations.

It wasn't until July last year that the Senate decided to create a special Subcommittee on Federal Procurement, which I was fortunate to have the opportunity to chair. You can't expect many people to have an attention span that long, but the important point is that now we're at a position to put into effect the changes that all this thorough research has told us is necessary.

I'd like to be able to say that the new Procurement Subcommittee will be moving out immediately on a broad front to bring the legislative process to work on all the separate items on the agenda for procurement reforms. But—for many reasons—we will have to be selective about the number of areas we concentrate on and follow-through sequentially.

The prime reason is that we are trying to move procurement reform through a Congress that so badly needs reform itself.

First off, we simply do not have the resources in Congress to do many things at once and do them all well. That applies to the Procurement Subcommittee, the Government Operations Committee and the Congress in general. As a matter of fact, I sometimes wonder whether the Congress has the resources to do the things it *must* do and do them well.

Another factor that constrains how fast we can move on how many fronts is the problem of Committee jurisdictions. Procurement, in all its many facets, touches directly on the bread and butter business of many committees, in particular the Armed Services Committee and also Judiciary and Labor and Public Welfare when it comes to socio-economic programs. If we're going to have effective procurement reform, it's going to have to be done in conjunction with these other Committees and this is the way we intended to proceed from the outset. This is only proper but it does add an extra burden in terms of additional coordination, consultation and joint reviews.

Now, these are some of the conditions we will have to work within, the ground rules that determine how far and fast we move. But I mention them only to give you a better appreciation for the fact that we *are* going to sustain the momentum for procurement reform which the Congress started years ago. We've already started the ball rolling in several areas and will be adding to them.

OFFICE OF FEDERAL PROCUREMENT POLICY

I don't have to tell you that the number one task to be accomplished right now is to create—by law—a central Office of Federal Procurement Policy, the linch pin and the fulcrum for more specific statutory and regulatory reform that will follow.

It would be nice if, by this time, all the concerned parties would be in agreement with the Commission's conclusion that the OFPP is an essential prerequisite for overhauling procurement.

But, as you know, that's not the case.

When legislation was considered to establish a Procurement Commission in the first place, back in 1969, spurred by Congressman Chet Holifield the Father of the Commission, the Department of Defense stated that the Commission studies would unquestionably result in an objective overview which could provide a basis for further improvement.

Apparently, when it comes to the Commission's #1 recommendation on how to *achieve* that further improvement, the Department of Defense, and Office of Management and Budget along with them, have had some second-thoughts.

Quite frankly, I don't believe that the Defense Department has given much thought to *why* they should oppose the legislation *or* given much attention to the provisions of the bill that are designed to protect the legitimate interests of the procuring agencies.

The OFPP is clearly constituted to focus its attention on the Government-wide direction of Federal procurement, *not* to be an investigatory body or an appeals court for the individual actions and contracts of the executive agencies. Specific language in the bill should have dispelled any misunderstanding on this score by now.

The fact remains that procurement reform is sorely needed. The problems are there, wasting money every day and they are not just Defense Department problems, they are Government-wide problems that Defense couldn't solve if they wanted to. A central procurement authority, with statutory backing is what is needed, and nothing less will do any more than massage the status quo.

All these considerations make me confident that, with the strong leadership of Chet Holifield in the House, we are going to have procurement legislation out of the Congress this year. The arguments are simply too strong. They're based on one of the most thorough jobs of legislative history the Congress has put together in any area. And we're not just preaching to the choir. You know action is well-founded when you gain bipartisan support from men like Senators Jackson and Muskie; Percy and Javits; Roth and Brock; Nunn and Huddleston; and others who have joined in co-sponsoring the legislation in the Senate.

If we don't have OFPP legislation now, if we become lulled by the constant drone of the executive branch chanting that all we have to do is wait and see, then we condemn reform to another Congress, another time, another year, and once again we abdicate to administrative powers.

BUDGET REFORM: S. 1414

Another example of positive Congressional action is the current move for budget reform, to modernize the way the Congress controls Federal spending and the way it sees to it that spending effectively meets public needs. Here, too, procurement reform enters because, in essence, the government's ability to meet public needs hinges on buying the goods and services in the most effective and economical way.

Budget reform legislation should reach the Senate floor soon and a bill derived from the Procurement Commission's analysis of major systems acquisition, S. 1414, will be considered.

Ever since I served on the Commission, I've been struck by the message developed in that part of the report, not just in terms of Defense Department weapon programs but in terms of organizing modern programs to meet national needs across the board.

New programs don't spring full-blown from executive agencies or from legislation. There is a natural evolution of steps: establishing the need for a new problem in the first place; exploring alternative approaches; choosing a preferred approach; and program implementation.

All of these steps are crucial to program success and budget control. If Congress can't review and judge the first two, it's been futile to try to control the last two. Only 5 percent of the program cost may be spent early but it determines how the remaining 95 percent will be used.

The most effective way to control program funds is to control the early steps which lock in the levels of spending that Congress becomes concerned with later. From weapons to social welfare programs, Congress becomes locked-in by not having a clear chance to confirm needs, goals and the search for alternatives.

The legislation will require that information come to the Congress at all stages of program development—from the time the goals are set and while alternative means of achieving those goals are being explored. This will be the first time the Congress will receive such information on a regular basis for all agencies, all programs before they are committed.

This is absolutely essential for achieving Congressional control of the budget and to stimulate the widest possible application of new technology to meet program goals. Without this type of information, the agencies come to the Congress with pre-cooked solutions and programs that are already under way and pre-determined in all their essential characteristics.

On top of this program control information, the legislation would also link all programs and program goals to human needs and national priorities rather than government agencies. I think it can be a major step in making our government efforts more visible to the public and more manageable for the Congress.

FUTURE PLANS

Over the coming year, we hope to broaden the agenda for procurement reform to go beyond the OFPP and budget reform legislation that has already moved out of Committee to the Senate. At the present time, I would like to plan to lay the groundwork for:

1. Consolidating the maze of procurement statutes that have grown up on the books over the years;
2. Clearly defining the government's policy of reliance on the private sector for goods and services.
3. Implementing the recommendations of the Commission that deal directly on major systems acquisition;
4. Clarifying the distinction between contracts, grants and cooperative agreements; and finally
5. Passing legislation on specific statutory changes that can gain immediate dollar savings, such as multi-year leases of automatic data processing equipment.

CONCLUSION

I can't help having it come to mind that perhaps the most important aspect of this

movement toward reforming the procurement process is bolstering the confidence the American people have in their government which, I don't have to tell you, has reached an all-time low.

Quite aside from the assault on public confidence to come out of this administration and the series of shocks that have come under the Watergate heading, there's been, over the years, a record of questionable procurement transaction that has undermined the confidence of the American people in the way their governemnt spends their money.

This is why I can say, as a former Commissioner, emphasis should be placed on the Procurement Commission's conclusion that perhaps one of the largest benefits that would accrue from over-hauling procurement would be a reestablishment of public confidence in the process.

To my mind, just this reestablishment of public confidence is reason enough to move foward, not tomorrow, not after more studies, but now. I appreciate the valuable contributions that each of you are making to help see change in procurement become a reality and appreciate also the chance to be with you today.

Thank you.

THE PROPOSED CONSTITUTIONAL AMENDMENT TO LOWER AGE REQUIREMENT FOR CONGRESS

Mr. THURMOND. Mr. President, recently Mr. Karl Rove, who is chairman of the College Republican National Committee, made a statement in favor of a constitutional amendment to lower the age of eligibility for membership in the two bodies of the Congress.

Mr. Rove is a junior at George Mason University, and recently left the office of Congressman RICHARD MALLARY, of Vermont, where he served as legislative assistant. He is now special assistant to the Republican National Committee chairman, the Honorable George Bush. Mr. Rove is the youngest person ever to become a member of the Republican National Committee.

Mr. President, I ask unanimous consent that Mr. Rove's statement be printed in the RECORD.

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

TESTIMONY OF KARL ROVE

Mr. Chairman: My name is Karl Rove and I serve as chairman of the College Republican National Committee, the student auxiliary of the Republican Party. The College Republican movement, organized in all fifty states on over 1,000 campuses, is the nation's largest student political group with over 150,000 members. From its ranks have come many of the young leaders of the Republican Party including Congressman Bill Steiger of Wisconsin, a former national chairman.

I appreciate the opportunity to testify today in support of S.J. Resolution 5, which proposes a Constitutional Amendment to lower the age of eligibility for the House of Representatives from 25 to 22 and the age of eligibility for the United States Senate from 30 to 27.

Unlike other portions of the Constitution, the age clauses did not inspire lengthy exchanges in the Constitutional Convention of 1787 or the Federalist essayist published in the New York papers during 1787–1788.

The only direct reference to the age requirement came on June 22, 1787 during action by the Constitutional Convention on a resolution dealing with the House of Representatives.

George Mason of Virginia, after whom my college, George Mason University, is named, proposed an amendment adding "twenty-five years of age as a qualification for members of the first branch." In the records of the Convention, Mason is quoted as saying that he "thought it absurd that a man today should not be permitted by the law to make a bargain for himself, and tomorrow should be authorized to manage the affairs of a great nation.

It was the more extraordinary as every man carried with him in his own experience a scale for measuring the deficiency of young politicians; since he would if interrogated be obliged to declare that his political opinions at the age of 21 were too crude and erroneous to merit an influence on public measures. It had been said that Congress had proved a good school for our young men. It might be so for anything he knew but if it were, he chose that they should bear the expense of their own education.

Mason was answered by George Wilson, who argued that he "was against abridging the rights of election in any shape. It was the same thing whether this were done by disqualifying the objects of choice, or the persons choosing. The motion tended to damp the efforts of genius, and of laudable ambition. There was no more reason for incapacitating youth than age, when the requisite qualifications were found."

Mason's amendment was carried that same day by a vote of seven states to three, with one, New York, divided.

There is no discussion at all concerning the age requirement of thirty for membership in the Senate.

The Federalist Papers contain only a few oblique references to the necessity for a high degree of maturity in the representatives of the people.

Mason's arguments have not stood the test of time. Where once the legal age of majority—the ability to enter into contractual agreements and be classified as an adult in legal proceedings—was almost uniformly pegged in state statutes at twenty-one years or more, today only nine states have a legal age of majority greater than 18. This coupled with the recent enfranchisement of 18, 19, and 20 year olds, is a general recognition that America's young are mature enough to shoulder the burdens of citizenship.

It seems strange at the same time we are extending the franchise and lowering the age of majority because of a recognition of the maturity of young people, that the Constitutional age requirements for Congress are retained. The retention of these requirements is a further abridgement of the "rights of election" that Wilson refered to.

The Constitutional Amendment proposed by Senate Joint Resolution 5 would be a signal that the Constitution is not an arbitrary document, constructed for a time and a set of circumstances long past, but instead capable of rational change.

Karl Rove, chairman of the College Republican National Committee, is the youngest person ever to be a member of the Republican National Committee. Prior to his election as chairman, he served as CRNC Executive Director.

Rove, a junior at George Mason University, recently left the office of Congressman Richard Mallory of Vermont, where he served as Legislative Assistant to the Congressman. He has taken on the job of Special Assistant to Republican National Committee Chairman George Bush.

The following is the testimony given by Mr. Rove before the Senate Joint Subcommittee on Constitutional Amendments.

NOAA REDUCED PRICES FOR MANY AERONAUTICAL CHARTS

Mr. HOLLINGS. Mr. President, this is an unusual occasion. As chairman of the Commerce Subcommittee on Oceans and Atmosphere, I have a deep interest in the National Oceanic and Atmospheric Administration. I am convinced that this Nation must turn to the oceans increasingly in the years to come, and that we have made our beginnings none too soon. I am pleased to have played a part in the development of NOAA, and I watch its performance and its problems closely and continually.

One of the finest organizations within this Commerce Department Administration is the National Ocean Survey, which began its life in 1807 as the Survey of the Coast, at the instigation of President Thomas Jefferson.

Among the Survey's mission is the mapping and charting of our oceans, coastlines, and airways. These charts are indispensable to shipping, to exploration, and to aviation.

In these inflationary days, I take no little pleasure in calling to your attention an announcement of February 18 by the Survey that the prices of many of its charts have been reduced, and I ask unanimous consent that it be printed in the RECORD.

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

NOAA REDUCES PRICES FOR MANY AERONAUTICAL CHARTS

A price reduction for many government aeronautical charts was announced today by the U.S. Department of Commerce.

The cuts, which range from 2½ to 41 percent, are in the charts produced by the National Ocean Survey, an agency of the Commerce Department's National Oceanic and Atmospheric Administration. A 50 percent reduction was also announced in the $4 price of bathymetric nautical charts of ocean bottom topography.

The price reductions are in subscriptions for aeronautical instrument navigational charts, primarily radio facility and instrument approach procedure charts. The instrument charts make up about 80 percent of the 35 million aeronautical charts sold each year by this government agency.

The price reductions follow several years of substantial price increases in navigational charts. The law requires that prices charged for charts cover printing and distribution costs. The price cuts were made possible by the institution of more efficient printing, finishing, and distribution methods, said Frederick O. Diercks, head of the National Ocean Survey's Office of Aeronautical Charting and Cartography.

The price reductions in subscriptions ranged from 25 cents for some high altitude radio facility charts to $17 for the Instrument Approach Procedure Charts for the conterminous (48) United States. The price cuts for the Radio Facility Chart subscriptions ranged from 2½ to 26 percent and those for Instrument Approach Procedure chart subscriptions from 7 to 20 percent.

The reductions covered all Radio Facility Chart subscriptions for enroute conterminous United States charts and all Instrument Approach Procedure Chart subscriptions. A 20 percent reduction was also announced in the price of Standard Terminal Arrival Route Chart subscriptions.

The new price list, which is issued annually, also included a 41 percent reduction for the Standard Instrument Departure Chart subscription for Alaska. Those for the coterminous United States were increased 16 to 20 percent.

Prices for aeronautical Visual Navigation Charts remained unchanged, as did those for nautical charts, with the exception of the bathymetric charts.

Copies of the new price list can be obtained from the Distribution Division (C44), National Ocean Survey, Riverdale, Md. 20840.

CHAOS IN THE CALIFORNIA-ARIZONA CITRUS INDUSTRY

Mr. FANNIN. Mr. President, I would like to point out to my colleagues how an unjustifiable and unreasonable decision of the Cost of Living Council has caused chaos in the California-Arizona citrus industry.

Mr. President, this action goes beyond mere bureaucratic bungling and points up a very serious problem which confronts all of us in both houses of Congress today. That problem is the manner in which the Congress can keep the administrative branch of Government from expanding its role when there is no statutory authority to support the administrative action being taken.

A case in point is the Cost of Living Council. It has, without statutory authority, determined that it will eliminate marketing orders in existence pursuant to the Agricultural Marketing Agreements Act of 1937, as amended. Dr. Dunlop has determined that he does not like marketing orders and therefore he personally will repeal this act of Congress. He is well on his way to succeeding.

Farmers producing navel oranges in my State of Arizona and in California have done so for the last 25 years pursuant to a marketing order for navel oranges which they voluntarily adopted. This has enabled these farmers to supply good fresh navel oranges to consumers over a 6-month period.

Dr. Dunlop has determined to bring about the practical end of the navel orange marketing order. His actions in setting arbitrary and unreasonable shipment rates have resulted in totally disrupting the marketplace. The actions taken by the Cost of Living Council have forced the f.o.b. price level for a carton of navel oranges to approximately $3.40. This compares with the growers' cost of producing that carton of oranges of $3.54 to $3.66. In other words, the growers are being forced to sell their oranges at a loss which amounts to approximately $750,000 per week on an industry basis. There is absolutely no justification for this since there has been no corresponding significant decline of the retail price for navel oranges.

In addition, the disruption of the navel market through surplus supplies has virtually eliminated the domestic market for early valencia oranges produced in Arizona. Growers in Arizona report to me that there is no demand and approximately 3 weeks supply back up in the packinghouses.

It can be clearly seen from this that Dr. Dunlop's actions have caused growers to lose considerable sums of money which eventually may lead to reduced supplies which will lead to higher prices. At the same time farmers are being forced to sell their goods at below cost, consumers are being required to pay the same price for navel oranges. This means that someone in the middle is making an increased profit thanks to the Cost of Living Council. This is totally unjustifiable.

This action becomes even more unjustifiable when the Cost of Living Council admits that it has no statutory authority to interfere with the operation of the marketing order. We must all be certain to see that the Cost of Living Council will exist no longer than April 30 when its statutory power expires. Then we must be certain that it is promptly abolished.

THE LATE ADM. LEWIS STRAUSS

Mr. THURMOND. Mr. President, in January of this year, the United States lost an outstanding citizen in the death of Rear Adm. Lewis L. Strauss, former Chairman of the Atomic Energy Commission.

Admiral Strauss had a long and successful career which was highlighted by his expertise in high finance, as well as many years of dedicated public service. He was born in Charleston, W. Va., but grew up and attended schools in Richmond, Va., and was too poor to attend college. He became vice president of his father's shoe company and moved from there in 1917 to work for 2 years as Mr. Herbert Hoover's secretary. At that time, Mr. Hoover was U.S. Food Administrator and Chairman of the Commission for Relief of Belgium.

In recognition of his demonstrated capability, he was appointed a member of a U.S. Delegation for the Commission to Negotiate Peace, which ended World War I. Afterwards, he became a member of the U.S. Delegation to the final Armistice Convention in Brussels.

In 1919, he joined the banking firm of Kuhn, Loeb & Co. of Wall Street and rose in that company to become a partner, as well as a member of the board of directors of many prominent business firms.

Since he was a member of the U.S. Naval Reserve, he was called to active duty in 1941 to serve with the Navy's Bureau of Ordnance in World War II. He had a distinguished war career and was given many decorations, which included three awards of the Legion of Merit—two by the Navy and one by the Army. He also received a number of awards from foreign governments.

After President Eisenhower was elected, Mr. Strauss became a Special Assistant to the President, and in 1953 was confirmed for a 5-year term as Chairman of the Atomic Energy Commission. In recognition for his outstanding service in that high post, he was given the Medal of Freedom in 1958.

Admiral Strauss was an unusual man who rendered distinguished service to his country. He was public spirited, patriotic, and set an example of devotion to country that should be emulated by his fellow Americans. He was a man of great accomplishment, impeccable honor and his service to his country should never be forgotten.

Mr. President, I ask unanimous consent that an article by Richard Slusser which appeared in the Washington Star-News on January 22, 1974 be printed in the RECORD.

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

ADM. LEWIS STRAUSS DIES; FINANCIER HEADED THE AEC

(By Richard Slusser)

Rear Adm. Lewis Lichtenstein Strauss, 77, a former chairman of the Atomic Energy Commission, died of cancer yesterday at his home in Brandy Station in Virginia's Culpeper County.

Mr. Strauss—pronounced "Straws"—for many years was a partner in a leading Wall Street banking house. He first was appointed to the then-new five member AEC by President Truman in 1946.

In 1959 the Senate rejected Mr. Strauss as Eisenhower's nominee for Secretary of Commerce, an event that was one of the leading political incidents of the Eisenhower years. He was the eighth Cabinet nominee rejected by the Senate in U.S. history.

Mr. Strauss was born in Charleston, W. Va., but grew up and attended schools in his parents, native Richmond, Va. His father was president of a wholesale shoe company and his mother was an artist.

He became interested in the new field of radioactivity while reading a high school physics textbook and wanted to be a physicist, but could not afford to attend college. He became a salesman and then vice president of his father's company.

From 1917 to 1919 Mr. Strauss was secretary to Herbert Hoover, then the U.S. food administrator and chairman of the Commission for Relief of Belgium, in relief operations in Belgium and elsewhere overseas.

In 1919 he was a member in Paris of the U.S. delegation of the Commission to Negotiate Peace, ending World War I. Later that year he was a member of the U.S. delegation to the final armistice convention in Brussels.

While in Paris he was offered a job by the head of Kuhn, Loeb and Co. of Wall Street and returned to the United States later in 1919 to join the firm.

From 1929 to 1941 he was a partner of Kuhn, Loeb & Co., as well as a director of the United States Leather Co., Hudson-Manhattan Railroad Co., Commercial Investment Trust General American Transportation Corp., United States Rubber Co. and other corporations. He began active support of research in nuclear physics in New York and California in 1938.

A member of the Naval Reserve, Mr. Strauss was ordered to active duty in early 1941 as a lieutenant commander. He organized the inspection service for Navy ordnance originated a plan for consolidation of all Navy inspection, and conducted an ammunition survey for an undersecretary of the Navy.

Mr. Strauss also was principal staff assistant to the chief of the ordnance bureau of procurement and materiel; he was in charge of formulating policies for contract termination. He was appointed as the Navy member of the executive committee of the Army-Navy Munitions Board.

Mr. Strauss also participated in the development of certain secret ordnance items.

and made inspection tours of ordnance performance under combat conditions in the Pacific theater.

In 1945 he became the Navy's member of the Interdepartmental Committee on Atomic Energy and was nominated by Truman and confirmed in the rank of rear admiral, one of the few Reservists to attain flag rank.

His decorations include three awards of the Legion of Merit—two by the Navy and one by the Army. He received many awards from foreign governments.

After Eisenhower's election, Mr. Strauss became a special assistant to the president in 1953 and was confirmed that June for a five-year term as chairman of the AEC.

He retired at the end of the term and in October 1958 received the interim appointment as secretary of commerce, succeeding Sinclair Weeks.

Aside from being a rarity, the Senate rejection also was unusual because Mr. Strauss had been a public servant of unquestioned integrity for many years. No one had thought Mr. Strauss would have difficulty in being confirmed.

The principle that appeared to weigh most heavily in the outcome of the tight confirmation vote was that of executive privilege and the extent to which it had been abused by Mr. Strauss, in the eyes of his critics, in his relations with Congress. He stood accused—and in the vote convicted—of "deceit and deception" of the legislative branch.

Lyndon B. Johnson, then Senate majority leader, and other senators were antagonized by lobbying by high Eisenhower administration figures.

Many senators were against Mr. Strauss' advocacy of public power as against private power during the Dixon-Yates controversy and opposed him because he had withdrawn the security clearance of nuclear physicist J. Robert Oppenheimer in 1954.

Two Republican senators, William Langer of North Dakota and Margaret Chase Smith of Maine, cast decisive votes in the balloting in which Mr. Strauss was rejected by 49 to 46.

In 1958 President Eisenhower awarded Mr. Strauss the Medal of Freedom.

He leaves his wife, the former Alice Hanauer; a son, Lewis H., of Bethesda, and three grandchildren.

Services will be held in New York.

LAW OF THE SEA: ENERGY, ECONOMY SPUR SECRET REVIEW OF U.S. STANCE

Mr. HOLLINGS. Mr. President, the U.S. Government will sit down at the bargaining table in June of this year to begin substantive work on a new Convention on Law of the Sea, an international treaty which will govern the more than 70 percent of our planet which is composed of the sea. The meeting in Caracas, Venezuela, will be important to every man, woman, and child in the United States. The reason is that we as a nation are looking ever increasingly to the oceans to supply us with energy and materials to meet our future needs. The potential for good and harm exist to a great degree at this stage of our negotiations in Law of the Sea. Recently, Science magazine published an article entitled, "Law of the Sea: Energy, Economy Spur Secret Review of U.S. Stance," by Ms. Deborah Shapley. The article points out, correctly I might add, that there has never been a thorough examination of the economic issues involved in our current posture toward law of the sea. I commend this article to the attention of all my colleagues who are concerned about the ability of our Nation to have access to the minerals and resources of the sea and seabed.

Mr. President, I ask unanimous consent to have the article printed in the RECORD.

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

LAW OF THE SEA

At the urging of the Treasury Department, U.S. officials preparing for the United Nations Law of the Sea conference are conducting a drastic reassessment of previously stated United States positions on issues ranging from offshore oil and gas development to international environmental policy.

The classified studies, begun last April, can best be described as an eleventh-hour reexamination of what this country stands to gain or lose economically in the conference. Officials close to the review acknowledge that it has been spurred in part by concern over the energy situation and the economic instability that has accompanied it.

This June, substantive negotiations toward an international treaty will get under way in Caracas; in fact, the Law of the Sea conference officially opened with an organizing session in New York last December. The reviews are looking at the stances put forth by the United States in preliminary negotiating sessions in New York and Geneva during the past 3 years.

The intense new examination of the economic and energy aspects of the Law of the Sea is said by several sources to have been urged principally by Treasury Secretary George Shultz and William E. Simon, Shultz's deputy secretary and the Administration's new energy czar. Officials stress that the reviews are not intended to scrap present U.S. negotiating positions and could merely turn into an exercise in "filling in the blanks" in these positions. But they do not rule out the possibility that, after close analysis, some tenets in the U.S. position could be discarded.

The Law of the Sea conference, if successful, will resolve fundamental questions of national and international jurisdiction in the oceans. The conferees are expected to extend the territorial sea, which is that narrow band of ocean along the shoreline over which the adjacent country has complete control, from 3 to 12 miles. Doing this, however, would place under purely national control approximately 100 straits which the United States deems vital to its military and commercial interests.

The U.S. position has favored the 12-mile territorial sea only on the condition that those straits remain open.

In addition, the conference will attempt to reach a balance of national versus international rights in a wider offshore area that would be called the "coastal economic zone." This zone would start at the outer edge of the territorial sea, and extend to some still undefined limit—perhaps 200 miles offshore, perhaps to the edge of the continental shelf. The extent of coastal nation control over oil and gas resource exploitation, fishing, and scientific research is a major issue, since these zones are believed to contain most of the wealth of the world's oceans. Finally, the Law of the Sea conference will have to decide how to regulate pollution, fishing, and seabed mining in the fully international waters beyond the coastal economic zone.

The United States has tried to assume a role of world leadership in the conference since 1970, when it proposed a draft treaty for discussion. The draft, in the words of one expert, represented what was thought then to be "the best possible deal" for the developing countries, which constitute a majority of nations. Some of the provisions that were regarded as benefiting these nations, and thus came to be characterized as "internationalist," included two U.S. proposals: one, for a strong organization to control the international seas; and so-called revenue-sharing proposals that would spread the income from ocean activities among all nations. The draft treaty also tried to minimize coastal state control over the offshore economic areas—thus giving other nations more access to them—through a complicated "trusteeship" arrangement that has since been dropped.

Since 1970, these so-called international proposals have been gradually eroded by the twin forces of militant nationalism among the developing countries—many of which are coastal states—and bickering among affected U.S. industries and government agencies.

The current Treasury-inspired economic reviews are part of this ongoing evolution, and ultimately they could help kill some of the remaining "internationalist U.S. positions. For one thing, the reviews are reconsidering the feasibility of international revenue sharing. For another, they include the question of whether a strong international organization supervising development of seabed minerals is in the U.S. economic interest. Questions like these, coming only a matter of months before the Caracas meeting, have clearly angered veteran officials who are dealing with the U.S. role in the conference. "I think they're grossly incompetent and ill-informed," one official said of some Treasury reviewers. "They really didn't understand the kinds of things that went on in the last 3 years. When they jumped in, it turned into an education program for Treasury."

But other sources say that, in all the years of preparation, the government has never taken a hard look at the economic impact of the proposals of the United States and of other countries. Such a review, they say, is needed, especially in view of the energy situation. "We're looking at questions which just haven't been asked," said one official. "Let's face it. The world is not the same as it was in 1970."

According to sources both in and out of the Treasury, Shultz, Simon, and deputy assistant secretary Howard Worthington became aware in March of the possible economic problems that could arise from the Law of the Sea conference. They then succeeded in obtaining a place on the key steering group for the U.S. delegation, the executive committee of the 100-man Interagency Task Force on the Law of the Sea. The one Treasury lawyer who had been working with the big task force was reassigned to other, unrelated duties. Treasury then appointed four economists to work full time on Law of the Sea, and three administrators to work part time.

The reviews themselves were ordered as a result of an early summer meeting of the committee that arbitrates interagency disputes on Law of the Sea matters, the Undersecretaries' Committee of the National Security Council. In addition to Treasury participation, the Council of Economic Advisers, Peter Flanigan's Council on International Economic Policy in the White House, and the Office of Management and Budget are said to be involved. Also, some outside academic economists have contributed along with specialists in other federal agencies.

At first the studies were conducted publicly, like many other projects generated in connection with the conference. But sometime during the summer the chairman of the interagency task force, John N. Moore of the State Department, decided they should be classified.

One of the major issues being studied is the question of how the Law of the Sea conference could affect future U.S. energy supplies. A central dispute concerns the amount of control a nation will have over

development of the oil and gas resources within the proposed coastal economic zone on the continental shelf. Although only a handful of nations have continental shelves extending beyond 200 miles, most nations, as a matter of self-interest, favor a coastal economic zone boundary of 200 miles offshore. The United States, whose continental shelf is even wider in some places, has remained ambivalent as to whether it favors a 200-mile limit or one including the entire continental shelf. Meanwhile, the Soviet Union favors an economic zone limit at a water depth of 500 meters or to a distance of 100 miles—a proposal that would favor the Soviet Union but few other countries. Some nations favor a much narrower economic zone limit—for example, one extending to only 40 miles, which would leave as much as 60 percent of the estimated offshore oil and gas reserves in international waters.

According to a recent United Nations study, the U.S. continental shelf is estimated to have approximately 400 billion barrels of potentially recoverable oil, or as much as ten times the proven reserves of the United States and three times those of Saudi Arabia. Under many of the proposals before the conference, some of those U.S. reserves could go to other nations—either through direct exploitation or through international sharing mechanisms. These are the kinds of questions under review.

A further complication is the issue of what would become of the income from offshore oil and gas development. In 1970, U.S. officials mentioned—but did not formally propose—that as much as 50 to 60 percent of the revenues from ocean resource development be directed to developing countries, in accord with the principle that the ocean's resources are the "common heritage" of mankind. Since then, U.S. officials have avoided naming percentages, but have continued to back the revenue-sharing proposal in principle.

Revenue sharing also enters into negotiations because the United States and several other countries have said that they favor some revenue sharing from deep seabed mining activities. Although the preliminary negotiations have focused on what kind of international organization should license deep-sea development and divide up the spoils, the current economic reviews are said to be looking at revenue sharing. Treasury officials are said to be skeptical of the concept's feasibility, and to be trying to figure out how much revenue might be involved.

Should it conclude that the notion is unsound, the United States may have jettison an important element of its position in the conference. Hitherto the revenue-sharing proposals have helped the U.S. in its role as purported world leader; moreover, they are a bargaining chip in dealing with some developing countries who, under revenue sharing, would stand to benefit.

The list of other issues involved in the Law of the Sea is long, and the present economic review is said to cover many parts of it. Fisheries and environmental questions are said to be included. Military considerations are said not to be. Officials would neither confirm nor deny that scientific research—or some aspect of the U.S. position on that issue—is included in the reviews.

Even if the current interest of Shultz and Simon in the Law of the Sea ends with the economists altering existing U.S. positions, the reviews will have achieved one other thing. The architects* of the new Federal Energy Office, set up in response to the fuel shortage, were sufficiently aware of the conference to include a Law of the Sea office among those reporting to the FEO's Assistant Administrator for International Policy and Programs. This is a contrast to the other agencies concerned with sea law: even in the State Department, those working on the meeting operate out of a temporary branch of the legal affairs office. By and large, in other agencies, those involved are on a temporary assignment, on loan from some other, permanent office.

A less concrete but perhaps more important result of the recent burst of activity spurred by Shultz and Simon is that, in the course of it all, both these officials got their feet wet on oceans issues and became interested in the conference outcome. Even those bureaucrats who grumble about the new entrants concede that the review exercise has also drawn attention to the conference in their own agencies. "They [Treasury] took it to the top, and in the long run that will bring Law of the Sea to the attention of the other Secretaries." Among them is Henry Kissinger, who, so far, is said to have paid little attention to Law of the Sea matters.

*Among whom were Shultz and Simon.

REQUEST THAT GAO LOOK INTO PRODUCTION OF GAS AND OIL FROM PUBLIC LEASES

Mr. ROTH. Mr. President, recent reports that the oil and gas industry are withholding the production of gas and oil from public lands are serious, disturbing, and require investigation. For instance, a story in the Wilmington Evening Journal reported that 900 wells are being kept out of production in the Gulf of Mexico, reputedly one of the richest natural gas producing areas in the world. I feel that these allegations must be investigated and that we must get at the truth.

It is important from the standpoint of the credibility of our entire energy program and the peace of mind of our citizens that we determine the facts. If these reports are untrue, they should be publicly refuted by an objective authority. If an investigation by such an authority shows that there is even some truth to the disturbing things we read and hear, then this becomes a most serious situation and corrective measures should be taken immediately.

It would be morally wrong for any oil or gas company to hold back on the production of oil or gas from public lands with the expectation of higher prices. Should this be the case in any instance, the company involved should be ordered to begin production immediately. A penalty for refusing to comply should be cancellation of the lease.

To get to the bottom of the matter, I am taking steps to obtain answers to a number of very important questions raised by the current reports about the withholding of production from the public domain by oil and gas companies. I have today requested and gotten the agreement of the Government Accounting Office to obtain answers to the following questions and to report back to me as quickly as the information can be gathered:

First. What provisions are currently contained in the regulations and leases requiring development of the lease within a certain time frame, and production of oil and gas by the lessee?

Second. What are the number of nonproducing leases and acreage involved, royalties paid on the production in cash or in kind during 1972, and bonus and rentals received?

Third. What are all leases producing in calendar year 1973 and the amount of oil and gas produced by each in that period?

Fourth. What are the number of shut-in oil and gas wells on public lands and what are the reasons for the shut-ins?

Just as soon as this information is obtained, I will ask the Congress to take appropriate action to protect the rights of the American public and to be sure that they are being treated fairly and equitably in both the leasing of the public domain and in assuring the production and distribution of any oil and gas discovered.

I ask unanimous consent that this story from the Wilmington Evening Journal be printed in the RECORD.

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

WELLS IN GULF IDLE IN WAIT FOR PRICE INCREASE

(By Al Kramer)

The nation's oil companies are keeping hundreds of wells shut down in the natural gas-rich Gulf of Mexico while spending millions to advertise claims they are working overtime to end the fuel crisis.

The advertising is one of the most intensive campaigns ever waged by the industry and is aimed at countering public reaction to huge oil company profits at a time when consumers are waiting in long lines to pay record high prices for gasoline—when they can find it.

The main thrust of the advertising is that astronomical profits are needed by the industry in order to finance the costly development of new fuel sources.

But behind this advertising barrage is the fact the industry is keeping at least 900 wells out of production in the Gulf of Mexico, one of the richest natural gas-producing areas in the world.

The total number of closed wells may be much higher, possibly running into the thousands. This is because of a loophole in the federal law on reporting them.

The industry term for these wells is "producing shut-in." This means that a well has been drilled and found able to produce gas in commercial quantities but instead has been capped.

Oil companies are only required to report shut-in wells by a block system. Each block represents 5,000 acres of their federal domain oil leases. Each block is considered a single shut-in whether it contains one or several non-producing wells.

Why are oil companies keeping this gas from the market at a time when it is desperately needed to ease the energy crisis?

The answer is simple: They are holding out for higher profits.

David S. Schwartz, veteran economist with the Federal Power Commission (FPC), has put it this way in testimony before Congress:

"There are strong indications that the present gas supply shortage is related to speculative anticipation of significantly higher prices for producers and they are pursuing a strategy of aggravating the current shortage in order to create pressure for deregulation."

Schwartz says his views are personal and do not necessarily reflect the view of the Federal Power Commission.

The American Petroleum Institute, spokesman for the industry, calls charges oil companies are keeping wells shut to drive up prices "unfounded."

It cites a U.S. Geological Survey (USGS) report giving reasons for the shutdowns. The institute also claims companies who fail to

produce within a time limit can have their federal leaves revoked.

But the reasons given in the USGS study are provided by the industry without details. The most common reason was temporarily abandoned—a reason given without explanation. Other reasons cited problems generally considered easy to solve in the industry.

And the time limit for production isn't very confining. A company has five years to drill a well and can get an almost automatic five-year extension.

The FPC regulates the price of natural gas. Schwartz and many other observers believe the day oil companies get the power to put through whopping price hikes those shutdown wells will suddenly begin gushing.

The Nixon Administration is pushing hard for legislation that would end FPC regulation of the natural gas industry and "free" the wellhead price of gas.

What would this mean to the consumer? Schwartz figures a price increase along industry lines would hike the cost of natural gas to the nation's users from $4.5 to $9 billion a year.

Most observers believe the industry wants a blastoff in natural gas prices until oil companies are able to reap the same towering profits from it as from other fuels.

The nation's major consumer groups are bitterly opposed to ending regulation.

So is Schwartz. "It's one thing for the industry to rape the public but it's another thing for it to ravage the public," he says.

Natural gas is the only part of the oil industry long regulated by the government. The regulation has always rankled and the industry fought it hard.

The oil industry has constantly complained that federal regulation has kept the cost of natural gas artificially low. So low, in fact, that it hasn't been profitable to explore for it and develop it.

But the facts don't do much for the industry's case.

Between 1963 and 1972 the ceiling price for raw natural gas supplies went up by 40 per cent.

And a recent decision by the FPC set an industry return on investment of 15 per cent. This took into consideration the cost of exploring, developing and producing natural gas and included an allowance for dry holes—wells that are drilled but produce nothing.

In comparison, passbook savings—the kind of bank account most average persons have—are limited by federal law to a 5 per cent return on investment at commercial banks and 5.25 per cent at savings institutions.

On top of this, Schwartz points out, the oil industry has developed a technique for jacking up the cost of natural gas.

The FPC only has the power to set gas prices in interstate sales. But it must take into consideration the price of gas sold and used inside a single state in setting the cost for interstate sales—and this forces the cost up even further.

Major producers pay higher prices for gas purchased in states such as Louisiana or Texas, often from firms they have close ties with. Then they use these costs to demand higher prices for interstate sales.

Nobody but the oil industry knows exactly how big an impact the shutdown of natural gas wells has had on the nation's energy crisis. That's because only the industry has the detailed information that can tell the full story, says Schwartz.

But one thing is certain. It has to be big.

There are 838,000 acres of federal domain oil and gas leases in the Gulf of Mexico that are idle—classified as producing shut-in.

Oil companies paid nearly $1.5 billion for those leases, a sure indication they expected them to be highly productive and return a sum far higher than their investment.

Someday, that is.

Right now the natural gas on those leases is just sitting there. Waiting.

The relationship between oil companies holding leases is closer than between families at a Cosa Nostra wedding. That's why it's impossible to single out individual companies as behind the move to keep natural gas from the market.

Here, for example, is how it works: Atlantic-Richfield has 94 producing federal offshore leases in the Louisiana area, but owns only three of them independently. In the others its partners are Cities Service, Getty, Continental, Tenneco, Standard Oil of California and El Paso Gas.

Cities Service has 101 leases, owns only one independently. Its partners are Atlantic Richfield, Getty, Continental, Mobil, Tenneco and Standard Oil of California.

Meanwhile, Getty has 100 leases, owns two of them independently. Its partners are Atlantic Richfield, Cities Service, Continental, Mobil, Tenneco, Standard of California, Phillips and several smaller companies.

The pattern remains the same for the rest of offshore holdings in the Gulf. It has also seen, in recent years, the largest share of lease sales go to a handful of the biggest companies.

This pattern, along with the fact major producers have interlocking relationships with pipelines, proves a virtual monopoly exists in the industry, according to Schwartz.

Schwartz agrees with a call in Congress for creation of a federal petroleum corporation that would explore for and develop oil and natural gas on government-owned land.

He would also like to see the present cash bid system for buying oil leases, that allows giant companies to squeeze out smaller competitors, changed to a system where lease buyers would pay a royalty based on production.

Natural gas should be providing a brighter side to the energy crisis.

A conservative study shows that the nation has enough potential reserves of natural gas to meet increasing demands for 32 years. A U.S. Geological Survey report puts the figure at 65 years.

But for the moment much of that gas is going to stay put while oil companies push for a price that will bring them a lot higher profit than 15 per cent.

THE GENOCIDE CONVENTION

Mr. PROXMIRE. Mr. President, it seems strange that a nation, so dedicated to the strengthening of human rights as ours, can be hesitant in affirming that dedication in action. Yet the International Convention on the Prevention and Punishment of the Crime of Genocide has been awaiting ratification by this body for some 25 years.

The convention makes the intended destruction, in whole or in part, of national, racial, ethnic, or religious groups an international crime; and it further provides for the punishment of those convicted of genocide. Since its unanimous adoption by the General Assembly of the United Nations in 1948, 75 nations have become parties to the treaty. It is a treaty designed to implement the principles of human rights, and yet the United States has not signed it.

Mr. President, we in the United States claim to be believers in human rights. In the words of the late John Kennedy:

There is no society so advanced that it no longer needs periodic recommitment to human rights. The United States cannot afford to renounce responsibility for support of the very fundamentals which distinguish our concept of Government from all forms of tyranny.

I once again ask my colleagues in the Senate to affirm this belief and advise and consent to the treaty.

PUBLIC FINANCING OF ELECTIONS

Mr. BUCKLEY. Mr. President, in the not-too-distant future, we are going to be asked once again to consider and vote on the question of whether the Federal Government should take over the financing of Presidential, senatorial, and congressional elections in this country. It is my hope that at the time this comes before us we will discuss the possible defects such a drastic change in the functioning of our political system might have on that system itself. In the past I am afraid some proponents of Federal financing have ignored these possible consequences and attempted to get us to accept radical changes without full consideration of the effect those changes might have on our system.

It is encouraging to note that many elected officials are beginning to analyze these proposals in some depth and ask the questions that I feel must be answered before we move into an area that could prove exceedingly dangerous. Representative WILLIAM KETCHUM of California's 36th District raises some of the questions inherent in these proposals in an article printed in the January issue of Battle Line, a monthly publication of the American Conservative Union. Representative KETCHUM'S analysis of the difficulties that might be raised by such legislation is well worth reading, and I ask unanimous consent that it be printed in the RECORD.

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

TAXPAYERS BANKROLLING ELECTIONS A BAD IDEA, SAYS REPRESENTATIVE KETCHUM

(Because legislation to finance elections with taxpayer's money will undoubtedly be introduced again this session of Congress, the following facts put out by Republican Rep. William Ketchum of California are of particular interest.)

In my opinion, federal financing of elections will not guarantee honesty and purity in politics. What it *will* do is: (1) greatly assist the re-election of incumbents, (2) lead to marked decrease in voter participation and responsibility, (3) transfer a considerable amount of power over our political process from private citizens to government officials, and (4) upset, perhaps drastically, the delicate balance worked out over 360 years of American political history between the government and the individual, between politicians and voters, between political parties and members of those parties, and between the federal government and the states.

The following are serious difficulties inherent in all of the financing proposals.

1. Centralization of Power. If election campaigns are financed wholly or even in large part from Washington, this will greatly increase the potential power of the federal government.

2. Power Over Minority Parties. Since the amount of money and the rules for apportionment of funds will inevitably be set by the majority party in Congress this will give the majority party considerable power over the funding of the other parties.

3. Discouragement of Third Parties. Most of these proposals would tie the amount of money granted to each party to a formula based on the number of votes that party received in the last election. This would obviously give the party which had a majority at the last election a tremendous advantage over the second party and even more of an advantage over a third party, especially a new party which was not in existence at the last election. This would gravely distort the democratic process . . . to say the least.

4. Discouragement of Challengers and Protection of Incumbents. Since 1954, only 10% of all Members of the House of Representatives who have run for re-election have been defeated. There is no doubt that an incumbent Congressman (or President; since 1912 only one President running for re-election has been defeated, Herbert Hoover) has a great advantage under the present system. As an incumbent, he has already access to the media, the use of the franking privilege to publicize his work, the benefits of seniority, etc. In order to compensate for these natural advantages and to have a chance of defeating an incumbent, a challenger has to start campaigning early and has to spend at least as much in advertising (usually more) to catch up with a well-known office-holder. A system which apportions funds according to the number of votes garnered in the last election amounts to an Incumbent's Re-Election Act.

5. Infringement of Freedom of Speech. An Act which denies a private citizen the right to use some of his money to propagate his political views is simply an infringement of his freedom of speech. It would also be impossible to enforce in practice. There is no Constitutional way in which the AMA, for instance, can be prohibited from advertising its views opposing socialized medicine and thereby indirectly aiding Candidate A who also opposes socialized medicine and hurting Candidate B who wants to fly a Red flag in front of every home. Nor can COPE be prevented from campaigning against what they view as the hated Right-to-Work Law and thereby aiding some candidates and taking votes away from others.

6. Difficulty of Distinguishing Between Cash and Non-Cash Contributions. If the executives of the Wojunk Works, Inc. favor Candidate A and give him a total of $10,000 in contributions, that would be recorded under present law and forbidden under many of the new proposals. However, if the Labor Political Education Committee of Wojunk Works, Inc. rounds up 1,000 of their members who work 20 hours a week manning telephones and distributing leaflets on Candidate B's behalf, that is *not* counted as a "contribution" under present law and would presumably *not* be forbidden in an era of federal financing. As we saw in Point 5, to date would be unconstitutional.

7. Discouragement of Popular Interest and Participation. Americans have traditionally been great "joiners" and have promoted many enterprises (schools, museums, charities, opera houses, sports, etc.) by "community action." It would be against our traditions to deny Americans the right to put their money where their mouth is and participate in election campaigns. Making campaign funds dependent on a subsidy from the federal government would tend to discourage popular interest and participation in campaigns and in government.

8. Oversupply of Minor Candidates. As with all other attempts by government to control the economy, the market for political candidates is bound to be distorted. Depending upon the wording of specific proposals, some current bills would grant federal money to anyone who can get his name on the ballot. This would unduly encourage frivolous candidates who will not have to prove their ability to raise at least some funds in order to wage a campaign.

9. Low-Voter Turnout. If campaigns are financed by the government there will be a tendency among many voters to "Let George Do It." If they believe they are not needed and not involved many will stay home on election day. A plethora of amateurish minor candidates will also provide a boring or even frivolous campaign and thereby alienate many voters. These trends would also have the effect of increasing the chances for victory of the incumbent. The end result of this will be to make incumbents less responsive to the people.

10. Weakening of Party Responsibility. If parties no longer have the responsibility of raising funds (and persuading a substantial number of people that they merit financial support) our traditional political party system will inevitably be weakened. If politicians receive their campaign money directly from the federal government they will be less responsive to their colleagues and the elected officials of their party. Party responsibility (allowing for independence, of course, on matters of conscience) is an important element in insuring political and national stability.

11. Problem of Funding Local Candidates. Most of the current proposals provide government finance for federal candidates. However, if most people have the impression that the government is now financing elections, it will be more difficult to raise money to fund local campaigns.

12. Ironically, More Money Would Be Spent on Federal Elections. Many of the proposers of these campaign reforms believe that too much money is being spent on electioneering. Yet, as a general rule, whenever the federal government begins to spend money (for medical care for the aged, for a new weapon, etc.) the costs almost always are far higher than the original estimates. The supply of federal money will encourage candidates to obtain and to spend as much as they possibly can. At the present time only about 50 House races are hotly contested; if candidates are able to obtain "free" federal money for the asking, however, they will be tempted to use it whether they really need it or not.

13. The Increasing Cost to the Taxpayers. All of the disadvantages mentioned above will come about at the expense of the taxpayer. His money will be used, whether he likes it or not, to support candidates that do not interest him or even those to which he may be strongly opposed. The taxpayer will be forced to pay for the campaigns of increasing numbers of minor candidates who might not have been able to raise any significant amount of funds in "the open market."

14. Federal Financing Will Not (In Itself) Prevent Corruption. Unless one of these bills includes a section to repeal Original Sin within the territory of the United States, federal financing will be just as subject to possible corruption as private financing is now. Illegal, "under-the-table" gifts of cash *or of manpower* (especially from Union groups) will still be possible. As many have said, guns do not kill people, people kill people. Any system is open to misuse. It is not clear how federal financing will make honest elections more likely; it is clear, however, that it will introduce a host of new dangers and difficulties.

REPLENISHMENT OF THE INTERNATIONAL DEVELOPMENT ASSOCIATION

Mr. McGEE. Mr. President, last week I placed in the RECORD a sampling of editorial opinion from around the Nation expressing strong and unequivocal support for the U.S. contribution to the fourth replenishment of the International Development Association.

Today, I am placing additional editorial comment in the RECORD in the hope the Senate will learn something from the mistake made by the House in defeating IDA in January.

From the Torrington, Conn., Reporter:

They (the Congress) should meditate upon a few statistics. The United States, the richest nation in the world, enjoys a per capita income 30 to 40 times as great as the nations of Africa and Asia. Yet it ranks 14th among the 16 principal World Bank member nations in its per-capita contributions to economic development. And its contributions in terms of national income are now only 10 percent of what they were 25 years ago.

From the Fort Wayne, Ind., Journal Gazette:

. . . the 248–155 vote did far more to hurt the innocent than to achieve its goal of putting the world on notice that U.S. largess no longer is unlimited.

From the Cleveland Press:

If the U.S. reneges on its promised contribution to IDA, so will other wealthy nations. Thus the total cost to poor countries will be some unknown multiple of $1.5 billion, and it is going to hurt them cruelly.

From the Memphis, Tenn., Press-Scimitar:

More than the oil imports they (the developing nations) need, it will deprive them of public health services, improved agriculture, power and water projects, roads and bridges—in short, everything they need to lift their people out of the hopeless morass of poverty into which they were born.

From the Memphis, Tenn., Commercial Appeal:

Above and beyond the abdication of leadership shown by the House majority, it was a cold, selfish stand for the legislators of the world's wealthiest nation to take.

From the Houston Post:

. . . are we really helping ourselves by denying help to nations in desperate need? Intense and pervasive poverty in developing nations inevitably creates emergency situations that we cannot ignore.

From the Little Rock, Ark., Democrat:

In rich countries like the United States, the problem for most people is simply doing without a few luxuries. But for the poor, it means being hungry and not keeping warm.

From the Fresno, Calif., Bee:

The House of Representatives' recent vote to kill a bill to aid the world's most underdeveloped countries through the World Bank's International Development Association is a disaster for millions of poor people.

From the San Diego Union:

. . . suspending IDA aid would hasten the collapse of Third World economies.

From the Newark, N.J., Star-Ledger:

It should be apparent—but it wasn't on Capitol Hill—that this is not a "give-away"

program but an enlightened, reasonable approach to foreign aid.

From the Garden City, N.Y., Newsday:

. . . the richest nation on earth has reneged even on this modest commitment to the poorest.

From the Hartford, Conn., Times:

There is a moral obligation to help needy nations help themselves—and IDA does that well.

From the Salt Lake City, Utah, Tribune:

None of these or other excuses mitigate the cruel fact that a wealthy nation, once distinguished for its humanitarian generosity, has turned its well-fed back on starving, sick, uneducated and hopeless masses of fellow human beings.

From the Salem, Oreg., Journal:

The U.S. accepted a moral obligation to help developing nations, though in recent years the U.S. share of its gross national product allocated to foreign aid is only a fraction of what it used to be. Many other advanced countries are now contributing more on a per capita basis than the U.S.

From the Rochester, N.Y., Times-Union:

Countries that receive aid often use it to buy American products, helping create jobs and improve the economy. And American industry depends on raw materials which come from many underdeveloped nations.

From the Roanoke, Va., World-News:

. . . what the House displayed was not national pride, but national arrogance and stupidity.

I ask unanimous consent that these editorials, and others from which I have not quoted, be printed in the RECORD.

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

[From the Fort Wayne (Ind.) Journal-Gazette, Feb. 4, 1974]

AID: VICTIM OF FRUSTRATION

The recent House vote to withhold further U.S. contributions to the World Bank was the undeniable result of frustration and long years of disillusionment with foreign aid. As with most actions taken out of frustration, however, the 248–155 vote did far more to hurt the innocent than to achieve its goal of putting the world on notice that U.S. largess no longer is unlimited.

In the first place, the proposed $1.5 billion contribution to the World Bank's International Development Association represented a major departure from traditional foreign-aid patterns. The association, which makes low-cost loans for development projects in the world's 21 poorest nations, would be funded multilaterally under terms of an agreement that was negotiated among the world's 25 richest nations in Kenya last fall.

The sharing agreement provided for $4.5 billion in aid to finance development projects of direct assistance to the poorest segments of the least-developed countries, particularly in the drought-plagued Sahel region of western Africa. The U.S. share of this amount would have been the $1.5 billion that the House voted to kill. Unlike the other rich nations, which are required to pay their shares within three years, the United States could have spread its contribution over four years.

The now-endangered agreement was a genuine effort to distribute the load for assisting poor nations, and would have cut the 40 per cent share the United States has been paying to 33 per cent. This is in contrast to Japan, which would have tripled its contribution, and to Germany, which would have doubled its share. An American refusal to fulfill its part of the bargain will give the other 24 signatories an excuse to back out too.

The dimensions of such a catastrophic blow to the ideal of international assistance for the poorest of the poor would be hard to calculate. The World Bank has forsaken the notion prevalent in recent U.S. aid programs, that strengthening national economies somehow will rescue the poor from the morass of starvation and denial. This idea seldom has worked, and the present agreement is an attempt to aid the poor directly. Most of the nations involved are small and struggling for survival. Larger countries also are aided, however—last year 30 per cent of all aid received by India came from the World Bank association.

The agreement, then, and the U.S. share of the assistance, meets every argument offered against foreign-aid "giveaways" of the past. International burden-sharing would remove the majority of the load from the United States; people, not governments, would be the recipients; the prestigious World Bank would insure the aid is used as intended; and the U.S. for the first time in history would pay less in international assistance while seeing a greater return in terms of human misery relieved.

Every effort now should be made to gain Senate approval of the agreement, and to return it to the House where perhaps it would fare better now that understandable frustrations with past foreign aid programs have been relieved.

[From the Torrington (Conn.) Register, Jan. 28, 1974]

ARE THESE THE "AMERICANS"?

Last week The Register for the umpteenth time was requested to reprint an item called "Americans" written by 73-year-old Canadian named Gordon Sinclair. Apparently many readers didn't notice it when it was printed last month, and it has been making the rounds in other publications similar to that patriotic eulogy several years ago called, "I am a tired American." Anyway "Americans" is an impassioned sermon dedicated to the citizens of the United States whom it describes as "the most generous and probably the most least-appreciated people in all the earth."

Maybe the description is accurate. But you'd have a hard time proving it by the first major action in the U.S. House of Representatives after the members returned from six weeks with their constituents during the holiday recess.

By a resounding vote of 248 to 155, the people's representatives killed a bill authorizing the appropriation of $1.5 billion over the next four years as America's share of a World Bank fund for lending desperately needed aid to the underdeveloped nations of the world.

It was a shabby performance. Robert S. McNamara, president of the World Bank and a man who normally refrains from candid comment on such matters, termed it "an unmitigated disaster for hundreds of millions of people in the poorest nations." Even Secretary of the Treasury George Shultz, often pictured as the Nixon administration's Scrooge-in-residence, had worked vigorously for the bill's passage and is now seeking some way to "give the House another chance to do the right thing."

No doubt most of the 248 congressmen who flubbed the first chance last week would justify their votes on the grounds that the United States has already done more than its share to lift up the poor. Like Gordon Sinclair, they presumably feel that this nation's charitable instincts have too often been rewarded with criticism rather than gratitude.

They should mediate upon a few statistics. The United States, the richest nation in the world, enjoys a per capita income 30 to 40 times as great as the nations of Africa and Asia. Yet it ranks 14th among the 16 principal World Bank member-nations in its per-capita contributions to economic development. And its contributions in terms of national income are now only 10 per cent of what they were 25 years ago.

This doesn't negate the claim that Americans as individuals have a long tradition of compassion and concern for the needs of fellow human beings both at home and abroad. They do. But it does suggest that as a nation we are hardly justified in being smug about our beneficiaries.

Rich nations, like rich individuals, have an obligation to be charitable. It is not an obligation that can be repealed on the grounds that the recipients of our charity have failed to bow and scrape in return.

[From the Memphis (Tenn.) Press-Scimitar, Feb. 4, 1974]

AN ILL-CONSIDERED VOTE

The House should reconsider its lopsided 248–156 vote against a new $1,500,000,000 U.S. contribution to the IDA, the branch of the World Bank that makes "soft" loans to the poorest of the world's poor nations.

The administration bill to fund the IDA was beaten by a combination of circumstances, chief among which was the oil price squeeze and the widespread suspicion in the House that a great deal of the $1,500,000,000 would ultimately find its way into the treasuries of extortionate Arab oil princes.

Lending credence to this theory is a World Bank calculation that, for 41 of the have-not nations, the increases in the price of the oil they must import would more than eat up the total foreign aid they will receive from all sources this year. Hence, the House reasoned, the U.S. contribution to IDA would do no more than further enrich oil-producing nations that are plucking the industrial Western world like a helpless chicken.

As tempting as the theory is, it won't stand analysis. If the U.S. reneges on its promised contribution to IDA, so will other wealthy nations. Thus $1,500,000,000 the total cost to poor countries will be some unknown multiple of $1,500,000,000, and it is going to hurt them cruelly. More than the oil imports they need, it will deprive them of public health services, improved agriculture, power and water projects and bridges—in short, everything they need to lift their people out of the hopeless morass of poverty into which they were born.

If the poor nations of the earth conclude that there is no compassion left among the wealthy countries, and no hope of further help in improving the lot of their woefully needy people, the ultimate price to the United States and the rest of the western world might be very high indeed. The Marshall Plan foreign aid has been firmly based on the enlightened self-interest of the United States. It would be a pity to abandon this philosophy now in an attempt to strike back at oil blackmail.

The administration promises to resubmit a scaled-down request for new IDA funds. We hope it does so. We hope, too, that the White House will support the new request with more vigor and purpose than it showed during the House debate over the original request.

[From the Memphis (Tenn.) Commercial Appeal, Feb. 4, 1974]

HOUSE TURNS ISOLATIONIST

There is a kind of wisdom—the sort gained by burning one's hand—in the post-Vietnam recognition that the United States cannot be the world's policeman. Nor can this country rush to the aid of every country in need. It is obvious that within this federation there are needs which are not being fully met.

But it would be a tragic mistake to become so isolationist that we turn our backs completely on the underdeveloped countries. That is just what the House did last week when it voted 248 to 155 against a $1.5-billion contribution to the International Development Association (IDA), the soft-loan subsidiary of the World Bank.

Unfortunately, the bill is also in trouble in the Senate.

The purpose of IDA is to make long-term loans with no interest other than an annual service charge of three-fourths of one per cent to governments of countries with a per capita annual income of $375 or less.

Contributions to IDA are made every three years. The United States' third replenishment period is due to run out June 30. The U.S. share of IDA's funds has been 40 per cent, but it was cut to 33.3 per cent at the meeting of the World Bank and International Monetary Fund in Kenya last September.

Up to 55 per cent of supportive loans for India, Pakistan and Bangladesh come from IDA. It is the financial buttress of the sub-Sahara countries of Africa, now suffering from drouth and starvation.

The position taken by those in the House who defeated this American loan contribution is that this nation somehow can look away from the poverty, disease and collapse of helpless countries. We have tried for years to convince the other industrial nations that they should share with the United States a portion of this humane out-reach. If we suddenly play Scrooge, that marks the end of IDA and chaos for suffering nations.

Secretary of State Henry Kissinger and Treasury Secretary George Schultz called the Jan. 23 House vote "a major setback to our efforts of cooperation and in the ability of the United States to provide leadership in a world where there is an increasingly serious tendency for nations to believe that their best interest lies in going it alone."

The Nixon administration requested replenishment funds for IDA. But majorities in both parties voted no. Surprisingly, the only representative from the Tennessee-Arkansas-Mississippi area to vote for the IDA funds was Dan Kuykendall, Memphis Republican.

Above and beyond the abdication of leadership shown by the House majority, it was a cold, selfish stand for the legislators of the world's wealthiest nation to take. We hope before it is too late the funds will be reconsidered and approved.

[From the Houston Post, Feb. 10, 1974]

BANNED AID

The vote by the U.S. House of Representatives to deny the proposed $1.5-billion contribution to the World Bank's International Development Association (IDA) is a serious blow to efforts to improve the lot of millions in the poor nations. Unfortunately, the request for funds came while the U.S. is struggling with the energy crisis and battling inflation at home. As a result, it was easy for congressmen to feel that charity begins at home.

But are we really helping ourselves by denying help to nations in desperate need? Intense and pervasive poverty in developing nations inevitably creates emergency situations that we cannot ignore. Unilateral aid to Bangladesh, India and areas of Africa where starvation is rampant is costing us millions of dollars. By refusing to appropriate the $1.5 billion, which is our share of a $4.5 billion package negotiated among the industrial nations, we threaten an entire concept of multilateral aid to the poorest of the poor countries.

If we fail to contribute our share to this international loan pool, other participating nations, some in deeper crisis than we, may be tempted to back off and the carefully laid plans of last year's World Bank meeting in Nairobi could crumble. It was through American efforts, with the help of the World Bank President Robert McNamara, that the U.S. share of the loan pool was reduced from 40 per cent of the total to one-third and that of the other industrialized nations was raised to two-thirds. For example, Japan agreed to triple its contribution and Germany's would be more than double under the Nairobi plan.

Even at the old rate we were in an advantageous position. In terms of percentages of gross national product, the U.S. was contributing less than were 14 of the 16 most prosperous nations. By turning our backs on even this reduced participation, we remove the American leadership on which IDA depends and threaten to reverse the world's strongest trend toward international burden-sharing. The alternative is a return to the system of bilateral, string-attached aid from large countries to small countries in the hope that some of it will trickle down to the poor people for whom it is intended. That is a hope that has often been futile in the past.

In addition to humanitarian reasons for participating in the IDA loan pool, there are mutual economic benefits in increasing the productivity and improving the welfare of poor populaces. There is also the matter of cooperating with our traditional trading partners. As Secretary of State Henry Kissinger asked, "How can we expect cooperation on oil if we will not cooperate to relieve hunger?"

[From the Little Rock (Ark.) Democrat, Feb. 6, 1974]

STARVING PEOPLE IGNORED

The House voted 155 to 248 against an administration-sponsored bill last week that would have committed the U.S. to a $1.5 billion loan to the International Development Association. The money goes to increase the production of energy and to improve agriculture in the world's poorest countries—places like sub-Sahara Africa, Bangladesh and India where people are literally starving to death.

The World Bank dispenses this money to the poor countries in the form of "soft loans," which have no interest other than an annual service charge of three-fourths of 1 per cent. The terms include a 50-year maturity period with a 10-year grace period.

The proposal represented a reduction from the United States' regular contribution, from 40 per cent to 33 and one-third per cent. Even at 40 per cent, the United States was contributing less of its gross national product than 14 of the 16 most prosperous nations. Furthermore, inflation has reduced the value of the money available considerably during the past few years.

President Nixon anticipated that Congress might oppose the aid, so, with the help of World Bank President Robert McNamara, he persuaded the other industrial nations of the world to increase their "soft loans" to the poorest countries from 40 per cent to 66 per cent, which allowed the United States to reduce its contribution from 40 to 33 per cent.

But he obviously underestimated the amount of opposition he had in Congress. It seems to be a combination of things, not the least of them Watergate. Others are the growing isolationism resulting from Vietnam, other setbacks abroad, concern about the oil shortage and the dollar. Another factor is the growing opposition in Congress to all kinds of foreign aid. Mr. Nixon marshalled support from only 47 Republicans, while 137 opposed the bill.

It is unfortunate that such matters have to result in cruelty toward poor countries that are being hurt much more than the United States by energy and economic conditions. In rich countries like the United States, the problem for most people is simply doing without a few luxuries. But for the poor, it means being hungry and not keeping warm.

It is especially disturbing that Arkansas Representatives Hammerschmidt, Alexander and Thornton all voted against the assistance and that Representative Mills didn't vote.

This aid is desperately needed. The bill should be brought back to life and approved, in the interest of this country's historic commitment to helping the less fortunate. It is not just charity. A world with fewer unfortunates is a safer and more stable world to live in.

The administration is devoting its attention now to the Senate, hoping that it will pass the bill and thereby keep it alive for another hearing by the House. Although Arkansas Sens. J. William Fulbright and John McClellan have recently been voting against foreign aid proposals, we hope that in this instance they will reconsider.

[From the Fresno (Calif.) Bee, Jan. 30, 1974]

[Identical editorial in Sacramento Bee, Sacramento, Calif.]

TURNDOWN OF WORLD BANK AID HURTS THE POOREST ON EARTH

The House of Representatives' recent vote to kill a bill to aid the world's most underdeveloped countries through the World Bank's International Development Association is a disaster for millions of poor people.

In its shortsighted action the House defeated a $1.5 billion contribution by the United States, a part of a larger sharing agreement negotiated last September in Nairobi, Kenya, at the annual meeting of the World Bank.

The agreement provides for $4.5 billion over three years, with the United States' share $1.5 billion. This is the smallest share ever for the United States, which, unlike the other countries, would be allowed to spread its contribution over four years instead of three.

Most of the countries affected by the House turndown are small and most are in Africa. These nations, which rely on the World Bank for much of their outside assistance, include such countries as Niger, Upper Volta, Mali, Mauritania, Senegal and Chad, which have been undergoing one of the worst droughts in history.

Other large recipients of these funds, such as India, Pakistan and Bangladesh, also recently have been hit by drought and the cost of imported food grain has tripled.

As The Wall Street Journal, no friend of foreign aid, commented editorially: ". . . the House vote reflects a general disillusionment with the US world role, a disinterest in handouts to people who cannot vote in a US congressional election, and a disintegration of leadership both on Capitol Hill and in the White House."

Although it is not likely the House will reverse itself in the next fortnight, it is not too late to undo the damage. An administration-backed bill could be introduced into the Senate and go before the House later this

year, giving the administration time to muster Republican support.

Congress and the administration should do everything in their power to clear the funds and help the poorest people on the earth while maintaining American leadership throughout the world.

[From the San Diego Union, Feb. 1, 1974]

MISPLACED "BACKLASH"

The vote in the House of Representatives last week cutting off U.S. funds for the International Development Association is interpreted as "backlash" against the exorbitant prices being charged by the Arab states for their oil. It takes some circuitous logic to see the connection.

The IDA provides low-interest loans for poor countries to develop their economies. Few if any countries selling oil to the United States of America—or currently refusing to sell it to us—are prospective clients for IDA loans. House members decided, however, that since the most urgent economic problem of undeveloped countries is paying the new high price for the oil they import, the funds appropriated for IDA would eventually wind up in Arab pockets.

It is true that as long as the oil-consuming nations are willing and able to pay whatever the oil-producing nations demand, there is less likelihood that the price will come down to a more reasonable level. The problem is that suspending IDA aid could hasten the collapse of Third World economies.

The scope and complexity of the impact of Arab oil-pricing policies is so great that there should be a long agenda for the international energy conference President Nixon has called Feb. 11 in Washington. The advanced nations which support IDA need to decide how that agency and its economic aid can best be used to avert economic catastrophe in the Third World from which they receive many of their natural resources,

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[From the Newark (N.J.) Star-Ledger, Feb. 2, 1974]

POOR CHOICE

In a period of rampant global inflation, the harshest impact is on the poor of the world, a fact that apparently escaped the House of Representatives in its insensitive denial of new U.S. contributions to the World Bank's International Development Association.

The funds are desperately needed for alleviating the plight of hundreds of millions of people in the poorest nations of the world, some of them facing mass starvation in Bangladesh, in sub-Saraha Africa and in India.

Ironically, this country was being called on to give a smaller share than it had in the past—a reduction from 40 per cent to a third of the $4.5 billion fund that would underwrite subsistence and development grants over a three-year period. And even at the higher rate, the U.S. would have been putting up less of its gross national product than 14 of the 16 most prosperous industrial nations. Inflation has sharply reduced the value of IDA loans by 30 per cent in recent years.

None of this, unfortunately, was sufficient to impress House members with the urgency of an affirmative action. The unthinking rejection no doubt reflects growing disillusionment with foreign aid and the lack of influence of a weakened Presidency. It should be apparent—but it wasn't on Capitol Hill—that this is not a "give away" program but an enlightened, reasonable approach to foreign aid.

Under its broadened structure, the IDA is now able to enlist the resources of oil-rich countries as well as the traditional donors for redistribution among countries still in need of investment capital. These projects provide direct benefits to the impoverished elements in less developed countries, rather than pumping funds into institutions at the top, as was the practice in the past when there was the unrealized hope that these benefits would filter through to the poor.

There is a practical aspect to this type of foreign aid—a constructive economic rapport between prosperous and poor nations that has long-range advantages that no longer can be ignored in the face of the economic confrontation generated by self-serving Mideast oil countries. The ill-advised House action should be reversed if at all possible—before it is too late.

[From the Garden City (N.Y.) Newsday, February 5, 1974]

BUT NO GENEROSITY IN CONGRESS

A Canadian broadcaster named Gordon Sinclair has attracted a lot of attention recently with a fervent declaration that Americans are "the most generous and possibly the least appreciated people on all the earth." He may be right about appreciation, but we're not so sure anymore about generosity.

Rated according to their government's current commitment to the International Development Authority, Americans would rank no higher than 14th most generous people on all the earth. That's because 13 other rich nations have pledged a greater share of their gross national product to IDA, which makes unsecured loans—for long terms, at low interest—to the world's poorest underdeveloped countries. The United States share is supposed to be $1.5 billion, which is less than two-tenths of one per cent of the American GNP.

But the richest nation on earth has reneged even on this modest commitment to the poorest. The House of Representatives voted last month to kill the bill that would have authorized the $1.5 billion. Despite the President's backing, the bill found fewer supporters in his own party than among the Democrats. Within the Long Island Republican delegation in the House only Representative John Wydler of Garden City, one of the party whips, voted for the bill.

Fortunately the Senate Foreign Relations Committee is still considering an IDA bill, which the Senate could pass and send to the House. New York's senior senator, Republican Jacob Javits, is a member of that committee. We hope the kind of mail he gets on this issue in the next few weeks will make it clear that the richest nation on earth isn't too stingy to spare two-tenths of one per cent of its total output to help the poorest help themselves.

[From the Fort Worth Press, Jan. 28, 1974]

A WRONG VOTE

The House should reconsider its lopsided 248–156 vote against a new $1.5 billion U.S. contribution on the International Development Association (IDA), the branch of the World Bank that makes "soft" loans to the poorest of the world's poor nations.

The administration bill to fund the IDA was beaten by a combination of circumstances, chief among which was the oil price squeeze and the widespread suspicion in the House that a great deal of the $1.5 billion would ultimately find its way into the treasuries of extortionate Arab oil prices.

Lending credence to this theory was a World Bank calculation that for 41 of the have-not nations the increases in the price of the oil they must import would more than eat up the total foreign aid they will receive from all sources this year. Hence, the House reasoned, the U.S. contribution to IDA would do no more than further enrich oil-producing nations that are plucking the industrial western world like a helpless chicken.

As tempting as the theory is, it won't stand analysis. If the U.S. reneges on its promised contribution to IDA, so will other wealthy nations, thus the total cost to poor countries will be some unknown multiple of $1.5 billion, and it is going to hurt them cruelly. More than the oil imports they need, it will deprive them of public health services, improved agriculture, power and water projects, roads and bridges—in short, everything they need to lift their people out of the hopeless morass of poverty into which they were born.

[From the Hartford (Conn.) Times, Jan. 27, 1974]

HOUSE MUST REVERSE "SOFT LOAN" VOTE

The House of Representatives last week rejected, by a 248–155 vote, a $1.5 billion American contribution to the International Development Association, sometimes called the "soft loan window" of the World Bank.

That vote should be reversed. The United States is not so hard-pressed economically that we must turn our backs on needs elsewhere.

IDA's program of long-term loans has developed since 1960 an admirable track record for effective projects to help developing nations build up their own economies toward self-sufficiency.

And as other nations grow more prosperous, the United States is being asked in this fourth "replenishment" of IDA's lending reserves to give only 33 per cent, rather than the 40 per cent of past years; others increasingly share the burden.

This is no time for us to hold back.

One reason for generous American participation was spelled out in testimony before a House committee by C. Fred Bergsten, a senior fellow at the Brookings Institution: Our increasing need for friends around the world.

The oil crisis has brought home to us the fact that we no longer dominate international trade and finance; the recurring crisis of floating currencies reminds us that complex international monetary relationships can no longer be skewed to meet our needs in disregard of others' problems.

And the oil crisis is a warning that many of the resources that we and other industrial nations need can no longer be taken for granted. It is increasingly a seller's market that governs the price of raw materials; cartelization and nationalization are possibilities in most of the resources we need to import to keep our economy going.

Simply accepting helplessly the demands of raw-material producing nations, the Arab oil embargo has taught us, is not an attractive option. Nor is retaliation—even financial and trade retaliation, when those weapons are available. Military retaliation is even less attractive.

The better course, Mr. Bergsten suggests, is "pre-emption": Helping the developing nations toward self-sufficiency through generous multilateral programs like that of the World Bank's IDA, providing them the wherewithal of growth without making more coercive approaches necessary.

But buying insurance against escalating demands by the "Third World" ought not be the only or even the primary reason for American support of the IDA program.

There is a moral obligation to help needy nations help themselves—and IDA does that well.

Its development credits are for a term of 50 years, repayable beginning in the tenth year of a loan, with only a small service charge to cover administrative costs. The World Bank has been exceptionally successful in seeing that loans are used for worthwhile projects and in providing technical assistance that assures the projects will be carried through.

The United States can be proud to have played the major role in IDA's program over more than a decade. The fact that oth-

ers are now helping carry more of the load is added reason to continue our own support.

[From the Salt Lake Tribune, Jan. 26, 1974]

HOUSE SHAMES UNITED STATES BY DENYING VITAL AID THROUGH WORLD BANK

We refuse to believe that even a bare majority of the American people want to cut out U.S. contributions to the World Bank, a major source of vital aid for deprived millions all over the globe. Yet the House of Representatives did just that Wednesday.

At the time of the House vote the world's wealthiest country was contributing only a tiny fraction of its national production to aid underdeveloped countries. Total U.S. aid, including that to the World Bank, was less percentagewise than that of Australia, Belgium, Canada, Denmark, France, Germany, the Netherlands, Norway, Sweden and Great Britain.

Prior to the House vote the U.S. Agency for International Development reported that in 1971 (latest year for which figures were then available) all forms of U.S. economic assistance combined totaled but three-tenths of one percent of the gross national product (GNP).

Put another way, the Department of Defense spends more in 14 hours than the entire United Nations World Food Program spends in a year. Other comparisons published by Paul and Arthur Simon in their book, "The Politics of World Hunger," reveal that in the same 14 hours the Defense Department spends more than the World Health Organization and the Food and Agriculture Organization combined. U.S. allocations for military purposes are 60 times greater than those for economic assistance.

This is not to say that a certain, even large percentage of U.S. expenditures should not go to defense. But the figures underscore the pathetically small amounts going to humanitarian purposes. And, if the House action is not reversed, the comparison will become even more shameful.

While the people back home can be forgiven for not understanding the broad scope of the World Bank's life and death work in underdeveloped areas, the members of the House of Representatives cannot be forgiven. They knew, or should have known, what denial of World Bank funds would mean to the miserable millions in the world's poorer countries.

The sorry House response to a modest plea from the bank is attributed to many influences and trends afoot in America. Disenchantment with foreign aid in general is one. Belt-tightening in the face of predicted shortages at home is another. And a gathering cloud of isolationism figured in the House reaction, too. None of these or other excuses mitigate the cruel fact that a wealthy nation, once distinguished for its humanitarian generosity, has turned its well-fed back on starving, sick, uneducated and hopeless masses of fellow humans.

Has the United States really sunk that low? We think not. But until the House is made to realize the enormity of the disaster it has invited, the answer must be a regretful, yes.

[From the San Juan (P.R.) Star, Jan. 27, 1974]

AN ILL-CONSIDERED VOTE

The House should reconsider its lopsided 248–156 vote against a new $1.5 billion U.S. contribution to the International Development Association (IDA), the branch of the World Bank that makes "soft" loans to the poorest of the world's poor nations.

The administration bill to fund the IDA was beaten by a combination of circumstances, chief among which was the oil price squeeze and the widespread suspicion in the House that a great deal of the $1.5 billion would ultimately find its way into the treasuries of extortionate Arab oil princes.

Lending credence to this theory was a World Bank calculation that for 41 of the have-not nations the increases in the price of the oil they must import would more than eat up the total foreign aid they will receive from all sources this year. Hence, the House reasoned, the U.S. contribution to IDA would do no more than further enrich oil-producing nations that are plucking the industrial Western world like a helpless chicken.

As tempting as the theory is, it won't stand analysis. If the U.S. reneges on its promised contribution to IDA, so will other wealthy nations. Thus total cost to poor countries will be some unknown multiples of $1.5 billion, and it is going to hurt them cruelly. More than the oil imports they need it will deprive them of public health services, improved agriculture, power and water projects, roads and bridges—in short, everything they need to lift their people out of the hopeless morass of poverty into which they were born.

If the poor nations of the earth conclude that there is no compassion left among the wealthy countries, and no hope of further help in improving the lot of their woefully needy people, the ultimate price to the United States and the rest of the Western world might be very high indeed. Ever since the Marshall Plan foreign aid has been firmly based on the enlightened self interest of the United States. It would be a pity to abandon this philosophy now in an attempt to strike back at oil blackmail.

The administration promises to resubmit a scaled-down request for new IDA funds. We hope it does so. We hope too that the White House will support the new request with more vigor and purpose than it showed during the House debate over the original request.

[From the San Francisco Chronicle, Jan. 25, 1974]

BLOW TO IDA

The rich nations of the world channel some of their help to the poor nations through IDA, the International Development Association, an agency of the World Bank. Its low-interest loans for development have helped immensely to improve the lot of the most disadvantaged people. But IDA's funds will run out in June if they are not replenished, and it has been expecting a total of $4.5 billion in new funds from the industrial countries, of which $1.5 billion was to come from the United States.

Wednesday the House knocked IDA galley west by the vote of 248 to 155 and so negated a commitment for the United States to pay this one-third share. The administration had evidently expected the authorization to go through, but Republican congressmen were the chief defectors. This fact heightened the administration's embarrassment. Secretaries Shultz of Treasury and Kissinger of State, denouncing the House's failure to live up to an internationally negotiated commitment, have promised to try again to find a way to get something for IDA. They are right to persist.

[From the Salem (Oreg.) Journal, Jan. 26, 1974]

COMMITMENT UNITED STATES MUST FILL

The International Development Association (IDA) is an affiliate of the World Bank. It was created in the late 1950s, partly through the initiative of the U.S. Congress, to become a channel for development loans and technical assistance to developing countries not financially able to meet the terms of loans from the World Bank itself.

IDA obtains its fundings through commitments from its richer member countries, of which the U.S. is one; special contributions made by some members; transfers of funds from the World Bank's net earnings and IDA's own accumulated net income.

Twenty-four member nations and Switzerland have recommended a $4.5 billion increase in IDA's resources in a fourth replenishment and, subject to approval by Congress, the U.S. has agreed to provide $1.5 billion. This is a decrease from the 40 per cent U.S. share in the third replenishment, but other industrial countries such as Japan and Germany are taking on larger parts of the burden.

The Nixon administration has asked for authorization of the latest commitment in HR 11354, which has been approved unanimously by the House Committee on Banking and Currency. A similar bill, S 2665, is under consideration in the Senate Committee on Foreign Relations.

The U.S. accepted a moral obligation to help developing nations, though in recent years the U.S. share of its gross national product allocated to foreign aid is only a fraction of what it used to be. Many other advanced countries are now contributing more on a per capita basis than the U.S.

There are practical as well as moral reasons why we ought to accept our full share of responsibility as an industrialized nation. We are dependent on a great many raw materials imported from Third World nations. Events of recent months and years prove they have growing power to control events and, if their legitimate aspirations are denied, to react in ways we may consider irrational.

In the long run, the enormous gulf between the rich and poor nations will be detrimental to our own best interests. For the sake of humanity and in the interests of the kind of world our grandchildren will inherit, we ought to be full participants in the kind of work IDA is doing.

[From the Rochester (N.Y.) Times-Union, Feb. 5, 1974]

WORLD BANK DESERVES SUPPORT

With Americans' own wallets getting thinner, the idea of sending money overseas as foreign aid is getting less and less popular.

So perhaps members of the House of Representatives were thinking about the voters back home recently when they stopped a new United States contribution to the International Development Association of the World Bank.

The association is the major source of aid for the 21 countries classified by the United Nations as the "least developed" in the world.

It supplied 30 per cent of all the aid to India in the last year, for example. Some of its African clients are suffering from one of the worst famines in history.

There have been serious abuses of foreign aid in the past.

One is that money given to some governments never seemed to benefit the people who needed help most. But the association programs were designed to make sure that doesn't happen.

Another has been that the United States has sometimes contributed more than its share, compared with other wealthy countries.

But this year the U.S. was to cut its percentage of the total $4.5 billion in donations from about 40 per cent to 33 per cent. Japan's contribution was to triple and West Germany's was to double.

Under the World Bank agreement, if the U.S. or any other country withholds its contribution, all others will withhold theirs too.

The U.S., the world's richest nation, has a moral responsibility to help the poorest nations. But in addition to that, foreign aid is in this country's own best interest.

Countries that receive aid often use it to buy American products, helping create

jobs and improve the economy. And American industry depends on raw materials which come from many underdeveloped countries.

The Administration, which was surprised by the defeat of the aid bill in the House now plans to take its request to the Senate.

The Senate should approve. Then the House, as one Administration official put it, will get another chance to do the right thing.

[From the Roanoke (Va.) World-News, Jan. 31, 1974]

THUMBING OUR NOSE A BIT EARLY

The House vote the other day on the World Bank's International Development Association might have been set to the tune of "America" and accompanied by the recording of Gordon Sinclair's stirring words. Sinclair, the Canadian broadcaster, is booming from every radio in the country, with such words as: "They (the Americans) will come out of this with with their flag high. And when they do, they are entitled to thumb their nose at the lands that are gloating over their present troubles."

However, the members of the House who voted against a modest U.S. contribution to the World Bank's development arm didn't even wait for us to "come out of this thing." They are telling the rest of the world to go to hell too early, according to the Sinclair scenario. The contribution, $1.5 billion, was negotiated by the administration within a package that included increased contributions by the other industrial nations, allowing the U.S. to reduce its contribution by one third and spread it out over four years. Even at the former, higher level, the U.S. was putting up a smaller share of its gross national product than 14 of the 16 most prosperous nations.

N.Y. Timesman James Reston pointed out in a recent column what an embarrassing position the administration is placed in by the House vote. Washington is trying to get the industrial nations to present a united front in dealing with the Arab oil crisis. Sec. of State Henry Kissinger, reacting to the vote, asked the legitimate question: "How can we expect cooperation on oil if we will not cooperate to relieve hunger?"

It is a difficult question to answer. The House has thumbed its nose, and in doing so has potentially punished poor nations who have already been hurt substantially by the oil crisis and who are absolutely powerless to do anything about it. There is a chance that the Senate can come up with legislation of its own and toss the issue back to the House for reconsideration. We hope that happens, because what the House displayed was not national pride but national arrogance and stupidity.

[From the New York Post, Feb. 12, 1974]

"THE ONLY WAR WE SEEK . . ."

The U. S. government has done a great deal in the past two years for survivors of the merciless drought that has seared thousands of lives and parched tens of thousands of square miles in East and West Africa. It has more to do, there are many ways of irrigating desolate land and one of them is with a flow of capital.

Over the shorter term, Washington's contributions have been generous.

But this country's reluctance to take part in any long-term investment in the regions' development has been equally conspicuous. It was most recently—and shamefully—demonstrated by the House vote last month against meeting a request for $1.5 billion from the World Bank's International Development Assn.

No one disputes the importance of feed grains to a starving village. It is equally important that land be reclaimed to grow seed, pasture livestock and raise children, and that a nation's resources be exploited for its people. This is the enterprise in which development assistance is vital. These are things the late Harry Truman had in mind when he launched Point IV aid and declared "the only war we seek" was against hunger and misery. Secretary of the Treasury Shultz says the White House will mount a campaign for the IDA grant. It deserves support in Congress.

VETO OF THE ENERGY EMERGENCY ACT

Mr. TAFT. Mr. President, I would like to submit for the RECORD a recent editorial from the Columbus Dispatch, a Columbus, Ohio, newspaper. This editorial supports the President's veto of the emergency energy legislation, stating that a rollback in prices as provided in the bill would not guarantee one additional barrel of oil, and that it most certainly would not provide the energy industries with incentives to either increase production or to explore for new sources of energy. I share this view.

The lower prices for gasoline and other petroleum products would lead citizens to demand greater quantities of these products even though these supplies are unavailable because of the Arab oil embargo. This would make present shortages seem worse and increase both the length of gas station lines and the pressures for gasoline rationing. In voting against the emergency energy legislation and in sustaining the veto, I held these views, and I was pleased to see that the Columbus Dispatch agreed.

I commend this editorial to my colleagues for their information and ask unanimous consent that it be printed in the RECORD.

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

VETO OF ENERGY BILL RAP AT EXPEDIENCY

President Nixon's veto of the congressional energy emergency bill was less a rejection of efforts to solve an important problem than it was a condemnation of shortsighted political expediency.

That shortages of vehicle gasoline and home heating oil have high political impact goes without saying. That emphasis on such factors in an election year can harvest an extra vote here and there also is expectable.

However, what too many officials concerned with this nation's energy problem have been doing is to focus attention on today with little regard to tomorrow.

America's energy problem must be approached in phases and the measure Congress sent to the President barely touched on what America must do in the energy field after current shortages are either corrected or minimized.

No one relishes the thought of automobile gasoline selling at 75 cents or $1 a gallon for it would be great not to have to pay more than two bits a gallon, as in the good old days.

That is the primary thrust of the bill Mr. Nixon said he was forced to veto—a rollback in prices.

The veto message envisioned steps backward rather than forward movement. It saw gasoline rationing as a direct result of lower production.

What Congress was voting for when it passed the measure was not a solution to the energy shortage but a greater shortage.

Additionally, Congress obviously was not as concerned with solving the energy problem as it was in keeping domestic political temperaments cool until after the November election.

The vote in Congress represented more fear than courage, more posturing than common sense.

One thing is certain, even to those who advocate fuel prices at a low level: a rollback in consumer costs will not guarantee one additional barrel of fuel.

It most certainly will not provide energy companies with incentive to either increase production in existing facilities or to explore for new sources of energy.

One thing Congress has given too little attention is the question of energy company profits, whether excessive or windfall, and how these profits can excite needed incentive.

What Congress should now be doing, rather than trying to muster votes to override a presidential veto, is to again tackle the whole energy problem, devoid of the distraction embodied in the price rollback feature.

This nation's energy crunch is too important to be bogged down in shortsightedness or even political posturing with more eyes on the ballot box than on the gasoline tank.

The country needs a remedy for the present shortage problem. But more importantly, it needs a master plan which addresses itself to the future, to the years 1980 and 2000.

The vetoed measure fell far short of what is important.

GOVERNMENT CREDIBILITY

Mr. MUSKIE. Mr. President, in a timely column appearing in the Outlook section of the Washington Post yesterday, David Broder has addressed a subject which all of us should begin to think about as our Nation approaches its Bicentennial Anniversary.

The issue, put quite simply, is the need to restore to good health a Federal system which is not functioning as well as it should in the eyes of those whom it is supposed to serve.

The implications of this issue are profound indeed. If we are going to address it seriously, we must be prepared to challenge some of the most basic premises upon which Government—particularly at the Federal level—has come to function in the postwar years.

Yet, if we are to make the most of the unique opportunity offered by our Nation's 200th birthday, we cannot afford not to ask ourselves these kinds of questions. From all around us, we hear that the American people have lost confidence in the way their Government operates. We must ask ourselves "Why?"

We also hear that the American people believe that the system can be run better, and that they are willing to participate in a system more responsive to them. We must ask ourselves "How can we meet such a fair and reasonable expectation?"

I intend to explore such questions as these during the present session of Congress, through the Subcommittee on Intergovernmental Relations. And I am glad to learn from Mr. Broder's column that others are planning to ask similar questions.

I commend Mr. Broder's article, entitled "The States Step Forward," to my colleagues. I trust you will find it as timely and thought-provoking as I did. I ask unanimous consent that Mr. Broder's article be printed in the RECORD.

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

THE STATES STEP FORWARD

(By David S. Broder)

The mayors and the governors were in Washington last week for their winter meetings, and next week a group of scholars will assemble here for two days to discuss "Using the Federal System More Effectively."

The meetings come as a healthy reminder to Washington that this is not a one-dimensional government but one in which most of the decisions are made at the state and local levels.

Much of the visiting mayors' and governors' time was taken up with a pastime familiar to permanent Washington residents—grousing at Congress and the administration, whose sluggard habits of procrastination are beginning to wear on everyone.

There were chuckles of instant recognition when Norfolk, Va., Mayor Roy B. Martin, Jr., the president of the U.S. Conference of Mayors, said the national government is beginning to look "like a slow student . . . to whom each new problem comes as an overwhelming surprise."

To the local officeholders, those problems are not abstractions or statistical deviations. They are all too real—whether they are discussing the doubling of unemployment in some cities, the tripling of propane prices, or the looming shortage of fertilizers.

But the mayors and governors brought more than complaints to Washington. They also brought a sense of their growing capability to cope—with a sense they expressed in accents as different as the cities and states they represent.

The new confidence came through most clearly in the keynote speech of the governors' chairman, Daniel J. Evans of Washington state. After a generation marked by multiple attempts from Washington "to poke and prod and mold us into a homogeneous mass," he said. Americans have come to realize that "national progress must lie in a shared experience" derived from the experiments in the "50 working models of representative democracy" that are the states.

Evans argued that to the degree the states and cities redefine their relationship with the national government as "a partnership essentially of equals . . . the years just ahead of us can be the years when the balance is restruck and the federal system reassumes the form envisioned by the founders of our Republic."

Whether that 18th-century notion of a deliberately divided and layered government makes sense in the late 20th century is one question very much on the mind of those who will gather here this week to discuss the state of the federal system as America approaches its bicentennial.

In a volume of essays distributed to conference participants by the Center for the Study of Federalism at Temple University in Philadelphia, Vincent Ostrom, an Indiana University political scientist, lists no less than 10 major advantages in a federal system of government.

They range from the claim that "citizens in a highly federalized political system will be able to exercise greater voice in the conduct of public affairs" than those in a large unitary government, to the reiteration of Hamilton's and Madison's arguments, in the original Federalist Papers, that a federal republic is less susceptible to military coups.

In reality, the reputation and the viability of American federalism will depend less on the acceptance of such abstract arguments as these than on a demonstration by state and local governments that they are dealing with the problems and needs of America's citizens.

That is why it is welcome news that the National Governors' Conference has decided to revise the format of its annual summer meeting to make it a showcase for the efforts and accomplishments of state government.

Dan Evans, who will be host to the meeting in Seattle in June, announced that the governors have been invited to present—both as written papers and in exhibits, displays and convention booths—programs exemplifying "state leadership in the federal system."

Later this month, he is launching an ambitious citizens' program in his own state to outline alternative future growths options for Washington state, as a guide to needed planning decisions. Evans says he hopes the effort will "persuade people to lift their eyes" beyond the current malaise.

The papers received from other states, he said, show state innovations "in such varied fields as land use planning, school finance, energy, emergency medical services, social services delivery, inmate education and training, management improvement, productivity, volunteers in state government service, regionalism, tax relief and long-range investments."

Nothing could do more to restore Americans' battered sense of self-confidence than a convincing demonstration that government is working—somewhere. In undertaking to prove that it does, the governors are making the right move at the right time in the right way.

THE FERTILIZER SHORTAGE

Mr. BARTLETT. Mr. President, in the past few weeks there have been repeated warnings of the increasing severity of the fertilizer shortage. We are rapidly approaching the point where food supplies for late this year will be seriously threatened because the necessary steps have not been taken to increase fertilizer supplies.

This matter must be of concern to all Americans and indeed to the entire world, because everyone will be affected. Since Oklahoma is a large producer of agricultural products, the shortage will have a more immediate and direct effect on the people of my State.

One fact about fertilizer which has been mentioned frequently, but which many people seem to ignore is that one of the essential raw materials for the most commonly used fertilizer is natural gas. Our shortage of fertilizer can be traced in large part to our shortage of natural gas which results from the shortsighted low prices imposed by the FPC. Other price controls, imposed until recently by the Cost of Living Council, on fertilizer have further exacerbated the problem.

Both of these examples clearly demonstrate the falacy of Government attempting to regulate our economy. Every such attempt in recent history has resulted in shortages of one commodity or another and not until we take action to permit the return to a free market economy will the situation be corrected.

The grave concern of the people of Oklahoma about this situation is evidenced by a resolution adopted recently by the Legislature of the State of Oklahoma. I concur in this expression of concern by my fellow Okies and ask unanimous consent that the resolution be printed in the RECORD.

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

RESOLUTION

A concurrent resolution memorializing the Congress of the United States to take such action as is necessary directing appropriate Federal agencies to assure the availability of adequate supplies of fertilizers for the needs of agriculture in Oklahoma and other States; and directing distribution

Whereas, agriculture is Oklahoma's largest single industry, producing almost two billion dollars in sales in 1973; and

Whereas, the agricultural industry in Oklahoma and throughout the nation is heavily dependent upon the use of fertilizer in order to increase yields of productivity, enhance quality and replenish the fertility of the soil; and

Whereas, a critical shortage of fertilizer for agricultural use has developed, with fertilizer stocks on February 1, 1974, being 43 percent below the level of a year earlier, raising dire portents for the 1974 crop year and thus contributing further to the spiraling inflation threatening the economy of this nation with catastrophe;

Whereas, a number of factors have converged to create the critical shortage of fertilizer, including the reduction of natural gas supplied to domestic fertilizer producers; the diversion of nitrogen to explosives manufacturers; difficulties in transportation resulting from shortages of fuel and contributing to inflated prices for available fertilizers; the failure of responsible federal officials to recognize the devastating ramifications to the American economy of an energy shortage and to plan for such a contingent emergency several years ago when danger signals of the impending crisis first began to be recognized; action by the federal Cost of Living Council placing a ceiling price on domestic sales of fertilizer, thus encouraging producers to take advantage of higher export prices, with 15 percent of all fertilizer production diverted to meet foreign demand; increased crop acreage for 1974 production due to high domestic and export demand; higher farm prices providing an incentive to produce more with higher fertilizer utilization; and closings of fertilizer plants and curtailment of planned expansions because of the uncertainty of energy supplies and regulations of the Environmental Protection Agency; and

Whereas, Oklahoma's farmers have planted 6,800,000 acres of wheat, a 13 percent increase over the 6,000,000 acres seeded for the 1973 harvest, and the acres planted to cotton, corn and other crops have been increased over 1973 plantings; and

Whereas, in order for fertilizer to have a beneficial effect on crop productivity it must be applied within limited time periods and under specific conditions; and

Whereas, in order for fertilizer to benefit the 1974 wheat crop it must be applied within the next 15 days, and without application of nitrogen top dressing within this period it is possible wheat yields will decline by as much as one-third; and

Whereas, total tonnage of fertilizers available is not adequate to meet the needs of farmers for the 1974 grain crop, with supplies being critically short in Oklahoma Panhandle counties, and this shortage will be worsened when row crops are planted; and

Whereas, it is predicted that supplies of nitrogen, which is the predominant fertilizer used in Oklahoma, will be short for the next two or three years unless remedial action is taken immediately to insure the production of more fertilizer for agricultural use; and

Whereas, unless steps are taken immediately to insure the availability of adequate supplies of fertilizer to meet the needs of farmers in Oklahoma and elsewhere throughout the nation, reduced crop yields will be a certainty, thus creating further shortages of food and fiber and intensifying the spiral of inflation threatening the foundations of the American economy.

Now, therefore, be it resolved by the Senate of the 2nd session of the 34th Oklahoma Legislature, the House of Representatives concurring therein:

Section 1. That the Congress of the United States be and hereby is respectfully requested to take such action as may be necessary to direct the federal Cost of Living Council, the Environmental Protection Agency, the federal Energy Office and other appropriate agencies to assure adequate supplies of fertilizer to the farmers of Oklahoma and the nation for the 1974 and succeeding crop years.

Section 2. That duly authenticated copies of this resolution be forwarded to all members of the Oklahoma delegation in the Congress of the United States at their offices in Washington, D.C., for their immediate consideration and action.

U.S. TROOPS IN EUROPE

Mr. MANSFIELD. Mr. President, an outstanding editorial entitled "Who Needs U.S. Troops in Europe" appeared in the March 8, 1974, edition of Newsday. It raises the basic questions with respect to the apparent lack of credibility on the part of the Europeans as reflected by their present attitudes toward the American commitment of 300,000 U.S. forces stationed in Europe. It comments on the waste of $11 billion of U.S. taxpayers for so little in return. It comments on the go-it-alone attitude of the Europeans with respect to the Middle East.

I believe the questions raised by this editorial are extremely perceptive and I ask unanimous consent that the text of the editorial be printed in the RECORD.

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

WHO NEEDS U.S. TROOPS IN EUROPE?

The United States keeps 300,000 troops in Europe to defend its NATO allies against a Soviet attack that no one really expects will ever come. The direct cost of this huge garrison is about $4 billion a year, and supporting it requires another $7 billion. That's a fairly solid commitment to the idea that America's fate is closely dependent on Europe's.

Europeans, on the other hand, rarely miss an opportunity to demonstrate their independence. When the Arabs attacked Israel last fall, Europe wouldn't help out with the U.S. arms airlift. When the Arabs cut back on oil production, our allies started trying to make their own deals for fuel. When the U.S. tried to promote measures to prevent oil prices from going even higher, the French refused to cooperate. And this week the nine Common Market countries quietly put out a feeler to the Arabs for long-term economic, technical and cultural cooperation. They were too discreet to mention oil.

So the question arises: If Europe is so determined to be independent of the U.S., why is the U.S. spending $11 billion a year to demonstrate its commitment to Atlantic interdependence? Why shouldn't the Europeans defend themselves?

Those 300,000 Americans in Europe are supposed to be a tripwire for nuclear retaliation if the Russians take leave of their senses and invade Western Europe. The French are constantly warning that the U.S. won't come through when the chips are down. If the tripwire isn't credible to our own allies, why should the Russians worry about it? Why not bring the troops home?

A substantial reduction of U.S. forces in Europe would not only reduce defense expenditures in the federal budget; it would also strengthen the dollar by improving our balance of payments. Properly executed, it could mesh neatly with Defense Secretary James Schlesinger's declared ambition to improve the Pentagon's teeth-to-tail ratio; the U.S. might not have to provide for 250,000 military dependents in Europe if combat troops were rotated out after six-month tours and all but the most essential support units remained on this side of the Atlantic.

Also, such a cutback would force the Europeans to face up to their own defense responsibilities and perhaps thereby drive them closer to the political unity.

We happen to think Atlantic cooperation is important—not only to Americans but to Europeans as well. But if the Europeans don't think so, that's their right. What's not their right is a free ride on the backs of 300,000 American soldiers in Europe and millions of American citizens who pay to keep them there.

SALARY INCREASES FOR GOVERNMENT EMPLOYEES

Mr. McGEE. Mr. President, there continues to be a serious problem involving the compensation, not only of this Government's top officers but also its senior career employees. Some of these people are suffering what one of my recent correspondents has termed a "quiet rage" because of the inequitable situation imposed on them by the workings of the law and by our recent action disapproving all salary increases as proposed by the President for those on the executive pay schedule.

An excellent presentation of just how this situation affects senior career employees, those in the so-called supergrade positions, is contained in a letter I recently received from an employee in Massachusetts, who forwarded me a copy of an earlier letter he had written to his Representative, the Honorable MARGARET M. HECKLER. I ask unanimous consent that this letter be printed in the RECORD.

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

OCTOBER 3, 1973.

HON. MARGARET M. HECKLER,
House of Representatives,
Washington, D.C.

DEAR CONGRESSWOMAN HECKLER: For some time now I have been intending to see you to discuss a problem that has been getting progressively worse but I have not found it convenient to visit your office; therefore, I am taking the liberty of writing you and furnishing you data to point out the problem. The problem is the freezing of salaries of those employees in super-grades and PL-313 positions.

Since 1970 there have been five salary increases for government employees in the General Schedule. Tabulated below are examples of increases for Grades eleven, thirteen, and fifteen:

Date of increase	Percent increase	Typical salaries (4th step) GS-11	GS-13	GS-15
Prior to 1970		$12,355	$17,393	$23,749
Jan. 1, 1970	5.9	13,096	18,437	25,174
Jan. 10, 1971	5.9	13,878	19,537	26,675
Jan. 9, 1972	5.4	14,641	20,612	28,142
Jan. 7, 1973	5.1	15,394	21,671	29,589
Oct. 1, 1973	4.8	16,138	22,744	31,089
Increase summation	[1] 27.1	3,783	5,351	7,340

[1] Actually 30 percent when compounded.

These increases reflect a normal cost-of-living adjustment as well as the principle of comparability with non-government positions of the same kind. The principle of comparability was established by the Congress in 1969.

With the super-grade GS-16, 17 and 18 and PL-313 in the same salary schedule the limitations imposed by Section 5308 of Title 5 of the US Code create some serious inequities that impact on key personnel here and elsewhere. The data listed below show how these limitations cause employees to fall behind in real salaries because they have not received increases in some cases during the time that all other civilian and military have had cumulative increases of over 30%. You will note that for the first time the GS-16 has also moved into the zone of salary freeze.

Date of increase	Percent increase	Salary scheduled versus salary received: GS-16, 4th step Scheduled salary	Actual salary	GS-17, 4th step Scheduled salary	Actual salary	GS-18 (only step) Scheduled salary	Actual salary
Prior to 1970		27,549	27,549	31,874	31,874	33,495	33,495
Jan. 1, 1970	5.9	29,202	29,202	33,786	33,786	35,505	35,505
Jan. 10, 1971	5.9	30,943	30,943	35,801	35,801	37,624	36,000
Jan. 9, 1972	5.4	32,645	32,645	37,770	36,000	39,693	36,000
Jan. 7, 1973	5.1	34,323	34,323	39,712	36,000	41,734	36,000
Oct. 1, 1973	4.8	36,085	36,000	41,774	36,000	43,926	36,000
Increase summation	[1] 27.1	8,536	8,451	9,900	4,126	10,431	2,505

[1] Actually 30 percent when compounded.

These repetitive losses of actual salary compared to scheduled salary have a dual effect. First, the employee is denied comparable salary growth compared to other government employees and secondly he may be penalized in his retirement annuity because his annuity is based on the average of high three years of actual salary *not* on scheduled salary. In some cases this latter penalty may be more severe than the first because it affects his annuity for the rest of his life. For example: a retiring GS–18 with 22 years of service would receive approximately 40% of his high three years based on the actual salary of $36,000 for an annuity of $14,400. The annuity which he would be entitled to if he were paid the salary of $43,926 would be $17,570. This $3,170 penalty in his annuity could create severe hardships for him in the years to come.

It seems to me that the key people here and elsewhere are paying an extremely high penalty for being leaders in their field. When it was a salary deficit of $1,624 in 1971 for the GS–18 one could brush it aside as being only temporary and "that's the way the ball bounces". But when one adds it all up for the four years it comes to $18,977 actual salary deficit plus the potential $3,170 in annuity which multiplied by life expectancy of 13 years for a man of 65 totals another $41,210. It is no longer possible then just to smile and like it. The fact is that this is so unfair that one would not believe it could happen if it hadn't. For example: a key employee GS–18 has received an actual salary increase since 1 January 1970 of $2,505 while a very junior journeyman GS–11 has received $3,783 and the senior GS–15 has received $7,340.

Your colleague, Representative Gilbert Gude of Maryland, has introduced Legislation to correct the inequities of the present system. I hope that my letter may stimulate you to help him get this Legislation enacted or some Legislation which will correct the problem described in this letter. Here at ——— there are seven employees affected by this salary penalty. I'm sure there are many other employees in Federal Agencies located in Massachusetts that have the same problem. Although this number of persons is small the impact that this discrimination is having on the leadership of these organizations is tremendous.

Since not all of the people affected are from your District you may wish to get the assistance of other members of the Massachusetts delegation to help in solving this important problem. I would be glad to furnish additional information if what I have said is not clear. All of the figures are quoted from Salary Schedules and can be verified.

Sincerely,

———, ———.

ECONOMISTS COMMENT ON MONDALE $200 OPTIONAL TAX CREDIT PROPOSAL

Mr. MONDALE. Mr. President, on January 28, I introduced S. 2906, which would cut nearly $200 a year from the average family's tax bill by allowing taxpayers to take a $200 credit for themselves and each of their dependents instead of the existing $750 personal exemption.

This bill would increase the purchasing power of low- and middle-income Americans by nearly $6.5 billion, and help to head off the growing threat of recession.

I am very pleased that the Senator from Minnesota (Mr. HUMPHREY), the Senators from Iowa (Mr. CLARK and Mr. HUGHES), the Senator from Louisiana (Mr. JOHNSON), the Senator from Connecticut (Mr. RIBICOFF), and the Senator from Utah (Mr. Moss) have joined me in cosponsoring S. 2906.

I am pleased also that the distinguished Congresswoman from Michigan (Mrs. GRIFFITHS), a senior member of the House Ways and Means Committee, has introduced companion legislation in the House (H.R. 13197).

Shortly after introducing this legislation, I wrote to a number of distinguished economists seeking their views on the proposal. I have now received a number of responses, and I would like to share them with my colleagues.

I am very encouraged by the support shown in these letters. While some of those responding had reservations about the proposal, they all contained extremely helpful suggestions and thoughtful comments.

It is clear from the comments I have received that there are differences of opinion on the need for a tax cut at this time. There are also differences—although fewer—on the form such a tax cut should take.

This underlines the importance of the hearings Chairman LONG has scheduled for next Tuesday, March 19, on tax cut proposals. There should be a full airing of views on such an important matter. The chairman's decision is a welcome and constructive response to the deteriorating economic outlook.

I suggested hearings along these lines in a letter to Chairman LONG last month, and I am extremely pleased that time has been found for them on the very full Finance Committee schedule.

There are three important justifications for the $200 optional tax credit.

It will help make up for the inflation and higher taxes that are imposing such a cruel burden on the average family.

It will help to head off the impending recession.

It will make our tax system more equitable.

Most of the comments I received dealt with some or all of these points.

COMPENSATION FOR INFLATION AND HIGHER TAXES

Inflation is accelerating. Prices rose 8.8 percent last year, but the rate was nearly 10 percent in the last 3 months, and consumer prices in January of this year rose at an annual rate of 12 percent.

Taxes too are going up, as inflation pushes taxpayers into higher brackets, and as payroll tax rates apply to higher levels of income.

A $200 optional tax credit would compensate—at least in part—for this erosion in workers' incomes.

Walter Heller, Chairman of the Council of Economic Advisers under Presidents Kennedy and Johnson, emphasized this justification for the $200 credit in his letter:

Inflation has eroded and is eroding the real purchasing power of the $750 exemption at a rapid rate. The boosting of that exemption to restore its previous value, therefore, ought to have a high priority. Since inflation has taken a particularly heavy toll at the modest and low income levels (especially because of the leap in food and oil prices), it is appropriate that more of the benefits of any tax adjustment today should be concentrated in the low income groups. The shift to a credit option serves this purpose.

George Perry, senior fellow at the Brookings Institution, made the same point:

Consumers real incomes have declined in 1973 as a result of soaring food prices and will decline further in 1974 as a result of soaring fuel costs. Your tax proposal would restore some of these real income losses.

Arthur Okun, Chairman of the Council of Economic Advisers under President Johnson:

In 1974 the American consumer will be spending directly and indirectly for fuel about $20 billion more than last year to get less product. This drain on the budget is bound to have serious effects on the experience of other consumer industries—what the consumer spends on oil is not available for speinding on other discretionary items ranging from movie tickets to television sets. Indeed, if the oil embargo ends and the availability of gasoline increases while its price remains high, the drain on the consumer budget will be even greater. . . .

In the present context, the provision of a consumer tax cut may help prevent the kind of retrenching in consumer living standards that might otherwise take place in response to layoffs and fuel and food inflation.

AN ANTIDOTE TO RECESSION

In a column in the March 3 Washington Post, Hobart Rowen reported that key Nixon administration advisers have concluded that the downturn in real GNP for the first quarter of this year "could be over 3 percent, and possibly as much as 4 percent."

The respected economic forecasters at the Wharton School at the University of Pennsylvania have made a similar prediction.

This is decidedly more gloomy than even the relatively cheerless report of the Council of Economic Advisers a month ago. And, of course, it can scarcely be squared at all with the Canute-like pronouncements of President Nixon that—

There will be no recession in the United States of America.

When industrial production is declining, unemployment is growing, and the growth rate is negative, it takes more than verbal legerdemain to convince people that we are not in a recession.

So far, the administration's principal method of attacking the recession has been to try to define it away.

The budget it has proposed for the 1975 fiscal year can only make things worse. It is highly restrictive, with a full employment surplus of $8 billion. This means spending will be $8 billion less than it would have to be to pump up the economy and bring unemployment down to the "full employment" level of 4 percent. This will clamp down on growth and employment even more than this year's estimated $4 billion full employment surplus, which has already served to bring the economy to a standstill.

The $200 optional tax credit would put an additional $6.5 billion in the hands of consumers, and give the economy a badly needed shot in the arm.

Most of the economists who wrote commented on this justification for the $200 credit:

Walter Heller put it this way:

Under present circumstances, with the economy sliding toward a recession, and

with the President's budget projecting an increase in the full-employment budget surplus (in NIA, or National Income Accounting terms) between fiscal 1974 and fiscal 1975, the $6.5 billion of fiscal stimulus implicit in your plan would be a welcome stimulus to a lagging economy. Moreover, it is the kind of a boost that could be translated into the withholding system and therefore into higher paychecks very quickly.

George Perry wrote:

By all available evidence, the economy is already in another recession. A boost to consumer purchasing power will help fight the downturn, lessening the rise in unemployment that is in store and improving the probability of a prompt recovery.

Robert Eisner, professor of economics at Northwestern University:

I believe that your proposed legislation for an optional $200 per dependent credit is an excellent step in the direction of stimulating the economy. . . .

Arthur Okun:

In view of the bleak outlook for consumer expenditures (which represent nearly two-thirds of our GNP), the prospects for an early upturn are very speculative. There is considerable risk that the sag could continue all year in the absence of policies to bolster activity. On the other hand, there is little risk of a self-generating upsurge in the economy that would make additional fiscal support inappropriate. Thus, a well-timed cut in consumer taxes would be an important insurance policy against a prolonged and sharp slide in employment and output. . . .

The vast bulk of the additional consumer spending will go into areas where the economy has available labor and plant capacity to meet and greet added demand. In the present situation, one can feel particularly confident that the response will increase output and employment rather than add to inflation. While a number of shortage areas remain in our economy, those except for food and fuel will be vanishing during the first half of 1974 as rapidly as they emerged during the first half of 1973. The economy's operating rates will be lower by mid-year than they were late in 1972, when lumber was the only significant product with a shortage. In the case of food, only a trivial part of additional consumer income adds to the demand for food and thus a tax cut will have virtually no effect on food prices. In the case of petroleum, the system of price controls should ensure that any increment in demand is not converted into additional inflation. Indeed, by evidencing concern and effort by the government to make up for the acute cost-of-living squeeze on the worker, a tax cut could have beneficial effects in preserving the recent moderate behavior of wages.

Others who responded were not certain that a tax cut was the right economic medicine at this point. However, most said that if a tax cut was decided upon, the $200 optional credit was preferable to an across-the-board cut or an increase in the $750 exemption.

Otto Eckstein, professor of economics at Harvard and a member of the Council of Economic Advisers under President Johnson wrote:

The economy is headed for a recession, but a tax cut would come too late. The economy is likely to be moving up at a pretty good rate by the end of the year. The economic impact of a tax cut, even if action were taken immediately, would barely be felt before then. . .

If a tax cut is undertaken, it should be in the general form of your proposal. An across-the-board tax cut would mainly benefit middle income families; it would have a very low multiplier because they are not likely to spend the cuts on automobiles and other durables.

Gardner Ackley of the University of Michigan, Chairman of the Council of Economic Advisers under President Johnson:

I am not sure that further stimulus—which could certainly not be effective for a number of months—is needed. However, there is enough uncertainty about that, that it is probably useful for tax-cut proposals to begin to be discussed and warmed up for use if extra stimulus should become necessary.

Robert R. Nathan, head of Robert R. Nathan Associates, Inc. in Washington:

I think we are definitely in a recession and I have grave doubts about the basis for believing, as many of my good friends and liberal economists believe, that the economy will pick up in the second half of the year. . . . Therefore, something ought to be done about stimulating the levels of economic activity. . . .

A tax cut always worries me as a measure for stimulation of economic activity. Almost every time we get a tax cut we end up with a less progressive system. If we are going to have a general tax cut I think your proposal is excellent because it really does help the lower income groups much more than the middle or higher income groups, and that is very necessary.

John Kenneth Galbraith of Harvard:

Certainly yours is the right way to reduce taxes. The effect on lower income families is more favorable than to raise the exemption.

However, I am very doubtful about a tax reduction. Inflation is still a major problem. It's a tough fact that tax reduction is the wrong medicine for that. And were there need for more fiscal stimulation, I would respond to the pressure of social need with higher spending and public service employment.

The following table illustrates the point made by many of those who responded; that is, that the $200 optional credit gives proportionately more relief to low- and middle-income taxpayers than do alternative proposals to raise the $750 exemption to $850, or to add a $25 per-person credit on top of the $750 exemption:

Adjusted gross income class	Percent of taxable returns	Percent of tax relief: $200 optional credit	Percent of tax relief: $850 exemption	Percent of tax relief: Additional $25 credit
0 to $3,000	5.3	2.6	1.3	1.7
$3,000 to $5,000	12.7	9.7	5.2	6.6
$5,000 to $7,000	14.3	15.2	8.8	10.6
$7,000 to $10,000	20.1	27.2	17.4	19.9
$10,000 to $15,000	25.6	35.3	30.0	31.7
$15,000 to $20,000	12.4	9.3	17.7	16.3
$20,000 to $50,000	8.7	.8	16.5	11.8
$50,000 to $100,000	.7	----	2.5	1.1
$100,000 plus	.2	----	.1	.2

Source: Joint Committee on Internal Revenue Taxation Based on calendar year 1972 income levels.

The $200 optional tax credit gives 78 percent of the relief to those in the $5,000 to $15,000 bracket, and 99 percent to those making less than $20,000.

Increasing the $750 exemption by $100, however gives only 56 percent of the relief to those in the $5,000 to $15,000 brackets, even though they make up 60 percent of all taxpayers. Furthermore, it gives nearly 20 percent of the relief to those making more than $20,000, even though they represent less than 10 percent of all taxpayers.

The proposal for an additional $25 per person credit falls roughly between the $200 optional credit and the $850 exemption in the percentage of relief it provides to each income category.

Joseph Pechman, director of economic studies at the Brookings Institution, has prepared an enormously helpful analysis of the $200 credit, the $850 exemption, and two other options, which carries the comparison forward using 1974 and 1975 income levels.

His analysis generally coincides with that prepared for me by the Joint Committee on Internal Revenue Taxation using 1972 income levels. However, Pechman's analysis shows that as income levels rise, a substantially greater percentage of the benefits from the $850 exemption go to those with incomes over $20,000.

I ask unanimous consent that the full text of Dr. Pechman's excellent analysis, and the accompanying tables, be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

TAX EQUITY

Mr. MONDALE. Mr. President, a $200 optional tax credit would be a significant step toward tax equity and fairness.

Hearings on American families before the Subcommittee on Children and Youth—which I chair—have demonstrated the unfairness of the existing $750 exemption. While it is designed in large part to help families raise their children, it discriminates strongly against low- and moderate-income families.

The $750 exemption for dependents is much more valuable for the wealthy than it is for average Americans. It provides the most help to those who need it least, and the least help to those who need it most.

For those in the highest 70-percent bracket—making $200,000 a year or more—each $750 exemption is worth $525 in reduced taxes. But for someone in the lowest 14-percent bracket making around $5,000 a year, each $750 exemption is worth only $105 in reduced taxes.

The new optional $200 credit would be worth the same amount in reduced taxes—$200—to everyone who used it, and would make a real start toward reducing the inequity inherent in the $750 exemption.

A number of the economists I wrote stressed the greater equity of credits as opposed to deductions.

Murray Weidenbaum of Washington University, formerly Assistant Secretary of the Treasury for Economic Policy in the Nixon administration:

I have been urging the substitution of credits for deductions on the personal income

tax as a way of increasing the progressivity of the Federal tax structure. The enclosed article presents some of the reasoning.

Otto Eckstein:

Your tax credit proposal would improve the fairness of our tax system. There is little reason why the value of an exemption—which is meant to help defray the living costs of each family member—should rise with income. Indeed, at the low tax rates of the lower brackets, the tax benefit of the exemption has become so small that it no longer bears any relation ot the cost of supporting a dependent.

Robert Eisner:

[Your proposal] is an excellent step in the direction of . . . redressing inequities in the tax law. As you point out, the $750 exemption offers large tax savings to the rich and little or nothing to the poor.

James Tobin of Yale University, a member of the Council of Economic Advisers under President Kennedy:

I very much favor conversion of exemptions into credits, and I am glad you are sponsoring such legislation.

Walter Heller:

The shift [to a credit option] also serves the longer-run purpose of recasting the exemption into a form that makes better sense in terms of a distribution of tax burdens that is fairer to the low income groups.

Wilbur Cohen, dean of the School of Education at the University of Michigan and Secretary of Health, Education, and Welfare in the Johnson administration:

I strongly support the idea of a tax credit for the personal exemptions. A tax credit is an important tax reform which should have extremely high priority.

Arthur Okun:

The best type of tax cut would put income rapidly into the hands of lower income and middle-income groups. From that point of view, the $200 credit option for the personal exemption seems ideally suited to meet the economy's needs. It could be promptly reflected in withholding schedules and would provide relief to those who have suffered most as a result of the food and fuel price explosion of the past year. By concentrating the benefits in the tax cut in income groups with marginal tax rates under 26 percent, it improves the progressivity and equity of the tax system.

Many people have trouble understanding why a $200 credit saves low- and middle-income taxpayers more in taxes than a $750 deduction. An example might help.

Suppose a family has an income of $10,000. If there are four people in the family, that means four exemptions worth $750 each, for a total of $3,000. This $3,000—plus the $1,500 standard deduction—is then subtracted from $10,000, and the tax is figured on what is left—$5,500. The statutory tax rate on that is just under 17 percent, and the tax is $905.

Under a system of $200 tax credits, however, only the $1,500 standard deduction is substracted from the $10,000 of income before the tax is figured. The statutory tax rate on this $8,500 of income is just under 18 percent, and the tax would be $1,490.

However, the four $200 tax credits—worth a total of $800—are then subtracted from that $1,490, leaving a final tax due of only $690. This amounts to a saving of $215 over the $905 that would be due using four $750 exemptions.

HELP FOR NONTAXPAYERS

Many of the economists who wrote expressed concern that the $200 optional tax credit would not help those with very low incomes who pay no tax.

Walter Heller, for example, said:

[The] proposal should be accompanied by other measures that will be of particular benefit to those who fall below the exemption limits and are badly in need of income support from the Federal Government.

James Tobin wrote:

I believe the credits should be cashable, for families that do not have sufficient tax liability to use the credits aganist.

Robert Eisner:

I do believe, however, that there is a serious deficiency in your proposal in failing to provide tax relief for really low income earners whose *income* taxes are less than $200 per dependent or who pay no income taxes at all. . . . I should like to see your proposal enlarged to let the income tax credit be taken against social security taxes to the extent the taxpayer does not have income tax liabilities equal to the amount of the credit.

Robert Nathan:

I know most of the people pay some income taxes but there are still quite a number at the lower levels who do not pay and they would not be benefited. Therefore, from an equity point of view your proposal goes quite a long way but I don't think it would be quite as helpful to the really low income groups as some moderation in the payroll tax.

Stanley Surrey of the Harvard Law School, Assistant Secretary of the Treasury for Tax Policy under Presidents Kennedy and Johnson, raised a related, but somewhat different, issue:

[In] 1969 and 1971 the Congress, mainly through the low income allowance, made sure that the income tax would not dip below the poverty level. With inflation and price rises, we now have people below the poverty line being required to pay income tax. I think the first order of business is to restore the prior policy.

The $200 optional tax credit would assure that no one with an income below the poverty line would have to pay Federal income taxes. The following table shows the current poverty line for nonfarm individuals and families, and the level of income below which no tax would be due using a $200 credit:

Family size	Poverty line	Income below which no tax is due using $200 credit
1	$2,409	$2,648
2	3,101	3,984
3	3,807	5 187
4	4,871	6,247
5	5,748	7,300
6	6,461	8,353

Joseph Pechman's letter contains an excellent comparison of the impact of three other options on poverty level taxation. It is reprinted at the conclusion of my remarks.

It is true that those who pay no income tax at all would not benefit from the $200 optional tax credit. As many of those who wrote suggested, cuts in the Federal income tax should be accompanied by other measures aimed at helping those with incomes so low they pay no tax.

The Senate has already acted on one such measure, the imaginative and constructive proposal by the distinguished chairman of the Senate Finance Committee, RUSSELL LONG, for a "work bonus" for low-income workers. Under the LONG "work bonus" plan—approved by the Senate on November 30 by an overwhelming 57 to 21 vote—each low-income worker with one or more children would receive a credit equal to 10 percent of his income up to $4,000. The credit would be gradually phased out for those with incomes over $4,000, so that no one with an income of over $5,600 would receive the credit. The credit would be paid whether or not the worker paid any income tax, and would, therefore, benefit those not helped by the $200 optional tax credit I have proposed.

The "work bonus" is in fact an excellent complement to the $200 optional tax credit, since its benefits phase out at just about the income levels where the benefits from the $200 credit begin. The "work bonus" establishes a strong beginning toward helping working Americans with low incomes. It is now in conference as part of H.R. 3153, and I hope the House conferees will agree to accept it.

Many of the economists who wrote me have urged that social security payroll tax reform be given high priority. I have advocated this for a number of years, and I hope we can move in this Congress to ease the heavy burden of the payroll tax on low- and moderate-income wage earners and their families. The Long "work bonus" is one step in this direction, and I hope we can build on that to achieve fundamental reform in this very important area.

The excellent work done by Representative MARTHA GRIFFITHS' Subcommittee on Fiscal Policy over the last 2 years has laid the groundwork for thoroughgoing reform of the whole range of Federal income and "in-kind" transfer programs that are intended to benefit low-income Americans. As Representative GRIFFITHS' subcommittee has demonstrated, these programs have so many overlaps and differing eligibility formulas that they all must be considered together in devising an effective reform program. Changing just one aspect of the system can often lead to unforeseen and unwanted consequences elsewhere. For example, when a family benefits from a number of programs simultaneously—such as AFDC, food stamps, medicaid, and public housing—it often happens that the family is penalized severely for earning just a little bit of extra money. This entire area stands in need of reform, and I hope we can move on it in the near future.

In addition, we must retain and

strengthen the existing social services program—which provides child day care, special help to the mentally retarded, services to help the elderly stay in their own homes—and other services to help low-income families, the disabled, the blind, and the elderly to achieve and retain independence. And we need to enact strong child development legislation, along the lines adopted by the Congress and vetoed by the President years ago. I will soon be reintroducing my child development bill, and I intend to push for early action on it.

Mr. President, I ask that the full text of the excellent letters I have received appear in the RECORD at this point. In addition, I ask that a column by Walter Heller in yesterday's Wall Street Journal entitled "The Case for Fiscal Stimulus," and a column by Hobart Rowen from the March 10 Washington Post, also be included in the RECORD at this point.

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

UNIVERSITY OF MINNESOTA,
Minneapolis, Minn., February 5, 1974.

Senator WALTER F. MONDALE,
U.S. Senate,
Washington, D.C.

DEAR FRITZ: In response to your inquiry of January 31 concerning your proposal for an optional $200 tax credit, I find it attractive for the following important reasons:

Inflation has eroded and is eroding the real purchasing power of the $750 exemption at a rapid rate. The boosting of that exemption to restore its previous value, therefore, ought to have a high priority.

Since inflation has taken a particularly heavy toll at the modest and low income levels (especially because of the leap in food and oil prices), it is appropriate that more of the benefits of any tax adjustment today should be concentrated in the low income groups. The shift to a credit option serves this purpose.

The shift also serves the longer-run purpose of re-casting the exemption into a form that makes better sense in terms of a distribution of tax burdens that is fairer to the low income groups. At the same time, it preserves the existing family differentiation for tax purposes in the higher income groups. So it recognizes both the need for a fair distribution of taxes by size of income and the need for reasonable differentiation of tax burdens according to family obligations.

Under present circumstances, with the economy sliding toward recession, and with the President's budget projecting an increase in the full-employment budget surplus (in NIA, or National Income Accounting terms) between fiscal 1974 and fiscal 1975, the $6.5 billion of fiscal stimulus implicit in your plan would be a welcome stimulus to a sagging economy. Moreover, it is the kind of boost that could be translated into the withholding system and therefore into higher paychecks very quickly.

Needless to say, the exemption proposal should be accompanied by other measures that will be of particular benefit to those who fall below the exemption limits and are badly in need of income support from the Federal Government. It should also be accompanied or quickly followed by measures of tax reform to cut back or end the many unjustified tax preferences that erode our tax system and give unfair tax breaks to the upper income groups. A simple and significant increase in the minimum tax would be a good place to start.

Sincerely,

WALTER W. HELLER,
Regents' Professor of Economics.

THE BROOKINGS INSTITUTION,
Washington, D.C., February 5, 1974.

SENATOR WALTER F. MONDALE,
Russell Senate Office Building,
Washington, D.C.

DEAR FRITZ: Your proposal to allow taxpayers the option of $200 tax credits in place of the $750 exemptions now available to them on their income taxes is a constructive one and is particularly timely in today's economy. By providing some tax relief for almost all families earning $20,000 or less, the measure responds to the two great problems of 1974—inflation and recession.

Consumers' real incomes have declined in 1973 as a result of soaring food prices and will decline further in 1974 as a result of soaring fuel costs. Your tax proposal would restore some of these real income losses.

By all available evidence, the economy is already in another recession. A boost to consumer purchasing power will help fight the downturn, lessening the rise in unemployment that is in store and improving the probability of a prompt recovery.

A tax reduction of $6.5 billion, which is approximately the revenue loss from your proposal, is fiscally sound. The economy needs a push from the budget and an equitable tax reduction would be a desirable part of a stimulative program. Looking further ahead, even if the economy recovers from the present recession promptly, inflation will have accelerated the normal growth of income tax liabilities, making some permanent tax reduction desirable for the longer run.

In short, your proposal has significant merits on all important fronts. I am pleased to endorse it and hope it is enacted.

With best regards.

Sincerely,

GEORGE L. PERRY,
Senior Fellow.

YALE UNIVERSITY,
New Haven, Conn., February 6, 1974.

Hon. WALTER F. MONDALE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MONDALE: Thank you for your letter of January 31st. I very much favor conversion of exemptions into credits, and I am glad you are sponsoring such legislation. However, I believe the credits should be cashable, for families that do not have sufficient tax liability to use the credits against.

I enclose a paper which may be of interest.

Sincerely,

JAMES TOBIN.

(The paper referred to is entitled "Reflections on Recent History", and was given by Professor Tobin on December 28, 1973 before the American Statistical Association.)

LAW SCHOOL OF HARVARD UNIVERSITY,
Cambridge, Mass, February 7, 1974.

Hon. WALTER F. MONDALE,
U.S. Senate,
Old Senate Office Building,
Washington, D.C.

DEAR FRITZ: This is in reply to your letter regarding the $200 tax credit as an alternative to the $750 personal exemption. This is an interesting approach and certainly deserves consideration.

My initial thought is that I would like to see somebody score it out with respect to the possible competing alternatives. For example, in 1969 and 1971 the Congress, mainly through the low income allowance, made sure that the income tax would not dip below the poverty level. With inflation and price rises, we now have people below the poverty line being required to pay income tax. I think the first order of business is to restore the prior policy. My guess is that this could be accomplished by increasing the low income allowance. Most of the revenue involved would go to people around and above the poverty level.

The next question is whether income tax relief should be given to people with up to $15,000 income or so because inflation has pushed them into higher brackets and thus increased their tax burdens. If the answer is "yes", then we come down to a choice of method. One way is granting a vanishing credit as an alternative to the exemption, which is your apporach. Another way is to raise the exemption itself. The second way is simpler and more traditional. The credit approach may be in a sense too generous to large families. I gather the economists feel that each additional child is not entitled to the same tax offset as the preceding child. On the other hand, I can understand that large families have problems and you may want to do something about that. Once we have straightened out the starting point of the income tax, the real utility of personal exemptions (or credits) is to achieve the proper tax relationship among different households—single people, married couples, married couples with one child, two children, etc. It is possible that the personal exemption does this better than the tax credit.

Of course the tax credit approach does cut off tax reduction at some point whereas an increase in the personal exemption runs all the way up the scale. The choice may thus come down to what one desires to focus on—stopping tax reduction at some point or, on the other hand, giving more attention to the relative tax burdens among different family compositions at the same income tax level.

I would suggest that you ask the people at Brookings to score out three alternatives—an increase in the low income allowance (and perhaps a change in exemption) to get the starting point back to the poverty level; after that, comparing your credit approach with any straight increase in exemptions. If this is done one can see the differences among income groups and the choice would become somewhat easier.

This obviously is a hasty letter. If you do get further information from Brookings I would be glad to look it over.

Sincerely,

STANLEY S. SURREY.

NORTHWESTERN UNIVERSITY,
Evanston, Ill., February 8, 1974.

Hon. WALTER F. MONDALE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MONDALE: I believe that your proposed legislation for an optional $200 per dependent credit is an excellent step in the direction of stimulating the economy and redressing inequities in the tax law. As you point out, the $750 exemption offers large tax savings to the rich and little or nothing to the poor. Ideally, the exemption should be replaced entirely by a flat credit. I can understand, though, that the credit will prove politically more acceptable if it is made optional so that no opposition need develop from upper income taxpayers who would find themselves worse off with the credit than the exemption.

I do believe, however, that there is a serious deficiency in your proposal in failing to provide tax relief for really low income earners whose *income* taxes are less than $200 per dependent or who pay no income taxes at all. For many of these individuals and families lose substantial parts of their income in social security taxes. I shoud like to see your proposal enlarged to let the in-

come tax credit be taken against social security taxes to the extent the taxpayer does not have income tax liabilities equal to the amount of the credit. This could presumably be done by having the social security account credited with the amount of the income tax credit and the taxpayer in turn refunded the amount that has been withheld for social security.

Even this amendment would not offer relief to the very poor who are not earning income on which social security payments are made. However, it would move a considerable way in the direction in which you are headed of eliminating tax benefits that help the rich and give much lesser relief if any to middle and low income households.

On the matter of where to make up the revenue loss when this proves necessary, I would urge that the "long-overdue reform of foreign and domestic tax loopholes," to which you refer is much better than a tax directed towards excess profits. I think it folly to try to take away more in direct profits taxes while refusing to eliminate the huge give-aways in tax credits for foreign payments for oil, along with the benefits from depletion allowances, current charging of development and drilling costs, and equipment tax credits and accelerated depreciation throughout the economy.

Sincerely,

ROBERT EISNER,
Professor of Economics.

WASHINGTON UNIVERSITY,
St. Louis, Mo., February 11, 1974.

Hon. WALTER F. MONDALE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MONDALE: This is in reply to your letter of January 31, with reference to your proposal for a $200 tax credit. As you may know, I have been urging the substitution of credits for deductions on the personal income tax as a way of increasing the progressivity of the Federal tax structure. The enclosed article presents some of the reasoning.

However, I am concerned that the $6.5 billion estimated revenue loss would add to inflationary pressures which remain so very strong. In this environment, I would suggest that a more effective way of combatting unemployment would be to redirect government spending to the creation of jobs for the unemployed.

Perhaps your approach can be combined with a more comprehensive tax reform proposal that would not yield a large net loss of revenue.

With all best wishes.

Sincerely,

MURRAY L. WEIDENBAUM.

(The article referred to is entitled "Shifting From Income Tax Deductions to Credits", and appears in the August, 1973, issue of TAXES—The Tax Magazine.)

HARVARD UNIVERSITY,
Cambridge, Mass., February 11, 1974.

Senator WALTER F. MONDALE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MONDALE: Thank you for the opportunity to take a look at your proposal of a $200 personal income tax credit for each dependent as an alternative option to the existing $750 exemptions. Here is my reaction.

(1) Is the tax cut needed now?

The economy is headed for recession but a tax cut would come too late. The economy is likely to be moving up at a pretty good rate by the end of the year. The economic impact of a tax cut, even if action were taken immediately, would barely be felt before then. This has always been the problem with using taxes to fight recession—it is just too slow. The major current problems of policy are not to find a fiscal stimulus, but to handle the energy situation more skillfully. If the driving situation remains in its present state, there wil be major damage to retail sales and to the housing industry.

If a tax cut is undertaken, it should be in the general form of your proposal. An across-the-board tax cut would mainly benefit middle income families; it would have a very low multiplier because they are not likely to spend the cuts on automobiles and other durables.

My feeling against a tax cut is mainly based on the longer-term needs for resources by the federal government. We have cut taxes too much in the last four years, and we will need the taxbase to meet future social goals.

Also, the current flush financial condition of the states and localities will be short-lived. Strong income growth and revenue sharing have been of tremendous benefit to local governments. But there is no plan to expand revenue sharing, and the economy will soon be producing less revenue growth. In one way or another, the federal government will be asked to pick up more of the financial burdens.

(2) Pros and Cons of the proposal

Your tax credit proposal would improve the fairness of our tax system. There is little reason why the value of an exemption—which is meant to help defray the living costs of each family member—should rise with income. Indeed, at the low tax rates of the lower brackets, the tax benefit of the exemption has become so small that it no longer bears any relation to the cost of supporting a dependent.

I would not make the tax credit an optional feature. While I recognize that this approach assures that no family will have to pay more, the use of optional features in the tax system hurts taxpayer morale. We now have options for income averaging, for itemized versus standardized deductions, and for other features. Each option leads to extra calculations and opportunities for the tax services. The present proposal would create this kind of option for the entire low- and lower-middle income taxpaying population.

While there are other tax changes that could accomplish the same goal, particularly the "vanishing exemption" or changes in rate structure, there is a simplicity to the optional tax credit which may make it more acceptable. Given the choice of the present system versus the Mondale proposal, I would favor the Mondale proposal.

I am very pleased to see that you are taking initiatives in the tax and economic policy areas.

With best wishes.

Sincerely,

OTTO ECKSTEIN.

UNIVERSITY OF MICHIGAN,
Ann Arbor, Mich., February 19, 1974.

Hon. WALTER F. MONDALE,
U.S. Senate,
Washington, D.C.

DEAR FRITZ: I am certainly sympathetic with the purposes of your proposal for an optional $200 tax credit as an alternative to the existing personal exemption.

My reservations are essentialy three. First, the Budget presented by the President is a fairly stimulative one, in my judgment. Moreover, I tend to be more optimistic than some others about the prospects for the economy. My own forecast sees a quite healthy expansion occurring beginning about mid-year and continuing through at least the first half of 1975. I am not sure that further stimulus—which could certainly not be effective for a number of months—is needed. However, there is enough uncertainty about that, that it is probably useful for tax-cut proposals to begin to be discussed and warmed up for use if extra stimulus should become necessary.

Second, I find it difficult to become committed to individual pieces of a tax reform program without knowing what the other pieces will be. While I favor making the personal tax more progressive, especially at the lower end, there are many other variables, including rate structure, standard deductions, credit for payroll taxes, etc. which could achieve this and which could be even more useful elements in a total tax reform package. However, I assume that the various elements need to be traded off against each other in the effort to secure a balanced and enactable package. Giving away the goodies of tax reductions one at a time, may not be the best way to achieve an effective reform, which needs to include a great many tax increase elements.

My feeling is that for the long run we are going to need a Federal tax system which will take at least as much out of the economy as our present system. I therefore would not support other than temporary and easily reversible tax cuts for fiscal policy reasons unless there were no alternative. You, of course, are in a far better position than I am to know what is feasible.

In any case, I congratulate you for getting some of these issues on the fire, and wish you every success in this as in your other endeavors.

Sincerely,

GARDNER ACKLEY,
Professor of Economics.

HARVARD UNIVERSITY,
Cambridge, Mass., February 20, 1974.

Senator WALTER F. MONDALE,
U.S. Senate,
Washington, D.C.

DEAR FRITZ: I am away in Switzerland composing a book—appropriately on money and its history. Do forgive me for not commenting at length on your proposal. Certainly yours is the right way to reduce taxes. The effect on lower income families is more favorable than to raise the exemption.

However, I am very doubtful about a tax reduction. Inflation is still a major problem. It's a tough fact that tax reduction is the wrong medicine for that. And were there need for more fiscal stimulation, I would respond to the pressure of social need with higher spending and public service employment.

All the best.

Yours faithfully,

JOHN KENNETH GALBRAITH.

ROBERT R. NATHAN ASSOCIATES, INC.,
Washington, D.C., February 25, 1974.

Hon. WALTER F. MONDALE,
U.S. Senate,
Washington, D.C.

DEAR FRITZ: Please forgive me for not replying promptly to your letter of January 31st. I have been away from the office quite a bit lately.

I have read the statement you made in the Congressional Record on January 28th and have looked through the tables and comments very carefully. There are several questions, one which relates to the desirability of a tax cut as compared with an increase in expenditures as a means of stimulating the economy. The second concerns the question of the kind of tax cut which will be most equitable and which would have the greatest

economic impact. The third question relates to basic tax reforms and the element of progressivity. Let me take these up in some separate but related order.

I think we are definitely in a recession and I have grave doubts about the basis for believing, as many of my good friends and liberal economists believe, that the economy will pick up in the second half of the year. Maybe it will but I do not see the basis for such optimism as yet. Therefore, something ought to be done about stimulating the levels of economic activity. I personally would prefer at least some increase in expenditures for mass transit and for improved rail transit and for rapidly exploring and exploiting alternative sources of energy. I do think we could spend an awful lot of money on buses and the Federal Government could give these buses to local transit authorities on the understanding that the fares would be maintained where they are, or preferably reduced. We would be a lot better off if we subsidized bus fares and railroad cars for the transportation of coal and the like. Such expenditures could, I think, be stimulating to recovery or they would at least cushion the declines in business activity that appear to be imminent.

There are other expenditures in terms of public employment, which was the subject of proposal you submitted some weeks ago, and that would make a lot of sense.

A tax cut always worries me as a measure for stimulation of economic activity. Almost every time we get a tax cut we end up with a less progressive system. If we are going to have a general tax cut I think your proposal is excellent because it really does help the lower income groups much more than the middle or higher income groups, and that is very necessary. I know most of the people pay some income taxes but there are still quite a number at the lower levels who do not pay and they would not be benefitted. Therefore, from an equity point of view your proposal goes quite a long way but I don't think it woud be quite as helpful to the really low income groups as some moderation in the payroll tax. As far as stimulating the economy is concerned, I am sure some of the tax savings which would be achieved through your measure would be spent, but we haven't much of an idea of what the marginal spending habits are going to be in a recession that is generated by shortages of an input which is as pervasive as power and fuels. It is hard for the economist to figure just how to stimulate this economy to get us back toward full employment without accelerating the rate of inflation and also with some sense of confidence that certain measures are going to really be effective. This is one of the reasons why any stimulating activity should, in my judgment, include expenditures such as mass transit because this well know would be helpful to the middle and lower income groups because it would keep their transit fares down and they do ride a great deal.

As far as alternatives in tax reductions are concerned, I still would like to see some of the reduction in the payroll taxes. In my judgment we have worshiped the concept of actuarial purity for much too long because social security really is not a true actuarial system and I think we should have had a third source of revenue in addition to the payroll taxes on employers and on employees and that the third source should be general revenues. Just to placate those who keep wrapping themselves up in the actuarial mythology, we could have general revenue contributions for cost of living adjustments and for improvement factors in social security benefits. I can't think of another tax which is as regressive as the payroll tax because the higher the income the lower the proportion subject to the payroll tax. I would love to see us put some general revenue into the reserve and reduce payroll taxes in employees by a similar amount, and that would certainly be the biggest help one could give to the lower income groups.

Again, I do like the principle you are pursuing and it certainly is one devil of a lot more equitable than raising the exemptions. I suspect what I would push for would be a part of the stimulation in the form of increases that would be spent quickly and would help the nation's economy and a part through your method and then another part in the form of reduced payroll taxes. Of course this then raises a political question as to which is the more feasible or more salable. I don't like to go for pure proposals which have no chance of achievement and I think that if the increased spending or the cut in payroll taxes were unlikely to succeed then I would go overboard on your proposal. I would at least like to see us start part way with that and part in the other direction.

I hope these observations are of some interest. If you ever have a few moments and would like to talk about them let me know and I will be glad to come down.

Best wishes.

Sincerely,

ROBERT R. NATHAN.

UNIVERSITY OF MICHIGAN,
March 4, 1974.

Hon. WALTER F. MONDALE,
U.S. Senate,
Washington, D.C.

DEAR FRITZ: I have your letter of February 21 concerning your Bill S. 2906 to convert the present deduction for personal exemptions to a tax credit.

I strongly support the idea of a tax credit for the personal exemptions. A tax credit is an important tax reform which should have extremely high priority.

In my opinion, the tax credit should be limited to three children and two adults. Moreover, I believe that there should be a higher credit for the first child.

These suggestions would fit very appropriately into your ideas concerning strengthening family and child life.

I do not see why we should continue to give deductions or credits for more than three children except in the case where the child was not a natural child and was adopted. I believe that it would strengthen our family planning policies to limit any tax credits normally to three children. I would, however, continue to permit credits for a natural or adopted child who was totally disabled (utilizing the definition of disability under title II of the Social Security Act) irrespective of the age of the child.

My justification for a higher amount for the first child is that this is where the major financial burden arises for a young family. In the case of the first child there is usually a need for additional space and expenditures which are somewhat less per person for the second and third child. My preference is a $300 tax credit for the first child; $200 for the second child; and $100 for the third child.

In passing, I would also like to bring to your attention that the federal matching payment to the states for dependent children under title IV of the Social Security Act has not been increased since 1965. There has been approximately a 50 percent increase in the price level since that date without any additional federal financing of the cost. I believe it is important that a cost of living adjustment be added to the program so that these children will not be penalized by inflation.

Quite frankly, I would like to see you couple these two ideas together so that families with children would be helped whether they were children in families where the parent was an earner or was on welfare. This would truly be a program that would improve family life and the welfare of children.

With best personal wishes,

Sincerely,

WILBUR J. COHEN,
Dean.

ARTHUR M. OKUN,
Washington, D.C., March 11, 1974.

Hon. WALTER F. MONDALE,
U.S. Senate, Washington, D.C.

DEAR SENATOR MONDALE: In response to some questions you raised, I should like to explain my position on the general desirability of a tax cut for consumers in 1974, and my views on the particular proposal for a $200 tax credit in lieu of the usual personal exemption.

Output and employment in the U.S. economy are sagging today. Our real GNP for this quarter is registering a market decline—one of the sharpest declines in sixteen years. Many initial features of the decline—such as the collapse of new car sales—are just beginning to exert their damaging secondary effects on other industries. The outlook for consumer demand is particularly bleak, reflecting the anxieties of American families associated with the combination of job layoffs and rapid inflation, and the drain on their budgets from food and fuel inflation. In 1974 the American consumer will be spending directly and indirectly for fuel about $20 billion more than last year to get less product. This drain on the budget is bound to have serious effects on the experience of other consumer industries—what the consumer spends on oil is not available for spending on other discretionary items ranging from movie tickets to television sets. Indeed, if the oil embargo ends and the availability of gasoline increases while its price remains high, the drain on the consumer budget will be even greater. This spending will not create jobs or output in the United States for the foreseeable future.

In view of the bleak outlook for consumer expenditures (which represent nearly two-thirds of our GNP), the prospects for an early upturn are very speculative. There is considerable risk that the sag could continue all year in the absence of policies to bolster activity. On the other hand, there is little risk of a self-generating upsurge in the economy that would make additional fiscal support inappropriate. Thus, a well-timed cut in consumer taxes would be an important insurance policy against a prolonged and sharp slide in employment and output.

According to the best historical evidence, widespread small increases in consumer take-home pay get into the spending stream. The excellent results in stimulating economic growth that followed the 1964 tax cut demonstrates that. In the present context, the provision of a consumer tax cut may help prevent the kind of retrenching in consumer living standards that might otherwise take place in response to layoffs and fuel and food inflation.

The vast bulk of the additional consumer spending will go into areas where the economy has available labor and plant capacity to meet and greet added demand. In the present situation, one can feel particularly confident that the response will increase output and employment rather than add to inflation. While a number of shortage areas remain in our economy, those except for food and fuel will be vanishing during the first half of 1974 as rapidly as they emerged dur-

ing the first half of 1973. The economy's operating rates will be lower by mid-year than they were late in 1972, when lumber was the only significant product with a shortage. In the case of food, only a trivial part of additional consumer income adds to the demand for food and thus a tax cut will have virtually no effect on food prices. In the case of petroleum, the system of price controls should ensure that any increment in demand is not converted into additional inflation. Indeed, by evidencing concern and effort by the government to make up for the acute cost-of-living squeeze on the worker, a tax cut could have beneficial effects in preserving the recent moderate behavior of wages.

The best type of tax cut would put income rapidly into the hands of lower income and middle-income groups. From that point of view, the $200 credit option for the personal exemption seems ideally suited to meet the economy's needs. It could be promptly reflected in withholding schedules and would provide relief to those who have suffered most as a result of the food and fuel price explosion of the past year. By concentrating the benefits in the tax cut in income groups with marginal tax rates under 26 percent, it improves the progressivity and equity of the tax system.

I do hope that the Congress will give serious and prompt consideration to this constructive measure.

Sincerely,

ARTHUR M. OKUN.

[From the Wall Street Journal, Mar. 11, 1974]

THE CASE FOR FISCAL STIMULUS

(By Walter W. Heller)

Once again, the battle between anti-recessionists and anti-inflationists is joined. Without differing very much on the 1974 economic scenario—downturn and double-digit inflation in the first half followed by an upturn and some ebbing of inflationary pressures in the second—the antagonists run the gamut from "ease up" to "hold tight" in their prescriptions for fiscal-monetary policy in 1974.

Part of this division reflects conflicting diagnoses of the nature of this year's recession and inflation. Partly, it grows out of divergent appraisals of how much of any given demand stimulus will translate into jobs and output and how much into more inflation (either now or later). And in no small part, it goes beyond positive economics to a conflict of values.

Nothing throws the issues into bolder relief than the proposal for a quick income tax cut in the form of an increase in personal exemption. A tax reduction of $5 billion to $6 billion a year could be effected either by boosting the per capita exemption from $750 to $900 or by adopting Senator Mondale's proposal to give the taxpayer the option of taking a $200 credit against tax or continuing to deduct $750 from income.

The equity case for this move is obvious:

Before the year is out, inflation will have eroded the real value of the $750 exemption by more than 20% since it went into effect at the beginning of 1972.

Even more important, boosting exemptions would concentrate the bulk of the tax benefits at the middle and lower end of the income scale where recent inflation, especially in the form of surging food and fuel prices, has exacted a particularly heavy toll. (To reach the lowest incomes calls for further action, e.g., a step-up in social service programs and relief from Social Security payroll taxes on the poor.)

Indeed, the social rationale for income and payroll tax relief in the lower brackets is so compelling that it would make sense even if it were matched by simultaneous tax increases elsewhere.

But equity aside, can a broad-based income tax cut stand on its economic merits? Those who say it can't—Messrs. Shultz, Burns, Fellner, McCracken and Stein somehow come to mind—cite such arguments as these:

Our current economic downturn is mainly the result of supply restraints, of shortages and bottlenecks; such demand deficiencies as exist will soon correct themselves.

Any further stimulus will simply increase the ferocity and tenacity of inflation.

Mr. Nixon's fiscal 1975 budget already contains all the stimulus the economy can stand. And besides, cutting income taxes today robs us of vital revenue-raising power we need for tomorrow.

Straw men? Hardly. But neither are they holy writ.

SOME UNMISTAKABLE SIGNS

First, as to the nature of recession. Though supply shortages get the headlines, a close look reveals unmistakable signs of a shortage of demand. The weary consumer, whiplashed by tight money and fiscal restraint and whipsawed by runaway food and fuel prices, has pulled in his horns:

For nearly a year, his consumption of durables other than autos has fallen in real terms, while his consumption of non-durables and services has kept only a trifle ahead of inflation.

As to autos, the gasoline shortage has converted an expected decline into an actual disaster. Lying behind the 27% drop in overall sales of domestic cars last month was a plunge of nearly 50% in demand for standard and larger models.

Tight money has cut the rate of residential construction outlays from $60 billion a year ago to around $47 billion today.

For consumers, January was perhaps the cruelest month. While personal income dropped $4 billion, consumer prices raced upward at a 12% annual rate. Real spendable earnings of non-farm workers, after taxes, were down 4% from a year earlier, the largest drop in 10 years.

Nor is any early rebound in sight. It will be months before exploding oil prices have worked their way through the economy, soaking up $15 billion to $20 billion of consumer purchasing power in the process. For that's the amount of tribute the American consumer has to pay foreign and domestic producers of oil—and in the shortrun, very little of the funds thus siphoned off will reappear in the economy as demand for exports or increased dividends and capital spending by the U.S. oil industry. So even with an end to the Arab embargo, the U.S. economy will continue to suffer the paradox of "oil drag"—a cost-inflation of prices and a tax-like deflation of demand.

Contrary to the Alice-in-Wonderland reasoning in Mr. Nixon's veto message on the energy bill, a rollback in domestic crude oil prices could materially ease that drag. For example, a cutback in new oil prices to $8 and old oil prices to $4.25 (as against $7.09 and $5.25 in the energy bill), while maintaining strong incentives for boosting output of new oil and oil substitutes, would serve to:

Cut oil-cost inflation by $5 billion.

Restore $5 billion of real purchasing power to consumers.

Stop that amount of excess profits at the source.

It isn't often that a single measure promises to cut cost inflation, bolster aggregate demand, curb profiteering, and still maintain vital incentives. Yet doctrinaire pursuit of market ideology coupled with a paralyzing fear of further inflation seems to be blinding policy makers to the opportunities for simultaneously serving different objectives of policy. Not all demand stimulants aggravate inflation on net balance.

That brings us to the second major charge against the proposed tax relief, namely, that much or even most of it will run off into added inflation. No one can deny that added dollars in consumers' hands will elicit some price increases. But in 1974, a year in which deficient demand will persist even after recovery replaces recession, the trade-off will be highly favorable. Consider the nature of today's inflation:

Above all, it reflects price pressures born of the food and fuel shortages of yesteryear which, as Arthur Burns cogently pointed out last fall, "hardly represent either the basic trend in prices or the response of prices to previous monetary or fiscal policies." After this year, those pressures will begin to burn themselves out, leaving a legacy of high but less rapidly rising prices.

In part, it is a lagged response to the boom in world commodity prices in general. And these pressures too will ebb even as demand recovers, much as they did after the price explosion set off by the Korean boom in 1951.

Further, it is a result of a sharp rise in unit labor costs, which moved ahead at a 9% annual rate in the last quarter of 1973 and will get worse in recession before getting better in recovery.

Upward price adjustments as industries are freed from controls will also give inflation a jolt, largely a one-shot phenomenon.

In other words, inflation in 1974 has a life of its own, nourished not by excess demand but mainly by a variety of cost factors beyond the reach of fiscal and monetary management. The great bulk of the stimulus of a prompt tax cut would therefore express itself in higher output, jobs, and income, not in higher prices.

It can be argued—indeed, George Perry of Brookings has argued—that a well-tempered tax cut can help relieve cost-push pressure by redressing labor's cost-of-living grievances in part through tax relief rather than wage escalation. Labor leaders keep an eye closely cocked on that critical barometer, "real spendable earnings *after* taxes." Cut income and payroll taxes and real earnings rise. If a fiscal bargain could be struck with labor to substitute this paycheck sweetener in part for wage hikes, less of the 1973–74 food and fuel price upsurge will be built into wage bargains.

But what about the legacy of a weakened tax system in 1975 and later years? Won't the inflationary chickens come home to roost? Not if responsive fiscal and monetary policies head off renewed excess demand when it again threatens the economy.

For that matter, the Congress should build in a large part of the protection by coupling its exemption boost with a firm commitment to enact compensating revenue-raising tax reforms to become effective in and beyond 1975. The necessary funds could be raised simply by a substantial hike in the minimum tax plus a phasing out of most of the tax shelters for petroleum as oil price curbs are progressively relaxed. (It is worth noting that with appropriate pricing policies, one can both avoid punitive excess profits taxes and phase out the distorting and inequitable tax preferences for petroleum—thus serving both equity and efficiency.)

THE THIRD QUESTION

But one still has to confront the third question: Isn't Mr. Nixon's new budget already offering plenty of stimulus to a sag-

ging economy? And besides, shouldn't we be reassured by Mr. Ash's promise to "bust the budget" if Mr. Nixon's exercise in exorcism fails and the economy is by recession repossessed? The answer is "no" on both counts.

True, the fiscal 1975 budget gives the *appearance* of stimulus. Spending is scheduled to rise $30 billion, and the deficit to double from $4.7 billion to $9.4 billion. But as this most realistic of Mr. Nixon's budget messages makes clear, "the recommended budget totals continue [the] policy of fiscal restraint as part of a continuing anti-inflation program." Indeed, the unified budget surplus on a full-employment basis would rise from $4 billion to $8 billion.

On a national income accounts basis, the rise in the full-employment surplus would be even greater. Even without fully accepting the St. Louis Federal Reserve Bank numbers showing a rise in the full-employment surplus from a rate of $2 billion in the first half of 1974 to nearly $13 billion in the first half of 1975, and even allowing for the inevitable slippage in the budget process, one can safely conclude that the fiscal 1975 budget, contrary to surface appearances, offers no substantial stimulus to the economy.

But what of the assurances that contingency plans will be rolled out to step up spending in case recession rears its ugly head? Given the typical lags in policy action and economic reaction, one can only say that the time to act is now. When a man is drowning, one should not deny him a life preserver on grounds that one can always resort to mouth-to-mouth resuscitation.

[From the Washington Post, Mar. 10, 1974]

RECESSION CHARADE

President Nixon keeps reiterating, in his stubborn way, that "there will not be a recession in 1974," as if the repetition of that hopeful thought will, like magic, wash all the nation's economic troubles away.

The hard fact is that the economy is suffering a contradiction which is clearly evident in rising unemployment, lower factory output and rising prices. Whether, in the end, it qualifies for the technical definition of a recession is not much of a point.

However, many reputable economists believe that the nation is already in at least the third month of a recession which will lower real gross national product for the first half of 1974.

A survey of 62 leading forecasters, as reported in the Washington Post Friday, sees at least a mild decline in real GNP for the first half of 1974. The Wharton School, and Prof. Otto Eckstein's Data Resources Institute, among others, see a somewhat sharper dip, with inflation a serious problem.

The more serious fall-off could arise if the first-quarter slide reaches the annual rate of 3 to 4 per cent now considered possible by statisticians within the Nixon administration itself, as was reported in this space last week.

The recession charade Mr. Nixon has been playing could be ignored as the natural reflex of a politician already in deep trouble if it did not imply the absence of a program to contain the damage.

By saying that there will be no recession, that, if everyone is patient, food and fuel prices will come down, leading to a recovery by the end of 1974, Mr. Nixon is also saying that his government isn't called on to take positive steps to stimulate the economy.

Economic Council Chairman Herbert Stein, a perennial optimist, reassured the Governors' Conference here the other day that although there is "no prospect of instant relief" from unemployment and inflation problems, there will be "a strong revival" around mid-year.

Stein expects a resurgence of auto sales, a "clarification" of the gasoline situation, a gain in new housing starts, a strong expansion of private capital investment, and boosted federal, state and local spending.

In an interview with The Washington Post, Treasury Secretary George Shultz adds that he expects a break in inflated world commodity market prices, and counts once again on the maturity of union leadership to keep wages from going through the roof.

A series of questions put to Stein at the Governors' Conference indicates that the chief executives of the states are much more concerned about inflation, fuel allocation problems, oil company profits, and high unemployment than the government here in Washington appears to be.

The problem with the Stein-Shultz analysis—on which Mr. Nixon bases his "no-recession" promise—is that it is predicated on getting all the breaks in a very uncertain and unstable world.

Not the least of current anxieties relates to the continuing Watergate mess. Although they know that an impeachment process would be a traumatic experience for the nation, big businessmen (Republicans as well as Democrats) now say openly that the best course now would be an impeachment proceeding that will settle the issue as quickly as possible.

Avoiding a significant recession will require good and plentiful crops to hold down food prices, the absence of a protracted decline in the rest of the industrialized countries, a reduction in the extortionate oil prices set by the cartel, a rapid conversion of the auto industry to smaller cars, assurance of steady gasoline supplies so that consumers are willing to buy cars, a good flow of funds to the savings institutions that finance private housing, a reduction of general inflationary pressures which already have reached the highest levels since the first World War, actual wage settlements which do not generate a new wage-price push and, above all, a reversal of consumer uneasiness about the health of the economy which will make them spenders instead of savers.

And beyond that, it will require an active federal government policy designed to give the economy a well-timed monetary and fiscal push.

But as Stein indicated, the administration will be cautious about "pumping up the economy" too far. To Republican Gov. Jack Williams of Arizona, worried about rising unemployment, Stein said that "we must endure a period of restraint in our ambitions" to cut back the jobless rate because inflation is such an overwhelming problem.

The contrary point of view was presented by Arthur Okun, former chairman of the Johnson Council of Economic Advisers. Okun, who believes we are several months into a real recession, told the governors that counter-recession moves should be made now, even though he agrees that the economic slide will be modest, rather than 1930s style.

Okun would roll back domestic crude oil prices which, along with other inflated prices, "have been draining some $20 billion from consumer budgets." He also would cut income and payroll taxes in a way designed to benefit lower- and middle-income groups by $5 billion to $6 billion a year. Sen. Edward F. Kennedy (D-Mass.) and Walter F. Mondale (D-Minn.), among others, have proposed legislation along such lines.

"The time to act is now," Okun says. "A little preventive medicine would go a long way."

Nixon, Shultz and Stein aren't convinced. They fear an oil price rollback would be costly in the long run, and argue that a tax cut should be the last medicine to be prescribed. But if the economists' reading as shown by the ASA poll turns out to be right, tax cutting may gain a popularity that crosses party lines by mid-summer.

EXHIBIT 1

THE BROOKINGS INSTITUTION,
ECONOMIC STUDIES PROGRAM,
Washington, D.C., February 28, 1974.

Hon. WALTER F. MONDALE,
U.S. Senate,
Washington, D.C.

DEAR FRITZ: In response to your recent request, I have examined the revenue loss and distributional impact of four alternative tax credit or exemption reform plans, including your proposal. The findings are summarized in the five tables accompanying this letter. The revenue estimates are based on a projection to the years 1974 and 1975 of data in the Brookings 1970 federal income tax file.

Plan I in the enclosed table, which is provided for comparison purposes, is present law (that is, $750 per capita exemption plus the $1,300 low-income allowance). Plan II is your proposal to offer a $200 tax credit in lieu of the usual personal exemption. Plan III would raise the personal exemption to $850 in 1974 and $900 in 1975 and later years. Plan IV, which would reduce revenues by as much as Plan II, would maintain the current $750 exemption and add an across-the-board tax credit of $22 in 1974 and $33 in 1975 and later years. Plan V would raise the low income allowance to $1,400 and personal exemptions to $850 in 1974, and to $1,500 and $900, respectively, in 1975.

Table 1 compares each plan with estimated poverty levels for 1974 and 1975. The results indicate that Plan V is the most successful in approximating the poverty levels for 1974 and 1975 if the poverty lines are assumed to be the standard. Plan II would be excessively generous in raising the minimum taxable levels (particularly for large families). Plans III and IV are much closer to the poverty levels than Plan II, but they do not do nearly as well as Plan V.

The revenue loss under the various proposals and their distributions by income levels are given in Tables 2–5. All of the plans concentrate the tax reductions largely in the adjusted gross incomes below $25,000. Under Plan II, however, over one-half of the 1974 tax reduction accrues to persons with incomes below $10,000 and almost all of the deduction goes to taxpayers with incomes below $25,000. At the other end (though the distance is not very far) only about one-quarter of the 1974 tax reduction under Plan III accrues to the under $10,000 group and over 80 percent goes to taxpayers with AGI below $25,000. Plan IV is more nearly similar to Plan II in its distributional effect, while Plan V is more nearly similar to Plan III.

On balance, my preference is for Plan V which approximates the 1974 and 1975 poverty lines most closely, but I am sure that judgments will differ on the relative merits of the various approaches.

Sincerely,

JOSEPH A. PECHMAN,
Director of Economic Studies.

PS.—These calculations were supported by a grant from the RANN program of the National Science Foundation.

TABLE 1.—LEVEL AT WHICH INCOME BECOMES TAXABLE UNDER VARIOUS EXEMPTION AND TAX CREDIT PLANS COMPARED WITH POVERTY LEVELS IN 1974 AND 1975 [1]

Family size	Projected poverty level budget [2]	Plan I [3] (Present law)		Plan II [4]		Plan III [5]		Plan IV [6]		Plan V [7]	
		Income level	Difference	Income level	Difference	Income level	Difference	Income level	Difference	Income level	Difference
1974:											
1	$2,409	$2,050	−$359	$2,644	+$235	$2,150	−$259	$2,207	−$202	$2,250	−$159
2	3,101	2,800	−301	3,988	+887	3,000	−101	2,957	−144	3,100	−1
3	3,807	3,550	−257	5,182	+1,375	3,850	+43	3,707	−100	3,950	+143
4	4,871	4,300	−571	6,247	+1,376	4,700	−171	4,457	−414	4,800	−71
5	5,748	5,050	−698	7,300	+1,552	5,550	−198	5,207	−541	5,650	−98
6	6,461	5,800	−661	8,353	+1,892	6,400	−61	5,957	−504	6,500	+39
1975:											
1	2,554	2,050	−504	2,644	+90	2,200	−354	2,286	−268	2,400	−154
2	3,287	2,800	−487	3,988	+701	3,100	−187	3,036	−251	3,300	+13
3	4,035	3,550	−485	5,182	+1,147	4,000	−35	3,786	−249	4,200	+165
4	5,163	4,300	−863	6,247	+1,084	4,900	−263	4,536	−627	5,100	−63
5	6,093	5,050	−1,043	7,300	+1,207	5,800	−293	5,286	−807	6,000	−93
6	6,849	5,800	−1,049	8,353	+1,504	6,700	−149	6,036	−813	6,900	+51

[1] Assumes joint returns are filed by families of 2 or more persons.
[2] Projected from the official poverty lines for 1972 on the basis of the actual increase in the Consumer Price Index from 1972 to 1973 and assumed increases of 8 percent for 1973–74 and 6 percent for 1974–75.
[3] Plan I: Present law (i.e., $750 exemption and $1,300 low-income allowance).
[4] Plan II: Option to elect either a $200 credit for each exemption or $750 exemption, whichever yields the lower tax.
[5] Plan III: $850 personal exemption for 1974, $900 for 1975.
[6] Plan IV: For 1974: $22 credit, which has the same revenue effect as an $850 exemption for 1975: a $33 credit, which has the same revenue effect as a $900 exemption.
[7] Plan V: For 1974: low income allowance of $1,400 and personal exemption of $850; for 1975: low income allowance of $1,500 and personal exemption of $900.

TABLE 2.—TAX REDUCTION UNDER PLAN II: OPTION TO ELECT EITHER A $200 TAX CREDIT OR A $750 EXEMPTION, WHICHEVER PRODUCES THE LOWER TAX

Adjusted gross income class	1974			1975		
	Number of returns (thousands)	Tax reduction due to plan (millions)	Distribution of reduction (percent of total reduction)	Number of returns (thousands)	Tax reduction due to plan (millions)	Distribution of reduction (percent of total reduction)
Less than 0	392.6			393.7		
0 to $5,000	22,198.9	$718.4	12.2	21,189.8	$702.9	12.4
$5,000 to $10,000	18,794.5	2,304.0	39.1	18,393.8	2,198.6	38.8
$10,000 to $15,000	16,532.0	2,113.8	35.9	15,474.0	1,916.2	33.9
$15,000 to $20,000	9,773.1	684.1	11.6	10,783.0	747.4	13.2
$20,000 to $25,000	4,807.1	58.7	1.0	5,823.8	90.2	1.6
$25,000 to $50,000	4,279.1	6.4	.1	5,439.7	5.0	.1
$50,000 and over	863.9	.2	0	997.4	.2	0
Total	77,641.3	5,885.6	100.0	78,495.3	5,660.6	100.0

TABLE 3.—TAX REDUCTION UNDER PLAN III: $850 PERSONAL EXEMPTION IN 1974, $900 IN 1975

Adjusted gross income class	1974			1975		
	Number of returns (thousands)	Tax reduction due to plan (millions)	Distribution of reduction (percent of total reduction)	Number of returns (thousands)	Tax reduction due to plan (millions)	Distribution of reduction (percent of total reduction)
Less than 0	392.6			393.7		
0 to $5,000	22,198.9	$207.2	5.2	21,189.8	$296.8	4.7
$5,000 to $10,000	18,794.5	792.3	19.9	18,393.8	1,132.0	18.1
$10,000 to $15,000	16,532.0	1,051.4	26.4	15,474.0	1,440.6	23.0
$15,000 to $20,000	9,773.1	789.9	19.9	10,783.0	1,284.6	20.5
$20,000 to $25,000	4,807.1	448.5	11.3	5,823.8	819.1	13.1
$25,000 to $50,000	4,279.1	516.6	13.0	5,439.7	980.4	15.7
$50,000 and over	863.9	172.1	4.3	997.4	299.5	4.8
Total	77,641.3	3,978.0	100.0	79,495.3	6,253.1	100.0

TABLE 4.—TAX REDUCTION UNDER PLAN IV: $22 CREDIT IN 1974, $33 IN 1975

Adjusted gross income class	1974			1975		
	Number of returns (thousands)	Tax reduction due to plan (millions)	Distribution of reduction (percent of total reduction)	Number of returns (thousands)	Tax reduction due to plan (millions)	Distribution of reduction (percent of total reduction)
Less than 0	392.6			393.7		
0 to $5,000	22,198.9	$285.8	7.2	21,189.8	$404.8	6.6
$5,000 to $10,000	18,794.5	982.4	24.6	18,393.8	1,386.8	22.7
$10,000 to $15,000	16,532.0	1,157.6	29.0	15,474.0	1,588.5	26.0
$15,000 to $20,000	9,773.1	762.3	19.1	10,783.0	1,245.0	20.4
$20,000 to $25,000	4,807.1	380.1	9.5	5,823.8	700.9	11.5
$25,000 to $50,000	4,279.1	346.1	8.7	5,439.7	656.5	10.7
$50,000 and over	863.9	72.7	1.8	997.4	126.0	2.1
Total	77,641.3	3,987.0	100.0	78,495.3	6,108.6	100.0

TABLE 5. TAX REDUCTION UNDER PLAN V: LOW INCOME ALLOWANCE OF $1,400, PERSONAL EXEMPTION OF $850 IN 1974; LOW INCOME ALLOWANCE OF $1,500, PERSONAL EXEMPTION OF $900 IN 1975

Adjusted gross income class	1974			1975		
	Number of returns (thousands)	Tax reduction due to plan (millions)	Distribution of reduction (percent of total reduction)	Number of returns (thousands)	Tax reduction due to plan (millions)	Distribution of reduction (percent of total reduction)
Less than 0	392.6			393.7		
0 to $5,000	22,198.9	$330.4	7.7	21,189.8	$530.3	7.7
$5,000 to $10,000	18,794.5	973.6	22.7	18,393.8	1,504.6	21.9
$10,000 to $15,000	16,532.0	1,051.4	24.6	15,474.0	1,440.6	21.0
$15,000 to $20,000	9,773.1	789.9	18.4	10,783.0	1,284.6	18.7
$20,000 to $25,000	4,807.1	448.5	10.5	5,823.8	819.1	11.9
$25,000 to $50,000	4,279.1	516.6	12.1	5,439.7	980.4	14.3
$50,000 and over	863.9	172.1	4.0	997.4	299.5	4.4
Total	77,641.3	4,282.5	100.0	78,495.3	6,859.1	100.0

COLUMBIA CELEBRATES 60 YEARS OF SERVICE TO NATION'S SCHOOL EDITORS

Mr. HARRY F. BYRD, JR. Mr. President, Mr. Charles H. Savedge, headmaster of the Augusta Military Academy in Verona, Va., is presently president of the Columbia Scholastic Press Advisers Association. He has been kind enough to bring to my attention the fact that the Columbia Scholastic Press Association is holding its 50th anniversary celebration and convention this month.

The Columbia Scholastic Press Association is the world's largest journalism association and has had over the years a profound influence on Virginia's journalists as well as journalists throughout the country. More than 5,000 young journalists will attend this year's convention and they deserve every recognition.

Columbia University recently announced this year's CSPA's convention, and I ask unanimous consent that this article entitled "Columbia Celebrates 60 Years of Service to Nation's School Editors" be printed in the RECORD.

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

COLUMBIA CELEBRATES 60 YEARS OF SERVICE TO NATION'S SCHOOL EDITORS

Each March, thousands of young student editors from all parts of the nation fill Columbia University's campus to participate in the three-day convention of the country's largest, most widely known school press organization.

The Columbia Scholastic Press Association, now celebrating its 50th anniversary, is devoted to helping young editors excel in their tasks through educational workshops, seminars, lectures, critical evaluation and a national competition.

Throughout its half-century history, the CSPA convention has been acclaimed by participants as the outstanding event in their careers as elementary, junior high school,

high school and college student editors, particularly for the critical review it offers their publications and the practical how-to seminars it conducts.

This year's convention, whose theme is "Looking Forward," will be held Thursday, Friday and Saturday, March 14, 15 and 16, on the Columbia campus. There, in University classrooms and lecture halls, professional journalists and journalism educators will conduct more than 260 meetings, conferences, workshops, shortcourses and laboratory sessions on various aspects of scholastic journalism.

Capping the yearly conference is a traditional massive Saturday luncheon, featuring nationally prominent speakers and attended by all the conferees. This year's luncheon is set for March 16 in the New York Hilton, with television newsman Walter Cronkite as the principal speaker. Others who have addressed past luncheons have included Edward Murrow, Eleanor Roosevelt, Edward Kennedy, Harry Truman, Hubert Humphrey, Dwight Eisenhower and Barbara Ward. The luncheon is the largest one held under one hotel roof in the world, says CSPA Director Charles O'Malley.

Some 5,000 student editors and faculty advisers are expected to attend the 1974 convention, representing 1,500 newspapers and magazines entered in competition for CSPA medals and ratings. There are also 1,000 yearbooks in the competition, but yearbook editors meet in a separate convention in the fall.

The first CSPA convention, in 1925, had 308 delegates attending, with 179 publications competing for awards. Altogether 158,089 students and advisers have attended the March conventions and 29,077 have attended the fall yearbook sessions, for a total of 187,166 participants. Entered in the competitions have been 60,204 newspapers and magazines, as well as 34,147 yearbooks, for a total of 94,351 publications.

Many of the nation's leading journalists received some of their early training as CSPA speakers and workshop leaders.

The founder and driving force behind the CSPA for 45 years was Colonel Joseph M. Murphy, now 75 and director emeritus. He became widely known as "dean of the school press field." Until Charles O'Malley became associate director in 1968, Colonel Murphy had directed CSPA activities with only the help of part-time Columbia College students. Mr. O'Malley assumed the directorship in 1969.

Through Colonel Murphy's efforts, CSPA is a self-supporting organization which has never had a deficit. A scholarship fund named for him and established in 1940 provides full tuition and a living allowance for the Columbia College students CSPA employs. More than 300 students have earned all or part of their college expenses in this way.

Previous milestones in CSPA history have been marked in newspaper editorials, a mayoral proclamation and commendations from prominent persons throughout the nation.

ANNALS OF INDUSTRY: CASUALTY OF THE WORKPLACE

Mr. MONDALE. Mr. President, I wish to call the Senate's attention to part III of Mr. Paul Brodeur's series of articles entitled "Annals of Industry: Casualty of the Workplace." The November 12, 1973, issue of New Yorker magazine contains the third installment in his revealing documentary on the manufacture of asbestos. The article is especially noteworthy and deserves the attention of my colleagues for it brings to light some of the ways in which Government has compromised the well-being of the Nation's workers for the interests of industry. This installment of Mr. Brodeur's article deals with the Government's issuance of safety standards in the asbestos industry.

Medical research has indicated that asbestos is a health hazard both to the workers who deal with it, and to the community at large. Investigations have revealed that cancer accounts for approximately 75 percent of the excess deaths among asbestos-industrial workers. Furthermore, exposure to even the slightest amount of asbestos places the worker in jeopardy from asbestosis—pulmonary scaring resulting from the inhalation of asbestos fibres—mesothelioma, and other malignant tumors. Because of these startling findings, advocates of stronger regulation consider asbestos dust "the most devastating environmental disaster yet perpetuated by any industrial nation."

However, despite these known hazards, industry has frequently sought to perpetuate lax governmental enforcement. Industry representatives maintain that death due to asbestos exposure is nominal and that, if all safety standards were met, it would mean financial suicide for the asbestos industry. Strict regulation, they argue, would price the American asbestos product out of the market, ruin the industry in America, and, consequently, eliminate thousands of jobs. The issue seems to have become, as Sheldon Samuels of the AFL–CIO's Industrial Union Department has said—

Whether a human life can be traded off in the marketplace and whether workers must really face death on the job.

Throughout Mr. Brodeur's article are frightening examples of industry's efforts to hamper the development of safe working conditions, to hide the facts about asbestos disease, and to prevent State job safety agencies from taking effective action. One soon learns, in Mr. Brodeur's words—

How deeply the medical-industrial complex has succeeded in penetrating the workings of the government in matters relating to the prevention of industrial disease.

Mr. President, I ask unanimous consent that the article entitled "Annals of Industry: Casualty of the Workplace" by Mr. Paul Brodeur from the November 12, 1973, issue of New Yorker be printed in the RECORD.

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

ANNALS OF INDUSTRY: CASUALTIES OF THE WORKPLACE

When the Pittsburgh Corning Corporation shut down its asbestos-insulation plant in Tyler, Texas, in February of 1972, it did so because of determined and courageous action taken by Dr. William M. Johnson and Dr. Joseph K. Wagoner, who had joined the Division of Field Studies and Clinical Investigations of the Department of Health, Education, and Welfare's National Institute for Occupational Safety and Health in the summer of 1971. Shortly after coming to the division as its chief medical officer, Dr. Johnson discovered data showing grossly excessive and dangerous levels of asbestos dust in the Tyler plant—data that had been buried in the files of Dr. Lewis J. Cralley, the former director of the division, for years. Dr. Johnson and Dr. Wagoner, the new director, set out to make sure that this information would be properly disseminated and used to benefit the workers, whose terrible jeopardy from asbestosis (pulmonary scarring resulting from the inhalation of asbestos fibres), lung cancer, mesothelioma, and other malignant tumors it described. By daring to release the government's dust counts at the Tyler factory to Anthony Mazzocchi and Steven Wodka, of the Oil, Chemical, and Atomic Workers International Union; by expressing their concern to Dr. Lee B. Grant, the medical consultant to Pittsburgh Corning, for the plight of the men who worked in the plant; by inspecting the factory and writing a report stating that a critical occupational-health situation existed there; and by insisting to their superiors in the National Institute for Occupational Safety and Health or NIOSH—that action must be taken to remedy it, and that pressure be brought to bear upon Secretary of Labor James D. Hodgson to promulgate a safe standard for industrial exposure to asbestos, Dr. Johnson and Dr. Wagoner had done something almost unheard of in the annals of occupational medicine in the United States: They had taken steps to force the federal government from its position of self-imposed neutrality and had placed the well-being of workers before the self-interests of industry. In so doing, not only had they become apostates against the old policy of suppressing occupational-health data that were embarrassing to industry but they had also introduced a revolutionary new concept at NIOSH by showing how the organization could actively carry out the primary mission assigned to it by Congress in the Occupational Safety and Health Act of 1970—that of preventing occupational disease. In addition, they had helped to crack the cornerstone of the medical-industrial complex of company doctors and industry consultants, whose triangular structure had come to rest largely upon an unspoken alliance with a number of key occupational-health officials at various levels of state and federal government.

For several years, Mazzocchi had been gathering evidence to show that industrial disease was rampant in the United States and that knowledge of it was being suppressed by the medical-industrial complex, and since the situation at the Tyler plant provided a quintessential example of the workings of this complex, he decided to draw public attention to it. In the meantime, he and Sheldon W. Samuels, who is the director of Health, Safety, and Environmental Affairs for the A.F.L.–C.I.O.'s Industrial Union Department, had aroused the concern of other trade-union leaders over the asbestos hazard, and had been urging Secretary Hodgson to declare an emergency standard for occupational exposure to asbestos of two asbestos fibres per cubic centimeter of air, which would replace the totally inadequate twelve-fibre standard then in effect. The unions were strongly supported in this effort by Dr. Irving J. Selikoff, who is the director of the Mount Sinai School of Medicine's Environmental Sciences Laboratory and a pioneer in the field of modern asbestos epidemiology. However, in spite of the fact that Dr. Selikoff and Dr. E. Cuyler Hammond, vice-president for epidemiology and statistics of the American Cancer Society, had provided indisputable evidence that one out of five asbestos-insulation workers was dying of lung cancer and that almost half of these men were dying of some form of asbestos-related disease, Secretary Hodgson, apparently searching for some middle ground that might be satisfactory to both industry and labor, declared a temporary emergency standard of five fibres per cubic centimetre. A further indication that the government was seeking a compromise between the well-being of the nation's asbestos workers and the interests of industry came late in November of 1971, when the Department of Labor's Occupational Safety

and Health Administration, which has the responsibility of enforcing the provisions of the 1970 Act, inspected the Tyler plant as a result of Dr. Johnson's report that a critical occupational-health situation existed there. Although major deficiences in the factory's ventilation system constituted serious violations of the Act—those likely to result in disability or death—the Administration chose to consider them nonserious and fined Pittsburgh Corning just two hundred and ten dollars. At the same time, it gave the company a deadline for making extensive improvements in the ventilation system—improvements that were considered too costly by Pittsburgh Corning's managers, who decided to shut the plant.

All this provided a tense buildup for the public hearings that the Occupational Safety and Health Administration was required by law to hold as part of the process of replacing the temporary emergency standard for asbestos with a permanent standard. Since the permanent standard for asbestos was to be the Administration's first ruling under its mandate to redefine occupational-health regulations, industry and labor were prepared to look upon the ruling as an indication of whether the Administration would be determined or lenient in setting new standards for other hazardous substances. Thus, the public hearings on asbestos, which were scheduled for the middle of March, loomed as a crucial contest between the independent medical and scientific community, most of whose members were backing labor's demand for a two-fibre standard, and that part of the medical-industrial complex supported by the asbestos industry, whose members were preparing testimony to contend that a five-fibre standard was adequate to protect workers. In weighing the evidence and deciding upon a safe level of exposure, the Administration obviously needed to approach the problem impartially. The way things stood, however, the Administration's impartiality was open to question, because of its previous failure to enforce even the inadequate twelve-fibre standard at the Tyler plant and at hundreds of other factories across the land. Speaking at a press conference in Washington, D.C., on February 10, 1972, Mazzocchi condemned this failure as bitterly as he did the blatant disregard shown by the managers of Pittsburgh Corning and its medical consultant, Dr. Grant, who, he claimed, had for years known about and ignored the excessive dust in the Tyler plant and the awful peril it held for the workers.

During the first week in March, I spent several days in Tyler talking with men who had been employed at the plant and with other people who were involved in the situation that had developed there. Shortly after I returned to New York, I arranged to fly to Cincinnati and spend a day with Dr. Johnson and Dr. Wagoner. I also telephoned Dr. Grant, who, in addition to being the medical consultant to Pittsburgh Corning, is the medical director of PPG Industries (formerly known as the Pittsburgh Plate Glass Company), which, together with the Corning Glass Works, had established Pittsburgh Corning. When I reached him, at his office at PPG Industries, in Pittsburgh, I ask him if he could spare an hour or so to talk with me about the Tyler plant. Dr. Grant was extremely cordial, but he declined to give me an interview unless I first obtained the permission of James H. Bierer, the president of Pittsburgh Corning. I then called Bierer, and he, too, was very cordial, but was somewhat hesitant regarding my request. He said that he would have to look into the matter before giving me permission to talk with Dr. Grant. "I'll get back to you as soon as possible," he said.

On Monday, March 13th, I took a morning flight to Cincinnati, and arrived at the offices of the NIOSH Division of Field Studies and Clincial Investigations shortly before noon. Dr. Johnson turned out to be a tall, pale, bespectacled man of thirty-one, with a quiet way of speaking and a serious demeanor. His boss, Dr. Wagoner, was a boyish-looking blue-eyed man of thirty-six; like Johnson, he is extremely soft-spoken, but his manner is more intense. I had a lot of questions for them about the survey they had conducted at the Tyler plant, in October of 1971, and by the time we had finished with these we were in the middle of lunch at a nearby restaurant. At that point, I told them something about my recent trip to Tyler, and how I had met several men who had become ill and stopped working in the plant even before it was shut down. When I finished giving them my impressions of these men, Dr. Johnson put down his fork and shook his head.

"As you know, Dr. Selikoff and Dr. Hammond have conducted a study of the mortality experience of nine hundred and thirty-three men who worked between 1941 and 1945 at the Union Asbestos & Rubber Company's plant in Paterson, New Jersey, which was the predecessor factory to the one in Tyler," he said. "Because of their findings, we're awfully depressed about the future of many of the eight hundred and ninety-five men who worked at the Tyler plant during the seventeen years it was in operation. And what is even more depressing is that the Paterson and Tyler tragedies are being repeated over and over, from one end of this country to the other. Last summer, as Joe and I were unearthing the environmental data on Tyler, we came across some mortality data on men who had worked in asbestos-textile plants throughout the United States. Like the Tyler data, this information had been accumulating willy-nilly in the division for years, and, incredible as it may sound, no one had seen fit to do anything about it. Just from the most cursory look at those data, almost anyone would know there had been a tragedy of immense proportions in many, if not all, of those factories. Why, the men working in them were dying of asbestosis and cor pulmonale—a form of heart failure that often accompanies the disease—right on the job! Men in their fifties! And some only in their *forties!* Recently, Joe and I pulled together the figures on just one of those plants and analyzed them. It manufactures asbestos-textile, friction, and packing products, predominantly from chrysotile asbestos, and that's interesting, because the segment of the asbestos industry that mines and uses this particular variety of asbestos has been trying to claim that chrysotile is not as biologically harmful as other types of asbestos, including amosite, which was the type the Tyler men worked with.

Between January 1, 1940, and December 31, 1962, thirty-three hundred and sixty-seven men and women worked in the chrysotile-asbestos plant, and, using the data that we found in the files, and more that we developed, we made a followup study of them from the time their employment ceased until January of 1968. As of that date, twenty-four hundred and eighty-one of these workers were known to be alive, six hundred and fifty-five were known to have died, and two hundred and thirty-one could not be traced. Death certificates were obtained for six hundred and twenty-six of the dead. According to the standard mortality tables, there should have been approximately five hundred and twenty-seven deaths among these thirty-three hundred and sixty-seven people instead of six hundred and fifty-five. Of the excess of a hundred and twenty-eight deaths, the vast majority—one hundred, to be exact—were caused by diseases of the cardiopulmonary system. Approximately nineteen deaths from lung cancer were to be expected, but there were actually forty-six. Seventy-two deaths occurred from chronic lung disease, mostly asbestosis, whereas there should have been only about thirty-five. Two hundred and thirty-nine of the workers died of heart disease—many with cor pulmonale and congestive heart failure—as opposed to two hundred and two expected deaths from these causes. Among the eighty-three other deaths whose causes were known, sixteen resulted from malignancies of the lymphatic and blood systems."

Dr. Wagoner told me that he and Dr. Johnson had also evaluated the distribution of the cardiopulmonary deaths according to the elapsed time since termination of employment. "We did this partly to shed light on the consequences of a common practice in the asbestos industry, as well as in many other industries, of using respirators in the absence of strict environmental controls," he said. "Our findings tell a depressing story. The majority of the lung-cancer and asbestosis deaths occurred within five years of termination of employment. In fact, fourteen of the forty-six lung-cancer deaths occurred within six months of termination of employment, and the average age of those fourteen people was only fifty-three and a half. And of the forty-one asbestos deaths that occurred within five years after termination of employment, a majority took place within the first year, including seventeen deaths that happened within six months, at an average age of fifty-four."

Dr. Johnson broke in to say, "Which means that a lot, if not most, of these people had advanced lung disease, malignant or nonmalignant, even as they were working. Now, what kind of medical program did that factory have, to allow men to be dying of pulmonary disease *right on the job?"*

Dr. Wagoner then continued, "During our medical survey of the Tyler plant, we found that almost fifty per cent of the men with ten or more years of employment showed X-ray, pulmonary-function, and clinical findings consistent with asbestosis. The routine use of respirators, which are often difficult to breathe through, in such a population of men is extremely hazardous, because it puts them at an excess risk of cardiopulmonary death. For that reason, the Secretary of Labor's Advisory Committee on the Asbestos Standard, of which I am a member, has recommended that the use of respirators during periods of excessive asbestos dust be preceded by strict medical evaluation."

I had heard previously of the existence of the Advisory Committee on the Asbestos Standard, and when we returned to the office at NIOSH, I asked Dr. Wagoner to tell me about it. He explained that the committee was part of a long and complicated procedure by which criteria are developed for the recommendation of occupational-health standards. "The primary source of medical evidence and information about asbestos was provided in the NIOSH asbestos-criteria document, which I helped to write," Dr. Wagoner said. "This document included a critical evaluation of all known research on asbestos disease and a recommended standard based on this evaluation, and it was sent to Secretary Hodgson on February 1st. The document recommends that airborne asbestos dust be controlled so that no worker is exposed over an eight-hour working day to an average of more than two fibres greater than five microns in length per cubic centimetre of air. It proposes that the two-fibre standard become effective two years after its promulgation, in order to permit manufacturers of asbestos products to install the necessary engineering controls, and that in the meantime the temporary emergency standard of five fibres remain in effect. It urges that medical surveillance, including periodic pulmonary-function tests and X-rays, be required for all workers exposed to more than one asbestos fibre per cubic

centimetre of air, and that these examinations be conducted at the employer's expense. It also recommends that warning labels be affixed to containers of raw asbestos and to finished asbestos products stating that asbestos is harmful, that it may cause delayed lung injury, including asbestosis and cancer, that its dust should not be inhaled, and that it should be used only with adequate ventilation and approved respiratory devices."

Dr. Wagoner went on to tell me that in proposing a permanent two-fibre standard for asbestos dust he and the other authors of the NIOSH document gave great weight to the fact that that standard had been recommended in 1968 by the British Occupational Hygiene Society and had been adopted by Her Majesty's Inspectorate of Factories the same year. "However, we took care to point out that the British standard was designed only to reduce the early signs of asbestosis, and not to prevent asbestos-induced cancer, which may occur after exposure to levels of asbestos dust that are low enough to prevent lung scarring," he added.

Continuing, Dr. Wagoner said that the Advisory Committee on the Asbestos Standard had been set up by Secretary Hodgson two months before, in January, to provide additional evidence and information as to what the permanent standard should be. "The committee has five members, representing industry, labor, government, and the independent medical and scientific community," Dr. Wagoner said. "In addition to me, it includes Isaac H. Weaver, corporate director for environmental control of Raybestos-Manhattan, Inc.; Andrew Haas, the president of the International Association of Heat and Frost Insulators and Asbestos Workers; Jack Baliff, the chief engineer of the Division of Industrial Hygiene of the State of New York's Department of Labor; and Edwin Hyatt, of the University of California's Los Alamos Scientific Laboratory, who is the chairman. We held meetings in Washington for five days in February, and, by majority vote, we supported the two-fibre standard and all the recommendations of the NIOSH criteria document. In fact, in certain areas we made recommendations to the Secretary of Labor that were even stronger than those of the criteria document. For example, as I said, we recommended that before respirators could be issued to workers for any reason, each worker must have a complete physical examination to determine whether he could wear a respirator without endangering his health. We took this action to avoid the recurrence of conditions like those at Tyler, where respirators were slapped onto men who already had pulmonary problems as a result of exposure to asbestos."

That night, I had dinner with Dr. Johnson and his wife, who lived, with their two children, in an apartment in the suburbs of Cincinnati. I had been told that Dr. Johnson was fulfilling his military obligation by serving with NIOSH, and as he was driving me to my hotel later in the evening I asked him if he intended to remain there when his two-year tour of duty was over.

For a few moments, Dr. Johnson was silent; then he shook his head and said he really didn't know. "I am greatly troubled by the question of respectability in the field of occupational medicine," he told me. "There's very little peer pressure among the doctors who are in it, either in industry or in government, and now that I find myself faced with the problem of defining myself professionally for the next thirty years or so, I'm afraid of becoming frustrated and fatigued in this field, and of becoming part of the fabric of how things are done in a huge bureaucracy. You see, the way things are set up in occupational health these days, it's all too easy for a man to look at the welter of problems awaiting solution, to realize the lack of any real intention on the part of many people in government and in industry to take any significant action to remedy them, and to say to himself, 'Well, I can't do anything on my own, so I might just as well sit back and fit into the mold.'"

"But you did do something about it," I said. "You and Dr. Wagoner did something that could be the beginning of turning the whole thing around."

"Yes, we did something," Dr. Johnson replied quietly. "But will they let us keep on doing it?"

Early the next morning, I flew to Washington to attend the opening session of the Department of Labor's public hearings on the proposed permanent standard for occupational exposure to asbestos. They were held in a large conference room in the Interdepartmental Auditorium, at Twelfth Street and Constitution Avenue, and when I arrived there, shortly after nine o'clock, the place was filling up with some hundred-odd representatives of industry, labor, government, and the independent medical and scientific community.

The morning was given over to scheduling and rescheduling appearances of people wishing to give testimony during the rest of the week, and this complicated business was accomplished with wit and dispatch by Arthur M. Goldberg, a diminutive, bearded man, who was a hearing examiner for the Department of Labor.

After Goldberg had arranged the agenda for the four days of hearings, a tall man in his early forties, with dark hair and white sideburns, got to his feet, introduced himself as Bradley Walls, and said he represented the Asbestos Information Association of North America. "We have a number of questions asking for rulings from you, Mr. Goldberg," he said. "I preface them by saying that, in light of the number of witnesses, we concur with you that cross-examination might delay the hearings beyond our endurance and possibly yours, and that if clarifying questions be required they best come from you, sir. Secondly, we would like your ruling on your position with regard to physical evidence, either living or photographic. We would prefer that it not be presented, inasmuch as we do not think it would be helpful to this hearing."

With a puzzled frown, Goldberg inquired, "May I ask what you mean?"

"Either basket cases or X-rays," Walls said, with a grin. "We feel that their introduction would turn the hearings into a circus."

"The only thing I can say now is that evidence must be submitted in duplicate," Goldberg said dryly.

Walls grinned again. "Thank you, sir," he replied. "We will accept that."

When Mr. Walls sat down, a slight man in his early thirties rose at the rear of the room and, in a voice full of emotion, introduced himself as Colin D. Neal, the administrative assistant to the president of the United Papermakers and Paperworkers Union, which represents twenty-one hundred workers at the Johns-Manville Corporation's asbestos plant in Manville, New Jersey. "Sir, the United Papermakers and Paperworkers would like to express our indignation at Mr. Wall's characterization of those who may suffer the effects of asbestos-dust disease as 'basket cases,'" he said. "Using his terminology, however, we have a 'basket case' we would like to present to you sometime today."

Goldberg looked at Neal and nodded slightly. Then he said, in a quiet voice, "We will hear all witnesses who are presented, sir," and adjourned for lunch.

On my way out, I encountered Sheldon Samuels of the A.F.L.-C.I.O.'s Industrial Union Department, whom I had previously met and talked with on several occasions. Samuels, a stocky man in his middle forties, is ordinarily mild-mannered, but he was now flushed with anger. When I asked him to explain what had happened between Walls and Neal, he shook his head grimly. "We're holding a press conference at the Hotel Washington in a few minutes," he said. "Come on over and you'll find out."

The press conference was conducted by the Industrial Union Department in conjunction with the United Papermakers and Paperworkers, and was attended by a dozen or so journalists from various newspapers and magazines and by a Metromedia television camera team. Seated from left to right behind a long table at the front of the room were Samuels; Dr. William J. Nicholson, assistant professor of community medicine at the Mount Sinai School of Medicine and a member of the Mount Sinai Environmental Sciences Laboratory; Dr. Maxwell Borow, a thoracic surgeon from Bound Brook, New Jersey, which is near Manville; Jacob Clayman, administrative director of the Industrial Union Department; Colin Neal; Joseph Mondrone, president of Local 800 of the Papermakers' union in Manville; Robert Klinger, Local 800's vice-president and the chairman of its Health and Safety Committee; Daniel Maciborski, a member of the local; and Marshal Smith, the local's international representative.

Samuels got the press conference under way by reminding his listeners that it had long been known that the inhalation of asbestos dust could scar and destroy the lungs. "For the past thirty years, asbestos has been a proven cause of cancer of the lungs, and of the stomach and intestines of the workers who breathe it," he went on. "Usually, exposure over a long period of time is necessary to produce asbestos-related disease, but there is now evidence that even a single day of breathing large amounts of asbestos dust will harm the lungs. Contamination in the community, especially in the homes of asbestos workers, has been shown to cause cancer in women and children who have never been in an asbestos factory. Indeed, no one who has been or who is being exposed is safe from the effects of asbestos, and tens of thousands of workers and their families may already have had their lives shortened by exposure to asbestos dust."

Samuels went on to say that the development of safe methods of working with asbestos had been hampered for years by the efforts of management to hide the facts about asbestos disease, to suppress government and private studies of the subject, and to prevent state job-safety agencies from taking effective action. He then declared the temporary emergency standard of five fibres per cubic centimetre of air to be totally inadequate. "The Industrial Union Department will recommend at the hearings this week that a standard of two asbestos fibres per cubic centimetre of air go into effect within six months, and that within two years the standard be lowered to one fibre per cubic centimetre," he said. "Moreover, since constant monitoring of fibre levels in hundreds of plants is obviously impossible, we are calling for the installation of engineering controls and work practices designed to bring asbestos exposures ultimately to a zero level."

Samuels then introduced Clayman, who has been with the Industrial Union Department since its formation, in 1956, and had been its administrative director since 1960. Clayman, a soft-spoken man in his middle sixties, has spent a lifetime in the labor movement, first as a steelworker, then as a member of the Ohio state legislature fighting for improved workmen's-compensation laws, and, just before joining the Industrial Union Department, as secretary-treasurer of the Congress of Industrial Organizations in Ohio. Speaking in measured tones, Clayman told his audience that the press conference had

been called to bring to public attention what might well be the most devasting environmental disaster yet perpetrated by any industrial nation. "Today, millions of American workers, their families, and their neighbors may be exposed to toxic concentrations of asbestos," Clayman said. "God only knows how many thousands of workers have died, and how many will die or be terribly sick, because of the routine way this country has dealt with the problem of occupational exposure to asbestos for so many years. We cannot bring dead workers back to life or prevent pain long since experienced, but we can and must bring an end to this inexcusable environmental crime of huge proportions that afflicts workers and totally unaware victims in the plant community."

Dr. Borow was then introduced, and he described the cases of malignant mesothelioma that he and his associates at the Somerset Hospital, in Somerville, New Jersey, had begun to find in 1964, and said that he had witnessed a sharp rise in the incidence of the disease since then. He quoted from a letter he had written on October 12, 1967, to Marshall Smith, then president of the Papermakers' Local 800. The letter stated that Dr. Borow and his associates were planning an exhibit on the rising incidence of mesothelioma in the Manville area, which they had hoped to display in 1968 at four major medical conventions throughout the country and at various hospitals in New Jersey, but that, though they had applied to forty different sources for funding, they had been unable to obtain money for this purpose. "We were told frankly that local industry would not support this project for fear of upsetting the Johns-Manville Corporation," the letter continued. "Johns-Manville themselves, after six weeks of deliberation, refused support, as they were not ready to acknowledge the association between asbestosis and mesothelioma."

Dr. Borow's letter to Smith concluded by asking the union to provide the three thousand dollars that would be necessary to assemble and transport the exhibit, and after he had finished reading it. Dr. Borow said that the union had supplied the money and the exhibit had been widely displayed.

Dr. Borow then introduced Daniel Maciborski, a patient in whom he had discovered an abdominal mesothelioma a few months earlier. Maciborski, a gaunt man in his middle fifties, told the audience with calm and dignity that he had contracted mesothelioma while working for Johns-Manville, and that he hoped his personal misfortune would encourage government officials to act promptly so that it would not be shared by other workers.

The hearings had begun by the time I had had some lunch and returned to the conference room. As I took a seat, I saw that Maciborski and Dr. Borow had been giving testimony at a witness table at the front of the room—to the right of Goldberg, the hearing examiner, and directly opposite a cross-examination panel consisting of Nicholas DeGregorio, an attorney with the Department of Labor's Office of the Solicitor, and Gerald Scannell, acting director of the Occupational Safety and Health Administration's Office of Standards. Toward the end of his remarks, Dr. Borow said that he had now encountered fifty-two cases of mesothelioma in the Manville area, and that all the victims of the disease had worked for Johns-Manville with the exception of two, who had simply lived in the community.

Dr. Borow and Maciborski were followed at the witness table by Dr. Nicholson, of the Mount Sinai Environmental Sciences Laboratory, who began his testimony by stating that the health experience of American asbestos workers could be described only as a national tragedy. Referring to a mortality study Dr. Selikoff and Dr. Hammond had made of insulation workers in the Newark-New York area, Dr. Nicholson reminded his listeners that two in ten of those men had died of lung cancer, one in ten of gastro-intestinal cancer, nearly one in ten of mesothelioma, one in ten of other cancers, and almost one in ten of asbestosis. "Past standards are not an appropriate reference in setting a new permanent standard for occupational exposure to asbestos, simply because all past standards were conceived only for the purpose of preventing asbestosis," Dr. Nicholson continued.

"But asbestosis is obviously not the major problem among asbestos workers. Cancer is the major problem. Cancer accounts for seventy-five per cent of the excess deaths among the asbestos-insulation workers studied by Dr. Selikoff and Dr. Hammond, and this asbestos-cancer hazard is not appropriately covered by the proposed asbestos standard." Dr. Nicholson went on to say that no knowledge now existed of a safe working level of exposure to asbestos which would prevent the occurrence of cancer, and he urged that asbestos not be used in the workplace except with approved techniques and methods designed to remove asbestos dust from the working environment. "There is evidence that a standard of two fibres per cubic centimetre of air will be inadequate for the prevention of asbestos disease," he said. "The recently measured long-term exposure of the asbestos-insulation workers, whose disastrous disease experience has been documented by Dr. Selikoff and Dr. Hammond, was approximately three fibres per cubic centimetre, even prior to the implementation of improved control measures."

Another of the afternoon's witnesses was Dr. Sidney Wolfe, who is the director of Ralph Nader's Health Research Group and a former medical researcher on the staff of the National Institutes of Health. Dr. Wolfe testified that "if workers were guinea pigs and asbestos were a food additive, the Delaney Clause of the Food and Drug Act [which prevents the introduction into the marketplace of any substance known to cause cancer in test animals] would have mandated the elimination of this carcinogenic dust from the environment long ago. However, in 1972, twelve years after the publication of data showing the relationship between asbestos exposure and mesothelioma in humans, and at a time when there are now hundreds of cases of this cancer in workers exposed to asbestos, the slaughter continues. Under these circumstances, regulations which do not ultimately reduce the fibre count to zero fail to comply with the Occupational Safety and Health Act of 1970, which clearly states that 'no employee will suffer diminished health, functional capacity, or life expectancy as a result of his work experience.'"

Dr. Wolfe was succeeded at the witness table by Anthony Mazzocchi, who was accompanied by his assistant, Steven Wodka, and who stated the position of the Oil, Chemical, and Atomic Workers International Union in blunt language.

"The proposed Labor Department standard for exposure to asbestos dust is a very sad document," he said. "It serves to confirm what many members of our international union already fear—that the [Occupational Safety and Health] Administration is frivolous with the health and rights of working people." Mazzochi went on to say that there were far more people exposed to asbestos in the workplace than one was usually led to believe. "The often quoted Labor Department figure of two hundred thousand workers isn't conservative, it's ridiculous," he declared. "In our international union, which represents one hundred and eighty thousand workers in the oil, chemical, and atomic-energy industries alone, almost every shop and plant uses asbestos in one form or another. For example, in a major oil refinery on the East Coast—Mobil Oil in Paulsboro, New Jersey—asbestos has captured our concern as the single most serious industrial-health hazard in that facility. We had nineteen workers who handle asbestos-insulation materials in that refinery examined by Dr. Irving Selikoff, of the Mount Sinai School of Medicine. Dr. Selikoff's tests revealed a very serious occupational-health problem resulting from their exposure to asbestos. Now our concern is that two to three hundred other workers—pipefitters, boilermakers, welders, bricklayers, and others who work in and around this insulation—may also have been overexposed. Asbestos turns up in the most unexpected situations. Recently, I was touring a plant in northern New Jersey where Prestone antifreeze is made. At one point in the tour, I caught a completely unprotected worker dumping asbestos into a vat of antifreeze. He told me that asbestos is what gives Prestone its anti-leak quality. If that was an unexpected situation, then what has been our experience in a primary asbestos plant—for example, one that manufactures asbestos-insulation products? Up until recently, the O.C.A.W. [Oil, Chemical, and Atomic Workers International Union] represented workers at the Pittsburgh Corning Corporation's asbestos plant in Tyler, Texas. This plant was the sister to the Union Asbestos & Rubber Company's factory in Paterson, New Jersey, where Dr. Selikoff conducted his now famous mortality study of amosite-asbestos workers.

At the Paterson plant, Dr. Selikoff found that total deaths were more than twice the number anticipated, and now at the Tyler plant the National Institute for Occupational Safety and Health has already found that seven out of eighteen workers with ten or more years of employment meet at least three of four criteria for asbestosis. Worse yet, H.E.W. studies of the plant dating back to 1967 have found grossly excessive levels of asbestos dust throughout the plant. While this particular factory employed only sixty or so people at its peak, the turnover was such that nearly nine hundred men had worked there for varying periods of time from 1954 to 1972. The story of Tyler is sadly filled with episodes of corporate indifference and governmental secrecy."

Mazzocchi went on to say that, because even very small quantities of asbestos were known to cause cancer, the union was recommending that all exposure to asbestos ultimately be reduced to zero by the enforcement of strict equipment-performance standards. "All manufacturing, maintenance, and other industrial and construction processes using asbestos must be reengineered so that they perform at zero exposure," he declared. "We propose that industry be put on notice, as soon as possible, that within six months of the effective date of this standard, no worker shall be exposed to more than two fibres per cubic centimetre of air; that within two years this level shall be reduced to one fibre; and that within three years of June of 1972 zero exposure shall be the law. As for respirators, they should be authorized only when the employer has a definite abatement plan to reduce the exposure to asbestos through engineering means. The other situation in which respirators would be allowed is where there is no feasible technology for controlling asbestos dust." Mazzocchi added that the Occupational Safety and Health Administration's proposed standard on medical examinations of asbestos workers would truly allow the fox to guard the chickens. "The medical community, like many other professional groups in this country, has physicians that industry can rely on to deny valid occupational-disease claims of workers," he said. "Therefore, we recommend that workers be allowed to have annual physical examinations performed on them by doctors of their own choice, but at the employer's expense. Furthermore, the rec-

ords of these examinations should not be sent to the employer but to a central record-keeping facility at NIOSH, where such records could be kept intact and confidential. NIOSH would then send each employer an annual statistical summary on the examinations of all his employees. It has been our sad experience, in case after case, that as soon as management finds out how badly it has injured the health of a worker, management does its best to get rid of him. Thus these records need to be kept intact for at least forty years." Mazzocchi concluded by declaring that a deficient standard for protection from the hazards of asbestos would legislate sickness and an early death for thousands of people. "Faced with this prospect, I would seek no new rule at all, rather than be held responsible for the cases of asbestos disease that will surface thirty years from now," he said.

One of the final witnesses of the afternoon was Alex Kuzmuk, a governor of the Asbestos Textile Institute—which in 1964 had sent a letter to the New York Academy of Sciences urging caution in the public discussion of medical research into asbestos disease in order "to avoid providing the basis for possibly damaging and misleading news stories." Kuzmuk now testified that the Asbestos Textile Institute was opposed to the NIOSH criteria document and to the recommendations of the Secretary of Labor's Advisory Committee on the Asbestos Standard. "We find that even the five-fibre standard is not feasible for us," he said. "Indeed, it will price American-made asbestos-textile products right out of the world and domestic markets, with the result that imports from nations where workers are under no such protection will flood the country. We feel that the proposed standard is based upon incomplete studies and that new evaluations are needed. Pending more comprehensive studies, we respectfully urge the Secretary of Labor to reconsider the establishment of asbestos standards, to reinstate the threshold limit value for asbestos dust at twelve fibres per cubic centimetre, and to provide for representation of the Asbestos Textile Institute on future advisory and study committees."

When Goldberg recessed the first day's session, I flew back to New York, where business kept me during the second day of the hearings. The day after that—Thursday, March 16th—I took an early plane to Washington to be present for what Goldberg had referred to previously in the proceedings as the Johns-Manville "scenario."

The conference room of the Interdepartmental Auditorium was almost full when I arrived, just before 9 A.M., and the hearings got underway promptly, with John B. Jobe, Johns-Manville's executive vice-president for operations, sitting down at the witness table and stating that the asbestos industry had first supported research on asbestos disease during the nineteen-twenties, at the Saranac Laboratory of the Trudeau Foundation, in Saranac Lake, New York, and was at present supporting such research at more than half a dozen medical schools in the United States and Canada. He went on to say that although the asbestos industry recognized its responsibility to support the intent of the Occupational Safety and Health Act, there was no credible evidence demonstrating the necessity for a standard lower than five fibres per cubic centimetre of air.

Jobe was followed by Dr. George W. Wright, a longtime paid medical consultant for Johns-Manville, who was also director of medical research of the Department of Medicine of St. Luke's Hospital in Cleveland. Dr. Wright began his testimony by saying that he had been conducting research on asbestosis since 1939, first as a member of the Saranac Laboratory of the Trudeau Foundation and then, since 1953, at St. Luke's Hospital. After reviewing the various standards for occupational exposure to asbestos that had been in effect over the years, Mr. Wright told the hearings that no evidence had been found to indicate that the present asbestos standard should be changed. "Moreover, since I believe that the five-fibre standard will certainly prevent asbestosis, I am in complete disagreement with the NIOSH criteria document with respect to its expressed opinion that the data relating asbestos exposure to biological reaction are inadequate to establish a meaningful standard at this time," he said. "While the evidence may not be as far-reaching as we would like, it is scientifically valid, and adequate to support as a first approximation the opinion that the present standard of five fibres per cubic centimetre should not be lowered, but left as it is."

According to Dr. Wright, a recent study conducted by Dr. John Corbett McDonald, of the Department of Epidemiology and Health of McGill University, in Montreal, furnished strong support for not lowering the asbestos standard below five fibres per cubic centimetre of air, and proof that mesothelioma was virtually absent in people who were exposed only to chrysotile asbestos—a type of the mineral that accounts for ninety-five per cent of the world's production, and the type that Johns-Manville mines, uses, and sells almost exclusively. "Mesothelioma appears to be predominantly linked with exposure to crocidolite or amosite," Dr. Wright declared. "Therefore, both of these types of asbestos should be controlled more stringently than is chrysotile."

Dr. Wright then criticized certain aspects of Dr. Selikoff's and Dr. Hammond's mortality studies of the asbestos-insulation workers; the studies did not include adequate control populations, he said, and the incidence of mesothelioma among these workers was caused not by their exposure to chrysotile but by their dual exposure to chrysotile and amosite. He ended by reiterating his support of the five-fibre standard, because, as he put it, "This is a correct standard and constitutes a level of exposure that will protect against the development of asbestosis and bronchogenic cancer."

Thus far in the hearings, there had been very little cross-examination, but when Dr. Wright concluded his remarks a number of people made it known that they had questions to ask and points to make concerning his testimony. Among them was Nicholas DeGregorio, of the Department of Labor, who pointed out with some asperity that he had never heard the validity of Dr. Selikoff's and Dr. Hammond's study of the asbestos-insulation workers questioned by any of the leading epidemiologists in the field.

After a short recess, the Johns-Manville testimony continued with the appearance at the witness table of Dr. Thomas H. Davison, who introduced himself as the medical director of the corporation. Dr. Davison's testimony was very brief, and was chiefly concerned with his objections to the proposed frequency of medical examinations for asbestos workers. When he completed his remarks, he was succeeded at the witness table by Edmund M. Fenner, the corporation's director of environmental control. Fenner testified that Johns-Manville had worked diligently to lower dust levels in all its plants. He also criticized the two-fibre standard proposed in the document, on the ground that adequate monitoring and dust-sampling equipment was not available to measure such a level.

Then Dr. Fred L. Pundsack, Johns-Manville's vice-president for research and development, came to the witness table. "Perhaps nowhere else in the asbestos standards being considered today is the opportunity to bring about bad changes so clearly evident as it is in some of the proposed label requirements," Dr. Pundsack said. "If these label requirements are adopted in their proposed form, they will in our opinion destroy large amounts of the industry and eliminate thousands of jobs."

Dr. Pundsack went on to declare that warning labels need only indicate that precautionary steps should be taken when handling asbetos, and that labels need not contain terrifying language, such as the word "cancer." He pointed out that asbestos is not an acutely toxic chemical or drug that reacts in minutes or hours, nor is it an explosive, nor can it be absorbed through the skin. "Therefore, the application of frightening labels to asbestos is inappropriate," he said. "Instead, we recommend that a caution or warning label with the following type of text be used on bags or containers of asbestos fibre: 'Caution—This bag contains chrysotile asbestos fibre. Inhalation of asbestos in excessive quantities over long periods of time may be harmful. If proper dust control cannot be provided, respirators approved by the United States Bureau of Mines for protection against pneumoconiosis-producing dusts should be worn.'"

When Dr. Pundsack finished his remarks, there was an hour's recess for lunch. The first afternoon witness was Henry B. Moreno, senior vice-president for the industrial and international divisions of Johns-Manville, who said that the company's dust-control programs had already cost twenty million dollars. "For us to achieve a standard of two fibres per cubic centimetre would require capital expenditures of twelve million dollars, and additional dollars per year," Moreno declared. "It would simply not be economically feasible to operate at this level in five of our plants, which, if closed down, would put sixteen hundred employees out of work. This and similar closings across the country would have a substantial effect upon the nation's economy, and would result in higher costs reflected all across the board. In addition, Japan, Taiwan, India, other Asian countries, and nations in South America would come on strong and flood the American market with asbestos products. For these reasons, we believe that it would be nothing less than complete social irresponsibility to adopt a two-fibre standard for occupational exposure to asbestos without stronger medical evidence than that which presently exists."

When questioned by Dr. Nicholson, Moreno, like Dr. Wright before him, sought to place chrysotile asbestos above suspicion as a cause of mesothelioma, and, like Dr. Wright, he implicated amosite. Moreno declared that from 1930 until 1960 all high-temperature-insulation materials contained amosite, that since 1960 there had been a trend away from amosite, and that for the past five years almost no amosite had been used.

Knowing that Johns-Manville had long been attempting to absolve chrysotile by blaming crocidolite and amosite asbestos for the occurrence of mesothelioma, and that most members of the independent medical and scientific comunity consider such efforts to be self-serving, I was not surprised to hear Dr. Nicholson strongly question Moreno about his statement that amosite asbestos had been a major constituent of insulation materials between 1930 and 1960. Later, I learned that Dr. Nicholson reinforced this refutation by sending an addendum to Goldberg on March 24th for inclusion in the record of the hearings. Dr. Nicholson's accompanying letter referred Goldberg to two tables of information he had included in his addendum. The first table, which listed the quantity of asbestos used in the manufacture of insulation materials in the United States between 1920 and 1965, had been furnished by Dr. Pundsack himself to Dr. Selikoff for presentation at the Fourth International Pneumoconiosis Conference of the International Labor Office, held in Bucharest, on September 29, 1971. The second table,

compiled from the *United States Minerals Yearbook*, listed imports of amosite asbestos into the United States during those same years. Since a comparison of the two tables showed that only a few hundred tons of amosite was imported each year between 1920 and 1940, and that this amount was only a small fraction of the total amount of asbestos used in the manufacture of insulation materials during that period, Dr. Nicholson pointed out, "clearly, amosite could have been only a minor constituent of insulation material until World War II," and even through 1950 "it could only represent a small fraction of the asbestos used in non-marine commercial and industrial insulation, if one considers the extensive use in shipbuilding." Dr. Nicholson concluded his letter by calling Goldberg's attention to a table showing that the disease experience (including mesothelioma) of shipyard insulation workers was not significantly different from the disease experience of non-shipyard insulation workers. "It is not possible to assign an important role to amosite in the insulation workers' experience," he wrote.

After Dr. Nicholson's cross-examination of Moreno, the seat at the witness table was taken by Dr. McDonald, who stated at the outset that he was a professor of epidemiology and the chairman of the Department of Epidemiology and Health of McGill University, and that he had specialized in epidemiology for twenty-four years. "I would now like to add one or two points not in my written submission, in order to clarify my position here," Dr. McDonald continued. "The first point is that I am a full-time employee at McGill University, and an independent research worker. I do not work, nor am I associated, with any asbestos producer or manufacturer. The research I shall be describing is supported by grants, not to me but to McGill University, from a number of sources—the Institute of Occupational and Environmental Health, the Canadian government, the British Medical Research Council, and the United States Public Health Service. I am not here to support the testimony or position of Johns-Manville or any other body affected by the proposed regulations."

Dr. McDonald went on to quote at length from a report entitled "The Health of Chrysotile Asbestos Mine and Mill Workers of Quebec," which he and some colleagues were preparing for publication in the near future. Dr. McDonald said that he and his associates had begun an epidemiological study of miners and millers in 1966, using records of the Quebec asbestos-mining companies to identify all persons known to have worked in the industry since its inception, in 1878. He explained that the mortality aspect of the study was limited to those men who had worked for a month or more, and who were born between 1891 and 1920, adding that he and his colleagues had already published an initial analysis of the mortality experience of these workers. Dr. McDonald then said that about eighty-seven per cent of the 11,572 persons included in the mortality study had been traced by the end of December, 1969, and that 3,270 of them had died. "Cancer of the lung showed a rising death rate with increasing dust exposure, particularly in the two highest dust-exposure groups," he continued. "Of one hundred and thirty-four deaths from respiratory cancer, there were five from pleural mesothelioma. These cases, however, showed no clear relationship with dust exposure."

Later in his presentation, Dr. McDonald assessed the results of his mortality study by declaring that the number of excess deaths related to asbestos exposure among the workers he had investigated probably constituted no more than two per cent of the total of 3,270 deaths; that most of these deaths were caused by lung cancer and pneumoconiosis (by which he presumably meant asbestosis); and that almost all of these excess asbestos-related deaths occurred among workers employed in the highest dust-exposure categories. After pointing out that the death rates from cancer and mesothelioma among the chrysotile-asbestos miners and millers he had studied were very low compared with the death rates from those diseases found among the insulation workers studied by Dr. Selikoff and Dr. Hammond, Dr. McDonald concluded that only high levels of exposure to chrysotile asbestos during mining and milling operations had an appreciable effect on mortality. Dr. McDonald ended his presentation by further concluding, from the findings of his study, that a reasonable standard for chrysotile mines and mills would be somewhere between five and nine fibres per cubic centimetre.

When Dr. McDonald finished his testimony, he was questioned at some length by Dr. Nicholson and by DeGregorio. Dr. Nicholson's questioning elicited a statement from Dr. McDonald that in a previously published report on mortality among the Quebec asbestos miners and millers, he had concluded that among those workers in his cohort who were exposed to the highest level of chrysotile dust the incidence of lung cancer was five times that of the workers exposed to the lowest level. He also obtained an admission from Dr. McDonald that his recommendation of a standard of between five and nine fibres was based upon a total of only thirty-two fibre counts made in mines and mills of Quebec in the summer of 1971. DeGregorio, too, asked Dr. McDonald a series of pointed questions about the scientific validity of his study. He expressed open skepticism of Dr. McDonald's ability to substantiate the accuracy of chrysotile-exposure levels that workers were exposure to during the nineteen-fifties and the nineteen-sixties. He also obtained an admission from him that not all the effects of whatever exposures there may have been were observed directly by Dr. McDonald and his associates—through, for example, the examination of autopsy material—but that they had been observed by other people and recorded by them in reports and death certificates, which he and his associates had then included in their study as valid.

I was not surprised to hear Dr. McDonald questioned in this manner, for several members of the independent medical and scientific community had previously expressed grave reservations to me about the accuracy of the conclusions he and his colleagues had drawn in a report of their study which had appeared in June of 1971, in Volume XXII of the *Archives of Environmental Health*, under the title "Mortality in the Chrysotile Asbestos Mines and Mills of Quebec." Some people had pointed out that many, if not most, of the workers studied by Dr. McDonald could have had little or no exposure to airborne asbestos fibres, because they had worked in open-air pits, extracting asbestos in wet-rock form. Others deplored the fact that Dr. McDonald and his associates had conducted very little pathological review, such as the examination of autospy material and lung-tissue slides, in arriving at their conclusions. Still others pointed out that ninety per cent of the lung cancers and mesotheliomas found in insulation workers occurred twenty years or more after the onset of exposure to asbestos—as, for example, in the cases of men who began working with asbestos at the age of twenty, and who died of cancer at fifty—and that by omitting persons born before 1891 Dr. McDonald and his associates had excluded from their calculations precisely the people who might be expected to show the effects of asbestos inhalation. (It was as if in studying the total occurrence of gray hair one refused to look at anyone born more than forty or fifty years ago.) In addition, a number of people pointed out that by including only deaths that occurred twenty years or less after the onset of exposure, Dr. McDonald had perforce diluted the major disease effect of asbestos in his study. Perhaps the most telling critiism of Dr. McDonald's study, however, was made in a letter sent to Dr. Selikoff on January 7, 1972, by Herbert Seidman, who is chief of statistical analysis in the Department of Epidemiology and Statistics of the American Cancer Society. Seidman's critique was included in the addendum for the hearing record that was submitted by Dr. Nicholson. It described some of Dr. McDonald's methods of computing death rates as "ill-advised." It pointed out the lack of consideration that Dr. McDonald and his associates had given to the importance of the long latency period in the development of asbestos tumors, and it described the methodology used in the study to assess separately the importance of cumulative dust exposure and duration of exposure in relation to lung cancer as "inappropriate," because of the "paucity of basic data." In conclusion, Seidman wrote, "I think that the data have been collected fairly well but analyzed quite poorly."

As a layman, I had little way of judging the scientific validity of Dr. McDonald's work except through the observations of those members of the independent medical community who had communicated their opinions of it to me. However, I had brought with me to the hearings a copy of Volume XXII of the *Archives of Environmental Health*, containing Dr. McDonald's article on mortality among the chrysotile-asbestos miners and millers of Quebec, which had been sent to me some months earlier by William P. Raines, a vice-president and director of public affairs for Johns-Manville. Since Dr. McDonald had referred to this mortality study during the course of his testimony, and since anyone attending the public hearings had the right to cross-examine witnesses, including members of the press, I decided to ask him some questions about it. After receiving permission from Goldberg to address Dr. McDonald, I reminded him that in his opening remarks he had declared that all his research had been performed independently.

"That is correct," Dr. McDonald replied. "All things are relative."

I then reminded Dr. McDonald that John Jobe, the executive vice-president for operations of Johns-Manville, had testified at the morning session that his company was supporting research on asbestos disease, and asked him if that was research other than what he had performed.

"I guess what Mr. Jobe is referring to is the fact that Johns-Manville, together with other mining companies, helps support the Institute of Occupational and Environmental Health, which is granting body that receives research applications, and which therefore indirectly supports our research," Dr. McDonald replied. "Now, it is a very indirect relationship."

I then pointed out to Dr. McDonald that at the end of his article in the *Archives of Environmental Health*, a credit was listed in small type: "This work was undertaken with the assistance of a grant from the Institute of Occupational and Environmental Health of the Quebec Asbestos Mining Association."

"That is correct," Dr. McDonald said.

With that, I took my seat. Dr. McDonald had just indirectly admitted that Johns-Manville, together with other asbestos-mining companies, supported the Institute of Occupational and Environmental Health, and that the institute, in turn, had helped support his study. Moreover, the credits at the end of his article, which listed no financial support other than that supplied by the institute, had given the full and correct title of this organization—the Institute of Occupational and Environmental Health of the Quebec Asbestos Mining Association. It seemed unnecessary to point out to the rep-

resentatives of industry, labor, government, and the independent medical and scientific community who were gathered in the conference room something that many of them already knew—that Johns-Manville is, and for the past quarter of a century has been, the dominant member of the Quebec Asbestos Mining Association.

When the hearings were adjourned that afternoon, Ivan Sabourin, former attorney for the Quebec Asbestos Mining Association, came up to me and introduced himself. We talked briefly, and then I took a plane back to New York. I had never met Sabourin before, but I remembered reading something about him in connection with McGill University in a copy of the minutes of a 1965 meeting of the Asbestos Textile Institute. The following day, I took the minutes from my files and read them again. They informed me that a meeting was held on June 4, 1965, at the Motel Le Provence, in Thetford Mines, Canada, and they quoted Sabourin as saying that a recent article associating asbestos and cancer in the *Journal of the American Medical Association* was not convincing, and expressing regret over the adverse publicity that resulted from such articles. Sabourin then told the meeting that the Quebec Asbestos Mining Association wished to study respiratory diseases related to chrysotile asbestos, and that it was seeking "alliance with some university, such as McGill, for example, so that authoritative background for publicity can be had."

According to the minutes, the next speaker at the meeting was Dr. Lewis J. Cralley, of the United States Public Health Service, "who for the past several years has been supervising the extensive environmental study of asbestos employees in textile plants in the U.S.A." Dr. Cralley told the meeting that "the study was going well," that the Public Health Service was now extending its work into other asbestos industries, and that "the results to date certainly justify the program and its further expansion."

Dr. Cralley did not elaborate on what these results had been, nor, for that matter, did he ever see fit to officially warn any segment of the asbestos industry, least of all the workers, that the data he was collecting showed that men employed in asbestos factories across the land were being exposed to grossly excessive levels of asbestos dust, and that excess mortality from asbestos disease among workers in asbestos-textile factories had reached tragic proportions. (Indeed, six years passed before Dr. Johnson and Dr. Wagoner unearthed the data buried in Dr. Cralley's files and undertook to do something to rectify the appalling situation they discovered.) In this connection, I found it interesting to note that out of the seventy-odd people listed in the minutes as attending the 1965 meeting of the Asbestos Textile Institute, Dr. Cralley was the only invitee from any government, and the only one who did not represent an asbestos company or a related organization.

At the same time, I also reread a paper sent to me some months before by Johns-Manville, which gave a history of the company's health-research programs. Referring to Dr. McDonald's study of the Quebec asbestos miners and millers, the paper had this to say:

"This study is being funded by the Institute of Occupational and Environmental Health, the scientific research arm of the Quebec Asbestos Mining Association (QAMA). As mentioned before, Johns-Manville is a principal member of the QAMA. The Institute of Occupational and Environmental Health plays a vital role in the Johns-Manville health research effort. Besides allocating QAMA funds for research projects, the seven-man scientific advisory committee of the Institute also reviews requests J-M receives from scientists and scientific organizations for money to conduct research in the asbestos/health field."

The paper then listed the chairman of the Institute's seven-man scientific advisory committee as Dr. George W. Wright, Director of Medical Research, St. Luke's Hospital, Cleveland, Ohio.

I did not return to Washington for the final day of the hearings, but during the following week, thanks to Gershon Fishbein, editor of the *Occupational Health & Safety Letter*, and as a result of reading the *Occupational Safety & Health Reporter*, a newsletter published by the Bureau of National Affairs, Inc., I was able to keep abreast of most of the testimony that had been delivered during the two days of hearings I missed. By and large, this testimony ran true to form, in that it reflected the beliefs and self-interest of those who delivered it. Representatives of the asbestos industry, on the one hand, stated that an asbestos standard of two fibres per cubic centimetre of air either could not be achieved technically or would be prohibitive in cost, and that it would surely result in the shutting down of many asbestos-manufacturing plants, with an attendant loss of jobs and an influx of foreign asbestos products into the United States. Representatives of labor unions, on the other hand, urged that the safety and health of workers be placed ahead of any economic considerations, that the two-fibre standard be adopted, and that efforts be made to reduce occupational exposure to asbestos to zero. In a way, much of this testimony tended to be misleading, for the hearings on the asbestos standard had become far more than just a disagreement between industry and labor over whether the standard should be five or two fibres. The introduction—by Dr. Selikoff and his associates at the Mount Sinai Environmental Sciences Laboratory, by the authors of the NIOSH criteria document, and by the Secretary of Labor's Advisory Committee on the Asbestos Standard—of proposals for performance standards that would a priori reduce dust levels in the manufacturing and installation of asbestos products by requiring the use of proper equipment, efficient exhaust and ventilation systems, and safe work practices was of crucial importance, for the carrying out of performance standards would obviously put the horse before the cart, where it belonged. In short, effective performance standards would be bound to lessen the importance of and reliance upon the laborious and time-consuming process of taking air samples and counting asbestos fibres beneath a microscope in order to determine whether the asbestos standard was being complied with. Thus, performance standards would go a long way toward obviating the kind of cooperation between industry and government that in factories such as Pittsburgh Corning's Tyler plant had for so many years reduced the taking of air samples and the counting of asbestos particles and fibres to a farce of tragic proportions and fatal consequences.

Two pieces of testimony delivered at the sessions I had missed were of particular interest to me in this respect, so a few days after the hearings were concluded I obtained full texts from the men who had presented them. The first was given on the second day by Duncan A. Holaday, research associate professor at the Mount Sinai Environmental Sciences Laboratory and formerly a senior industrial-hygiene engineer with the United States Public Health Service, where he had been instrumental in developing standards for protecting uranium miners against radiation exposure. (For this work, he had been given the Distinguished Service Award of the Health Physics Society.) Holaday addressed himself at the hearings to the problem of how best to control asbestos dust:

"The use of procedural standards, by which I mean regulations requiring the use of specified methods of treating and packing material, and work rules that reduce dust production and dispersion, is the best means of preventing overexposures to harmful substances. It is based upon the knowledge that certain operations and processes will release contaminants in the work area unless they are controlled. It is also known from experience that certain control measures will markedly reduce or eliminate these emissions. Therefore, the prudent course is to require that control procedures be instituted without waiting for information obtained by air samples and dust counts to demonstrate that contamination has, in fact, occurred."

The second piece of testimony that I found of special interest was delivered on the final day of the hearings by Sheldon Samuels. He began by saying that there were certain advantages in appearing at the end of the prolonged hearings. "As you know, Mr. Goldberg, I did not plan it that way, but it has provided me with an important overview, which I intend to exploit," he declared. "The basic issue before us was made crystal clear at your prehearing conference, when Mr. Walls, of the Asbestos Information Association, attempted to prevent Daniel Maciborski from being heard, and referred to him in a disgustingly unmentionable manner. Daniel Maciborski did not ask to be heard at these hearings for dramatic effect. He was trying to tell you that more than the company's admittedly advanced environmental-control and medical-surveillance programs were needed to reduce the risk to other workers. The issue before us is whether human life can be traded off in the marketplace, and whether workers must really face death on the job."

Samuels continued his testimony by urging the adoption of performance standards that would require equipment and work practices designed for zero emission of asbestos. "For a six-month transitional period the Industrial Union Department recommends a two-fibre level," he said. "Within two years, this level should be lowered to one fibre per cubic centimetre of air, and, ultimately, there should be a zero exposure to asbestos dust." Samuels also urged the adoption and strengthening of the NIOSH recommendations for labelling asbestos, for monitoring airborne asbestos dust, for conducting periodic medical examinations of asbestos workers, and for guaranteeing that the records of such examinations be the property of the employee, and not the employer. "Most important of all, any employee who lacks confidence in the judgment of a physician who is directly responsible to the employer should have the right to choose another source of medical service," Samuels declared, adding that Daniel Maciborski had passed a medical examination provided by a Johns-Manville physician only a few weeks before his own physician had diagnosed him as suffering from terminal mesothelioma.

Most of the members of the independent medical and scientific community with whom I spoke seemed pleased by what had taken place at the hearings, and thought it likely that a two-fibre level would be adopted by the Occupational Safety and Health Administration as a permanent standard for occupational exposure to asbestos. Their optimism was based largely upon the reasoning that except for the testimony of Dr. Wright and Dr. McDonald—neither of whom could be considered completely independent medical researchers—the asbestos industry had set forth no real data to refute the conclusions and recommendations of the NIOSH criteria document and the Secretary of Labor's Advisory Committee on the Asbestos Standard. Mazzocchi, Samuels, and other union people, however, expressed a skepticism concerning the Department of Labor's motives and intent which was based upon long

and bitter experience. In any event, once the hearings were concluded, nobody involved in the matter could do much but wait until June 6th, when, having presumably weighed all the evidence, the Department of Labor was required by law to promulgate a permanent standard for asbestos.

On Monday morning, March 20th, I received a long-distance call from James Bierer, the president of Pittsburgh Corning. Bierer started out by apologizing for not getting back to me sooner concerning my request to interview Dr. Grant about the Tyler plant. Then he told me that, upon the advice of legal counsel—because of the recent hearings in Washington and on account of possible litigation inherent in the Tyler situation—Pittsburgh Corning could not authorize me to conduct an interview with Dr. Grant, or, for that matter, with anyone else in its employ.

During the first week of April, I drove out to Paterson, New Jersey, and spent a day at the offices of the Mount Sinai School of Medicine's Paterson Asbestos Control Program, where Dorothy Perron and several aides (among them Shirley S. Levine, Rayla Margoles, and Charles Nolan) have been working since 1968 to trace the nine hundred and thirty-three men who had worked for at least a year between 1941 and 1945 at the Union Asbesto & Rubber Company's plant there. I learned that, pressed by its insurance company, Union Asbestos had paid its workers five cents an hour extra to wear respirators, and had threatened in editorials published in the plant newspaper to fire them if they refused. I also discovered that the workers had lodged numerous complaints about the respirators, saying that they were difficult to breathe through. Indeed, some of the men had complained that, unable to work with the respirators, they had coated their nostrils with Vaseline and drunk large quantities of milk in an attempt to protect their respiratory tracts from the irritating amounts of airborne asbestos dust that filled the plant. (Obviously, such measures were pitiful protection against the pervasive nature of asbestos fibres, for when Dr. Selikoff and Dr. Hammond conducted their study of mortality among the men who had worked in the plant, they found a gross number of excess deaths resulting from asbestosis, lung cancer, mesothelioma, and other malignant tumors. Moreover, the asbestos-disease hazard extended far beyond workers directly involved in the production of insulation materials. For example, Rudolph Wild, the engineer who had developed the product manufactured in the Paterson and Tyler plants, died of mesothelioma. He may have had ample occupational exposure to asbestos, but his daughter also died of mesothelioma, and her only known exposure to asbestos had occurred when as a child she had played with samples of asbestos products her father had brought home from work.

In addition to the engineer and his daughter, Robert E. Cryor, who had been manager of the Paterson plant between 1941 and 1944, died of mesothelioma in April of 1970. During my visit to the Paterson Asbestos Control Program, I went through nearly fifty separate reports of medical examinations conducted by the company's physician which either told of abnormal lung X-rays or contained such notations as "This man is a poor risk" and "This man should not be put into a dusty area." I also discovered that during the war all blacks hired at the Union Asbestos plant in Paterson were automatically assigned to the shipping department, where dust levels were considerably lower than on the production lines, because of a belief—widely held at the time—that the lungs of black people were somehow more susceptible to dust than the lungs of whites.

While I was in Paterson, I called Thomas Callahan, of Waldwick, New Jersey, who had been a foreman in charge of the asbestos-block department of the Paterson plant. Callahan had been sent to Tyler in October of 1954 to help set up machinery for the new factory that Union Asbestos was opening there and that was later purchased by Pittsburgh Corning. "I stayed a couple of months in Tyler, and then I was sent to the Union Asbestos plant in Bloomington, Illinois, where I worked for the next eight years," Callahan told me. "As far as I was concerned, our biggest problem was health. I always wore a respirator at Paterson, at Tyler, and up in Bloomington, and on one occasion I discharged a man who refused to wear his. A lot of men hated to wear them, you know. None of them seemed to understand the hazard."

Callahan went on to tell me that he felt that the Union Asbestos people had been concerned about the safety and health of the workers in the Paterson plant. "The company doctor X-rayed all the men continually to detect asbestosis, and, once he suspected it, he would always tell a fellow to get himself a job out-of-doors," Callahan said. "In addition, the company used to pay its workers an extra five cents an hour to wear their masks, but the men were human beings, you see, and a lot of them wouldn't conform to regulations. Believe me, the company did everything it could in those days, but there was no way it could improve the ventilation system. In any case, we were a lot more humane than other people in the business. I remember going one day in the early fifties with Edward Shuman—he was then the general manager of the plant—to see some Johns-Manville people in New York. We asked them if they knew of any way we could improve the dust situation in our factory.

My God, they were brutal bastards! Why, they practically laughed in our faces! They told us that workmen's-compensation payments were the same for death as for disability. In effect, they told us to let the men *work themselves to death!* Afterward, we went to the Metropolitan Life Insurance people. Only one doctor over there knew anything about asbestosis. He told us that the only solution was to spot it early and tell the guy to run for his life. We did our best, you understand, but a lot of the men wouldn't wear their respirators, and our engineers told us it was impossible to improve the ventilation."

The next day, I dropped by the Mount Sinai Environmental Sciences Laboratory to see what progress Dr. Selikoff and Dr. Hammond had made in their investigation into the mortality experience of the Paterson workers. Dr. Selikoff told me that as of December 31, 1971, Mrs. Perron and her associates had been able to trace eight hundred and seventy-seven of the nine hundred and thirty-three men who had worked at the Paterson plant during the war years. "It was a remarkable job of detective work, and Charles Nolan in particular has been incredibly adept at tracking down men who appeared to have dropped from sight," Dr. Selikoff said. "On the basis of the standard mortality tables, Dr. Hammond has calculated that in a normal population of that size, two hundred and ninety-nine deaths were to be expected. Instead, there were four hundred and eighty-four. As with the studies we conducted of the asbestos-insulation workers, the reason for the excess deaths—eight hundred and eighty-five, in this case—was not hard to come by. There should have been about fifty deaths from cancer of all sites. Instead, there were a hundred and forty-three. Only eleven of the men could have been expected to die of lung cancer, but there were actually seventy-three—a rate that is almost seven times as high as that of the general population. And though virtually none of these workers could have been expected to die of mesothelioma according to the mortality tables for the general population, there were seven deaths from the disease. Moreover, in this group of men the death rate from cancers of the stomach, colon, and esophagus were twice as high as they should have been. And though none of the men could have been expected to die of asbestosis, twenty-seven of them did."

When I asked Dr. Selikoff how he felt these statistics for the Paterson workers applied to the eight hundred and ninety-five men who had worked at the Tyler factory between 1954 and 1972, he shook his head. "I can only say that for the younger men—those who could be expected to live from twenty to fifty years after their first exposure to asbestos—the future looks awfully dismal," he replied.

Dr. Selikoff then told me that in 1971 Local 800 of the United Papermakers and Paperworkers Union had asked him and Dr. Hammond to review the medical histories of its members to help evaluate the effectiveness of Johns-Manville's dust-control measures at its Manville plant. "We have since completed this study, which, sadly, serves to corroborate our previous findings," he said, adding that he would call Dr. Nicholson in and let him describe the actual results, since he had headed the field team that developed the information.

Dr. Nicholson told me that out of a total of three thousand and seven employees at the Manville complex of factories, Dr. Selikoff and Dr. Hammond had decided to review the histories of the six hundred and eighty-nine production workers who were actively at work on January 1, 1959, and had by that time had at least twenty years' exposure to asbestos. "We studied the mortality experience of these men from January 1, 1959, until December 31, 1971," Dr. Nicholson said. "Unhappily, the results were at least as depressing as those for the Newark-New York asbestos-insulation workers and for the men employed in the Paterson plant. Using standard mortality tables of the National Center for Health Statistics, Dr. Hammond calculated that one hundred and thirty-four deaths were to be expected in this group of people. Instead, there were a hundred and ninety-nine."

Dr. Nicholson went on to say that the reasons for this large number of excess deaths among the Johns-Manville workers were, unfortunately, all too familiar. "Only eight deaths from lung cancer should have occurred, but there were twenty-seven," he told me. "And though no deaths from mesothelioma could normally be expected, there were fifteen. Cancers of the stomach, colon, and rectum were two and a half times what they should have been. In addition, though virtually no deaths from asbestosis would have been expected among the general population, twenty-four of the Johns-Manville employees died of this disease."

When I asked Dr. Selikoff if he thought it likely that the proposed two-fibre level would be adopted by the Department of Labor as a permanent standard for occupational exposure to absestos, he shrugged. "I have no idea," he replied. "There has been a strange development in the past week that leads me to wonder, but before I tell you about it, I'd like Dr. Nicholson to give you his outlook on number standards in general, for I wholeheartedly concur with it."

"I tend to think of number standards in this way," Dr. Nicholson said. "A standard specified as two fibres per cubic centimetre of air or five fibres per cubic centimetre of air sounds fairly innocuous. However, it is well to remember that a worker may inhale eight cubic metres, or eight million cubic centimetres, of air in a working day. Leaving aside the fact that there are many more fibres smaller than five microns in length in any environment containing airborne asbestos dust, a five-fibres-per-cubic-centimetre standard thus becomes, in terms of a man's lungs, a forty-million-fibre-a-day standard, and by the same token the proposed two-fibre standard would allow a worker to inhale six-

teen million fibres a day. This, you see, is why we testified at the hearings in favor of performance standards designed not only to control asbestos emissions but to reduce them as close as possible to zero."

When Dr. Nicholson had concluded, I asked Dr. Selikoff to tell me about the recent development that had caused him to wonder whether the Department of Labor would promulgate the proposed two-fibre standard. By way of reply, he handed me a set of documents that included a page with this heading:

"Enclosure A

"Expert Judgments: Asbestos

"Medical & Industrial Hygiene

Beneath this was a request: *"Return as soon as possible to Arthur D. Little, Inc., 35 Acorn Park, Cambridge, Massachusetts, 02140, Retain a copy for reference during Phase II."* Beneath the request was a space for the name and affiliation of the person to whom the documents were sent, and beneath that, under the words "Exposure-Response Judgments," was a table of boxes that asked the recipient to estimate what might be the incidence of asbestosis, lung cancer, and mesothelioma in a hundred workers after forty years of exposure, on the basis of an eight-hour working day, to two, five, twelve, and thirty asbestos fibres per cubic centimetre of air. Dr. Selikoff had filled in the boxes, and these were his estimates: At two fibres per cubic centimetre, fifty-five of a hundred workers would contract asbestosis, twelve of a hundred would develop lung cancer, and four of a hundred would be afflicted with mesothelioma.

At five fibres per cubic centimetre (basing his judgment on what had happened to the asbestos-insulation workers), eighty-five of a hundred would develop asbestosis, twenty of a hundred would contract lung cancer, and seven of a hundred would develop mesothelioma. Dr. Selikoff's estimates were, of course, higher for workers exposed to twelve fibres per cubic centimetre of air, and for workers exposed to thirty fibres he estimated that ninety-five of a hundred would be afflicted with asbestosis, twenty of a hundred would be afflicted with lung cancer, and five of a hundred would develop mesothelioma. The reason Dr. Selikoff estimated fewer mesotheliomas at the highest level of exposure to asbestos dust was simply that previous study had indicated that there would be more early deaths from asbestosis at such levels, and that fewer individuals would, therefore, survive long enough to develop mesothelioma.

The Arthur D. Little Phase I questionnaire also asked for a judgment on how frequently asbestos workers should be examined, and it stated that all the estimates and judgments solicited would be synthesized and included in a Phase II questionnaire, which would be sent out later. The front page of the questionnaire, which was headed "Health & Asbestos, Phase I Judgments, Background," explained what the Arthur D. Little people had in mind:

"The formulation of public policy for coping with an occupational hazard such as asbestos will necessarily rely upon judgment until a great deal more research evidence is available than now exists. In particular, judgment concerning the relationship between exposure and response will be implicit in health standards for asbestos established by the Occupational Safety and Health Administration in the near future. But judgments, possibly different ones, on the same issue will be implicit in the response of labor and of industry to the proposed standards. As long as judgments on the response to exposure relationships are implicit rather than explicit and as long as groups affected by the standard lack needed data to buttress their judgments, protracted conflicts are inevitable and difficult to resolve. Moreover, the absence of a clearly defined and credible set of judgments makes it difficult, if not impossible, to identify the various costs and benefits associated with policies for reducing the hazard. This is so because the benefits of candidate standards depend upon projections of lives saved or illnesses eliminated at various exposure levels.

"So crucial a matter should not depend upon implicit judgment or even the explicit view of a single expert. We are led to a search for a consensus that will make explicit and credible the necessary judgments on the exposure-response relationship for asbestos. Such a consensus is sought through the participation of 12 to 15 qualified experts whose judgments will be obtained, combined, and refined in a systematic way—a variant of the Delphi process that has been used extensively to apply expertise to important issues not yet open to analysis."

When I told Dr. Selikoff that I had never heard of the Delphi process, and asked him what it meant, he shook his head and smiled. "I've never heard of it, either," he said. "But I'm pretty sure I know what it means. It means guesswork. And what's the point of guessing about the biological effects of asbestos when mortality studies of asbestos workers have already shown exactly what the effect has been?"

Dr. Selikoff now handed me a letter he had written on April 3rd to Mrs. Sonja T. Strong, of Arthur D. Little, Inc., concerning the Phase I questionnaire. Regarding the effectiveness of dust-counting as a method of insuring safe working conditions, Dr. Selikoff wrote:

"As matters now stand, meager use of performance standards seems to be intended. In this case, nothing in our experience indicates that the threshold limit values listed in your questionnaire will provide any effective safeguard against the occurrence of disease.

"An obvious rejoinder might be: "Yes, but what if they were enforced? How much disease might then occur?" Following you into this never-never land, in which one-tenth of the workmen wear personal samplers on their coveralls and the rest of us are at the phase microscopes in the laboratory, the results would still not be very much different, although perhaps somewhat better, since peak excursions would not necessarily have been engineered out.

"I have previously commented on the sorry state our nuclear-reactor industry would be in if radiation control had depended upon "threshold limit value" rather than engineering criteria. Can you imagine such regulation depending upon an army of inspectors with Geiger counters?"

After describing some of the data developed in his studies of absestos disease, Dr. Selikoff told Mrs. Strong that it was impossible to answer with any degree of accuracy the questions posed by her firm. He went on to point out that the weight of medical and scientific evidence concerning the occurrence of mesothelioma in non-occupational cirsumstances, such as in families of asbestos workers and in people living in the vicinity of asbestos factories, bore heavily on the advisability of reaching a level of exposure as close to zero as possible. "The numerous instances of mesothelioma among workmen presumably exposed to asbestos as a result of indirect occupational exposure in shipyards, even in the absence of fibre counts thirty years ago, strongly points to asbestos disease at low levels of exposure," his letter continued. "Literally hundreds of cases of mesothelioma are now known to have occurred in such circumstanecs."

When I had finished reading the letter, I asked Dr. Selikoff why the Arthur D. Little company should be soliciting exposure-response judgments at this time.

"It is my understanding that A. D. Little has been awarded a contract by the Occupational Safety and Health Administration to formulate a consensus regarding exposure-response for asbestos disease," Dr. Selikoff replied.

"But the NIOSH criteria document and the Advisory Committee on the Asbestos Standard have already covered this ground by reviewing all the literature concerning asbestos disease," I said. "Not to mention the testimony given during four days of public hearings."

"True enough," Dr. Selikoff replied. "However, the A. D. Little people appear to have been specifically charged with determining the economic impact of the proposed permanent standard for occupational exposure to asbestos."

"Then why a questionnaire focussed solely upon medical judgments?" I asked.

"That is a question I have been asking myself," Dr. Selikoff dryly. "I don't know the answer. If you find out, please tell me."

During the next few days, I made dozens of telephone calls to people in various agencies of the Department of Health, Education, and Welfare, in the independent medical community, and in a number of labor unions, trying to ascertain what lay behind the involvement of Arthur D. Little, Inc., in the process of promulgating a permanent standard for occupational exposure to asbestos. The people I spoke with at NIOSH were clearly unhappy over the fact that a private consulting firm had been asked, in effect, to duplicate (if not amend) in the space of a few weeks all the effort that over a period of years had gone into the assessments, conclusions, and recommendations of the NIOSH document.

"Look," one of them told me. "Our recommendation for a two-fibre standard and our conclusion that it is technically feasible were upheld by the Secretary of Labor's own Advisory Committee on the Asbestos Standard. However, A. D. Little is up to something that has no basis in science and no specific authorization in the Occupational Safety and Health Act. It's trying to form a consensus for what is sometimes called the 'socially acceptable risk' involved in occupational exposure to hazardous substances. In other words, it's trying to determine how much society is, or should be, willing to pay to avoid the loss of lives. The Act, however, clearly states that 'each employer shall furnish to each of his employees employment and a place of employment which are free from recognized hazards, that are causing or are likely to cause death or serious physical harm to his employees.' "

When I called Sheldon Samuels, at the Industrial Union Department, however, I was able to gain a new perspective on the matter. "The whole concept of economic-impact studies, as they now exist, began back in 1968 with the President's Task Force on Government Reorganization, which was headed by Roy L. Ash," Samuels told me. "The Ash commission called for an assessment of all government programs in terms of their effectiveness, and this has since been made by the Nixon Administration's Office of Management and Budget through a whole series of cost-benefit analyses that are conducted under the guise of environmental-impact studies. The present A. D. Little study has some extremely serious ramifications. Congress to the contrary, and throwing its Occupational Safety and Health Act to the winds, the executive branch of government has decided on its own that the cost to the employer of meeting any new occupational-health standard must fall within an economic range that is acceptable to industry. The major point, of course, is the government's order of priorities in this whole matter. I mean, how in the name of God can a serious, in-depth cost-benefit study of the proposed asbestos standard fail to assess as one of its first priorities, the cost to the worker and the whole community of the terrible incidence of asbestos disease?"

When I ask Samuels if the Industrial Union Department had heard from the Arthur D. Little people, he told me that two representatives of the firm had visited him the previous week. "A Dr. Donald W. Meals and an engineer spend a whole day here," Samuels said. "They indicated that they had been brought into the picture to mediate between labor and industry, and to come up with a standard for occupational exposure to asbestos that would make everybody happy, and they asked for our help. During the past few days, I polled the members of our ad-hoc Committee on the Asbestos Hazard, and we have decided to stand firm on the recommendations we made at the public hearings, and not to participate in the A. D. Little economic-impact study. We have good reasons for believing that the A. D. Little people were brought into the standard-setting process not just to satisfy the Office of Management and Budget but to justify the asbestos industry's position. We have learned, for example, that in the economic-feasibility part of their study the A. D. Little people are relying almost entirely on guess-estimates from the asbestos industry—particularly from the shipbuilding industry, in which the government has an enormous stake."

I asked Samuels if he was aware that the A. D. Little study was also seeking medical judgments on the incidence of asbestos disease.

"Indeed I am," he replied. "In fact, just the other day I heard that A. D. Little's so-called panel of medical experts is loaded with doctors who are or have been connected with the asbestos industry. It'll be interesting to see this roster when the final report of the study comes out."

In the second week of May, I visited Dr. Selikoff again and asked if he knew of any further developments in the involvement of Arthur D. Little in the standard-setting process. He told me that the firm had sent him the Phase II questionnaire of its economic-impact study. He also showed me a letter he had written on May 9th to Dr. Meals. The letter said, in part, "I have carefully considered the asbestos data forms sent me and am returning them to you unanswered. To have completed them, in my opinion, would only contribute further to an inappropriate exercise; my original misgivings (see my letter of April 3, 1972) are now amplified." In conclusion, Dr. Selikoff told Dr. Meals that the methodology upon which the A. D. Little study was based "could lead to serious misconceptions and misdirected advice."

The following morning, I telephoned Samuels to find out if he had any new information about the Arthur D. Little study, and he said he did.

"Have you looked at your mail today?" he asked.

I told him that I had not yet had time to do so.

"Well, see if there's a letter from me."

I went through the envelopes on my desk and saw that there was.

"Well, open it up and talk to me later," Samuels said. "You aren't going to believe what's inside."

After hanging up, I opened Samuel's letter and pulled out three documents that had been stapled together. The first was a press release for Monday, May 8th, sent out by the Connecticut Development Commission, in Hartford. The second was a letter written on May 4th by Mark Feinberg, managing director of the Commission, to Jack Cawthorne, executive director of the National Association of State Development Agencies, in Washington, D.C. The third document was a letter written on Arthur D. Little stationery on January 25, 1972, by one John E. Kent. The letter from Feinberg to Cawthorne read:

"DEAR JACK: We have learned that a Massachusetts-based consulting firm, Arthur D. Little Inc., is attempting to sell a Connecticut manufacturer on moving its plant to Mexico. That information in itself is not startling, but what is startling is the fact that Arthur D. Little Inc. has a consulting contract from the U.S. Department of Labor to measure the impact of the standards being set for the asbestos industry under the recently enacted Occupational Safety and Health Act. And the company which Arthur D. Little is trying to move from Connecticut to Mexico is also in the asbestos industry. Thus it appears to me that at the same time as Arthur D. Little is carrying out a federal contract dealing with the asbestos industry and its problems, Arthur D. Little is also attempting to take one of our companies in that same industry to Mexico.

"This activity by Arthur D. Little in my opinion looks like a Trojan horse which I feel is highly improper. On the one hand, Arthur D. Little is accepting federal funds and on the other hand, it is attempting to help Mexico attract a firm directly involved in the federal project. Furthermore, it is shocking to me that a New England consulting company which has so frequently put forth the doctrine of helping economic development here would "raid" a company in our state. As you know, we are certainly advocates of competition, free enterprise, and profit, but when a consultant presumably making a profit with federal dollars is at the same time attempting to take jobs away from our state and out of the country, it is a most serious matter.

"I do not know what other companies in other states are being approached as our company was, and I feel strongly that the development directors of the other states should be warned about this Trojan-horse operation which certainly seems to be against the best interest of the people in the various states which may have similar situations. This operation by Arthur D. Little also seems to be contrary to all the efforts which we state development directors are making in cooperation with the U.S. Government to improve the national balance of payments and the economic development of our individual states.

"Therefore, I am enclosing, for your use, the copy of the letter on Arthur D. Little stationery which was sent to the Connecticut company being "raided." I have taken out the company name and address in order to avoid embarrassment for the firm. I strongly urge you to send a bulletin to all our members alerting them to this serious problem as soon as possible.

"Sincerely yours,

"MARK FEINBERG,
"Managing Director.

"P.S. You don't suppose there could be a relationship between the health and safety standards Arthur D. Little sets and the success of efforts to relocate American asbestos companies to Mexico?"

After several phone calls, I learned that the corporation Arthur D. Little had attempted to relocate in Mexico was Raybestos-Manhattan, Inc., whose factory in Stratford, Connecticut, is a major producer of asbestos brake linings, clutch facings, and gaskets. A few weeks later, when I was able to examine a copy of Arthur D. Little's first report to the Department of Labor, which was entitled "Impact of Proposed O.S.H.A. Standard for Asbestos," I saw listed among its panel of experts John H. Marsh, who is the director of planning for Raybestos-Manhattan, and who had testified at the public hearings in Washington against the NIOSH recommendation requiring warning labels on asbestos products. Meanwhile, I had discovered that the asbestos industry was taking a hard look at the feasibility of moving some of its plants and facilities to Taiwan and Korea, where, presumably, it could operate unhindered by occupational-safety-and-health regulations. It was already becoming clear, however, that by involving Arthur D. Little, Inc., in the standard-setting process, the Department of Labor was attempting to counter the recommendations of the NIOSH criteria document, of the Secretary of Labor's Advisory Committee on the Asbestos Standard, and of the members of the independent medical and scientific community who had testified at the public hearings. It was also becoming clear how deeply the medical-industrial complex had succeeded in penetrating the working of the government in matters relating to the prevention of industrial disease.

RECESS UNTIL 11 A.M.

Mr. ROBERT C. BYRD. Mr. President, I move that the Senate stand in recess until the hour of 11 a.m. today.

The motion was agreed to; and at 10:41 a.m. the Senate took a recess until 11 a.m. today.

The Senate reassembled at 11 a.m. when called to order by the Presiding Officer (Mr. ALLEN).

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER (Mr. ALLEN). Is there further morning business? If not, morning business is concluded.

AIRCRAFT PIRACY AMENDMENTS OF 1973

The PRESIDING OFFICER. In accordance with the previous order, the Chair now lays before the Senate S. 872, which the clerk will please state.

The assistant legislative clerk read as follows:

S. 872, to facilitate prosecutions for certain crimes and offenses committed aboard aircraft, and for other purposes.

The Senate resumed the consideration of the bill.

ORDER FOR CONSIDERATION OF CERTAIN MEASURES NEXT WEEK

Mr. MANSFIELD. Mr. President, I ask unanimous consent to speak out of order.

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

Mr. MANSFIELD. Mr. President, I ask unanimous consent that on Thursday, March 14, 1974, just before the Senate goes out for its recess, to return on March 19, it be in order that Calendar No. 664, S. 1541, be made the pending business.

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

Mr. MANSFIELD. So that when the Senate meets on Tuesday next, that bill will be the pending business.

Now, Mr. President, I ask unanimous consent that it be in order also, at the discretion of the leadership, to call up Calendar No. 665, S. 3044 any time when circumstances permit it.

Mr. GRIFFIN. Mr. President, reserving the right to object—what bill is that?

Mr. MANSFIELD. That is the bill to amend the Federal Election Campaign Act. There will be plenty of notice given

before it is done. What we are trying to do is to work out a schedule so that the Senate will be aware of what will confront it upon its return next week.

Mr. GRIFFIN. Well, if the distinguished majority leader would make it upon the disposition of the other bill, I think that would be an orderly process, but otherwise——

Mr. MANSFIELD. That is what I had in mind.

Mr. GRIFFIN. Then I will not object.

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

Mr. MANSFIELD. Mr. President, to reiterate the consent request which the Senate has already given, it will be in order any time after March 18 to call up Calendar No. 662, S. 354, the so-called no-fault insurance bill.

The acting Republican leader may recall that an informal agreement was reached between the chairman of the Commerce Committee, Senator MAGNUSON, and the chairman of the Judiciary Committee, Senator EASTLAND, that it would be kept in the Judiciary Committee for a month longer.

Before I made my unanimous consent request last week, which the Senate granted, I contacted those two Senators, and also the ranking Republican member, the Senator from Nebraska (Mr. HRUSKA).

Mr. GRIFFIN. With regard to the no-fault insurance bill, that would be after the other two bills are disposed of at some point and then it would be in order?

Mr. MANSFIELD. Either that or I would like to have permission, if circumstances dictated it, to operate on a two-track system, after budget reform.

Mr. GRIFFIN. I will not object. I would assume, as the distinguished majority leader knows, and I personally have no objection with regard to either one of them in regard to bringing them up, but both bills are very controversial——

Mr. MANSFIELD. All three.

Mr. GRIFFIN. All three. I do not want to waive anyone's rights if there were some disposition on anyone's part to contest the matter of motioning up a bill, but since no one has asked me to do so, and certainly these matters have been pending for a long time, I will not object.

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

Mr. MANSFIELD. Mr. President, may I say that we did get the consent for the no-fault insurance bill last week based on the informal extension. Our purpose, I reiterate, is to serve notice to the Senate that very important and controversial legislation lies ahead. Of course, the leadership on this side will do nothing without consulting the leadership on the Republican side.

THE SPIRIT OF TLATELOLCO—THE INTER-AMERICAN CONFERENCE IN MEXICO CITY

Mr. MANSFIELD. Mr. President, in the latter days of last month, the distinguished Secretary of State, Dr. Henry Kissinger, invited the Republican leader, the Senator from Pennsylvania (Mr. HUGH SCOTT), the Democratic leader, the Senator from Montana now speaking, and the Senator from Wyoming (Mr. MCGEE), the chairman of the Latin American Subcommittee, to accompany him to an Inter-American Conference held in Mexico City.

The group from the House of Representatives was composed of Speaker CARL ALBERT, Representative DANTE FASCELL of Florida, and Representative William Mailliard of California.

In attendance during portions of these proceedings and helping the delegation, were Mr. Pat Holt, the chief of staff of the Committee on Foreign Relations, and Mr. Frank Valeo, the Secretary of the Senate, who accompanied me at my request.

Frankly, I thought the meeting was most successful, even though there were differences, as was to be expected; but the ground work has been laid, based on the initiatives of Secretary Kissinger last year at the United Nations, followed by a meeting of the Foreign Ministers of the Latin American States at Bogotá, culminating in the conference at Tlatelolco which included, I would point out, a pledge made by the Secretary of State to his fellow Foreign Ministers on behalf of this country, as follows:

We will not impose our political preferences. We will not intervene in the domestic affairs of others. We will seek the free association of proud people.

I ask unanimous consent that a commentary written by Mr. Ben F. Meyer, published in the Baltimore Sun on March 6, 1974, entitled "Kissinger's Latin American Venture—The Spirit of Tlatelolco," be printed in the RECORD.

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

KISSINGER'S LATIN AMERICAN VENTURE: THE SPIRIT OF TLATELOLCO

(By Ben F. Meyer)

WASHINGTON.—The recent inter-American conference in Mexico City was extraordinary because it tackled basic problems in a friendly fashion.

True, there were no spectacular agreements such as were adopted at previous meetings (often to become the source of controversy later). Instead there seemed to be a better understanding of the real issues and a resolve to avoid an angry confrontation between the United States and 24 nations of Latin America and the Caribbean.

Great credit goes to Secretary of State Henry A. Kissinger for his careful groundwork in setting such a tone for the "new dialogue." His colleagues in the hemisphere contributed much to the idea of working out problems on a friendly, co-operative basis. One notable achievement was to carry forward the detailed work on promising projects and to review progress regularly.

The foreign ministers are to meet next in Atlanta, Ga., on April 17, two days before the start of the sessions of the General Assembly of the Organization of American States (OAS).

It would be unreasonable to suppose that there were no differences among the 25 nations attending the Mexico City meeting. Secretary Kissinger, for example, walked into one problem quite innocently. Stressing the mood for hard work, rather than oratory or eloquent declarations, he observed:

"We are not here to write a communique, but to start a course." He was overruled because Latin Americans dearly love communiques and declarations. He was proven correct. The wording of the conference declaration produced such a dispute that it was one day late in emerging.

The careful Dr. Kissinger walked into another issue also. He told the foreign ministers the United States is "rededicating itself to a new era of Western Hemisphere relationships" and invited their views "so that together we can make the Western Hemisphere community a reality." Here the community idea produced sparks. Some envisioned it as a sort of bloc in which the United States might seek dominance—the very thing Secretary Kissinger listed as one of the past sins of U.S. policy. It did sound as if that was what he had in mind, but he explained he was opposed to blocs, was merely "talking about an attitude, a spirit, a sense of co-operation."

He disarmed critics by reeling off a list of past sins of U.S. policy and promised not to sin again.

"We were prone to set standards for the political, economic and social structures of our sister republics," he said.

He yielded no ground, however, on the U.S. stance that nations which expropriate properties of U.S. firms should make adequate and prompt compensation. One approach, he said, might be to keep governments out of such controversies by setting up neutral machinery for adjudicating them. In an important, even if limited, concession, the other countries agreed to examine the proposal. They may have been influenced to some degree by the presence of the highest ranking delegation of U.S. congressional leaders ever to attend a conference of its kind. Secretary Kissinger said he would do everything he could to get Congress to come through with trade concessions and to carry forward "the spirit of Tlatelolco," a section of Mexico City where the conference was held.

It was surprising that other countries represented at the conference did not reciprocate Secretary Kissinger's confession of his country's errors of omission or commission. Nor was there any mention of the fact that after many months of meetings and haggling, almost nothing has been accomplished in an effort at restructuring the Organization of American States—a task under direct management of the foreign ministers.

The general atmosphere of the conference, however, permits one to hope that all 25 nations represented at the conference, or at least a majority of them, are going to strive for better understanding, and for concrete results. The Mexico City meeting, indeed, could produce a great deal of new thinking and, hopefully, some action on the reforms of the inter-American system.

Mr. HUGH SCOTT. Mr. President, together with the distinguished majority leader and other Members of Congress, I attended the conference of Tlatelolco, as an adviser or observer, with the Secretary of State. This was a conference of foreign ministers of the countries of the Americas, and it was a most useful exchange of ideas.

I think that perhaps our colleagues from Latin American countries probably had not experienced in the past quite the same feeling, that we were dealing in a spirit of complete candor and realism, that we were not there to act as a senior partner or to present the appearance of one who sought to give unsought advice to our friends and neighbors; but we were there in a spirit of mutual solicitation, of beneficial exchange of views.

We were privately congratulated on the fact that we had brought a senior delegation, which I think caused a good

impression generally. The delegation consisted of the majority leader and the minority leader of the Senate; the distinguished representative of the Committee on Foreign Relations and an expert on Latin American relations, the Senator from Wyoming (Mr. McGEE): the Ambassador-designate to the Organization of American States, Representative MAILLARD, of California; the chairman of the Inter-American Subcommittee of the House Committee on Foreign Affairs, Representative FASCELL, of Florida; and of course the person who probably created the warmest feelings toward the United States, our distinguished Speaker of the House of Representatives.

I say this because of the Speaker's command of the Spanish language. He had been a student at the University of Madrid. He still retains a fluency in Spanish. I think the remarkable thing about the delegation was that most of them did have a command of Spanish in various degrees, which presented an opportunity for discussions on a bilingual basis.

The general feeling of the conference was that the United States should be openminded to the problems of all the Americas; that we should avoid anything which smacks of economic and certainly of military aggression; that our system should be offered, where it is offered, on a basis of mutually satisfactory agreement; that we take no action, either in this hemisphere or elsewhere, which would be inimical to the relations of any country of the Americas, without prior consultation. All these matters and others were discussed at some length.

The United States made several specific proposals, and we were willing to implement them if the other countries so desired. They included the formation of a task force on science and technology, a task force that would be influential in the health and education fields, a task force that might go into matters of the economy. But these nations, understandably, must consult their own governments. There was a general agreement, unofficially and not included in the communique, that a number of these matters could well be taken up at the next meeting of the Organization of American States, which will take place shortly—I believe in May—at Atlanta, Ga.

So I think this was the kind of trip where the distinguished majority leader and I should have been, and we were glad we went. We are unhappy to note that we missed one vote in the time we were gone, which was the first time this year I had missed a vote. I think I have missed one since. It was in no sense a junket. Many essential visits are lumped with the unessential ones when our activities are publicly reported. If ever there was an essential trip, I think this was it.

I am particularly impressed with the leadership given by the distinguished majority leader, who, with the exception of the Speaker of the House of Representatives, perhaps, has been to Mexico more often than any of us, who often has led the U.S. delegation in the United States-Mexico parliamentary session, and who personally knows many people there. I was much impressed by his personal and friendly contacts not only with our Mexican friends but also with friends from many of the other countries.

In short, I believe it was a very useful trip. I am very glad that the distinguished majority leader has brought up the matter here and that, as he has undoubtedly said, the committee print on the Inter-American Conference of Tlatelolco, in Mexico City—or what we have referred to as "The Spirit of Tlatelolco"—is contained in his report to the Committee on Foreign Relations of the Senate. I congratulate him.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the committee report, entitled the Inter-American Conference of Tlatelolco in Mexico City, be printed in the RECORD.

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

SPIRIT OF TLATELOLCO

A REPORT ON THE CONFERENCE OF TLATELOLCO

I. Introduction

At the request of the Secretary of State, Dr. Henry A. Kissinger, several Members of the Congress served with the United States delegation at the Inter-American Conference of Tlatelolco which was held in Mexico City, February 21–23, 1974. For the first time in memory the Leadership of both Houses of the Congress joined with the Secretary of State in a meeting of this kind with regard to Latin-American and Caribbean policy.

The House group was led by Speaker Albert and included Representatives Dante Fascell and William Mailliard. In attendance from the Senate were the Republican Leader (Senator Hugh Scott of Pennsylvania), the Chairman of the Subcommittee on Western Hemisphere Affairs (Senator Gale McGee of Wyoming) and myself. The Secretary of the Senate (Mr. Frank Valeo) accompanied the group. All Members of the Congressional delegation had had substantial prior experience in inter-American affairs.

II. Procedure

Legislative-Executive communication during the course of this Conference was frank and friendly and, in accord with separate Constitutional responsibilities in foreign relations. The Congressional Members met with the Secretary of State en route and at frequent intervals in Mexico City for discussions of issues and U.S. policy. We were kept fully informed of developments as they were unfolding and we were able to make advisory contributions with regard thereto. In turn, the Secretary of State derived from us an estimate of Congressional attitudes on positions which were assumed by this government at the Conference, some of which could be sustained only with some assurance of subsequent legislative concurrence.

Together, then, the Secretary of State and the Congressional group presented to the other participating countries a valid impression of U.S. unity on inter-American policy. Frequent joint appearances at formal meetings, before the press and at public gatherings, symbolized a shared viewpoint. On an individual basis, moreover, the Members sustained the formal positions taken by the Secretary of State on behalf of the United States government. We were able to do so freely and in good conscience on the basis of common understanding and mutual accommodation.

III. The Conference of Tlatelolco

At the very outset of the Conference, Secretary Kissinger made clear to his colleagues from Latin America and the Caribbean that he was not interested in a war of words or in a grandiloquent cover-up of difficulties in the relations of the nations of the Western Hemisphere. He sought, rather, to give a new tone to these relations. In taking this approach the Secretary was on sound grounds.

Too often, in recent years, rhetoric has substituted for reality in our dealings with the other American States. Too often, too, there has been surface cooperation but subsurface confrontation between the United States and the nations to the South. Periodic bursts of U.S. interest in Latin America and the Caribbean have alternated with prolonged periods of disinterest. The words of equality, friendship and mutuality have blurred a certain persisting anxiety among the American States to the South. It is an anxiety which oscillates between fear of the enormous power of this nation on the one hand and a concern lest the needs of the Hemisphere be ignored in a U.S. preoccupation with Europe and Asia on the other. There has also been, in all frankness, an ambivalence in our attitude towards the Latin American States. A readiness to move in genuine concert with them has alternated, historically, with unilateral and precipitous assertions of our power.

For a decade, the Alliance for Progress served to conceal difficulties of this kind. So, too, did the Good Neighbor Policy before it, as did other dictums at still earlier times, going back to the Monroe Doctrine. Notwithstanding the constructive aspects of our various Latin American policies, divisive tendencies have been a persistent undercurrent of Hemispheric relations. In recent years, the cement of the most recent U.S. policy, the Alliance for Progress, has worn thin and these tendencies have been coming closer and closer to the surface.

The fact is that the circumstances of Latin America and the Caribbean and, indeed, of our own country have changed since the Alliance was undertaken in the Kennedy Administration. When we deal with Brazil, for example, we now confront a nation which in area and in population is larger than any in Western Europe. It is a nation, moreover, which shows in its major cities and elsewhere a dynamic modernization. The same may be said for Mexico and other of the Latin American countries. Elsewhere the pace of change is slower or scarcely perceptible. In some basic materials, we are becoming more a "have not" nation whereas many of our neighbors are in the category of "have." In short, we should bear in mind in our approach to the other American Republics that there are many graduations of "developed and undeveloped," of "have and have not." The terms are relative. There are pockets of underdevelopment and wealth in every country, and of development and poverty, side by side, in every country, including the United States. In this situation, it is clear that the Alliance for Progress, whatever its original thrust has been overweighted on the side of dependency on U.S. aid activities and insufficiently concerned with other needs and aspirations of the Americas. Our policies, nevertheless, have tended to cling to its patterns. So, too, have our attitudes. As such, both have lost much of their relevance to current realities in this Hemisphere.

It was in an effort to deal with this timelag that, last October, the President and the Secretary of State called for a new approach to the common affairs of the Western Hemisphere. The other American Republics responded at a meeting which was held in Bogota the following month. At that time, a united Latin American Caribbean agenda was drawn up for a "dialogue" with the United States. It represented, in considerable part, a scarcely concealed catalogue of dissatisfactions in regard to the existing state of inter-American affairs.

It was on this note, then, that the delegates to the Conference of Tlatelolco assembled in Mexico City on February 21. Rather than evade the issues posed by the Bogota agenda, the United States concurred, at the outset, in the need for change. The position of the other American States was treated not as a compliant to be answered but as an invitation to face up, together, to a new situation. The Secretary of State called for an era of concrete cooperation in the Americas and, to that end, set forth specific U.S. proposals on a range of specific questions Some of these were responses to certain of the Bogota proposals. Others were added as U.S. initiatives.

One such initiative, for example, was for a cooperative American effort to relieve situations of disaster and emergency in the Hemisphere. This proposal was of particular interest to me since thirteen years ago, on returning from an extended visit in Latin America, I had suggested that:

"An opportunity may exist for a major advance in Hemispheric cooperation in connection with a most important humanitarian endeavor. For some time now, the Defense Department has been developing and expanding techniques for air and sea rescue work throughout the Americas. On a less organized basis, this nation has participated in * * * relief work in connection with disasters.

"It would be desirable to explore the possibilities of consolidating these and related functions in a permanent hemispheric rescue and relief unit under the Organization of the American States. Such an organization could stockpile food and other emergency supplies at strategic points and otherwise plan and prepare in advance for cooperative and immediate action whenever and wherever disaster strikes in the Western Hemisphere. An organization of this kind would not only have the highest practical utility but would be a symbol of the humanistic potential of hemispheric cooperation.* "

As the statements of the Secretary of State which are appended make clear, this nation is on record as being ready to act on a cooperative basis, not merely in humanistic undertakings but on questions of trade, science and technology, reform of the Organization of the American States, energy and resources, the problem of seized assets, mutual aid and many other subjects. These proposals follow on the progress in negotiations regarding the status of the Panama Canal and on the issue of compensation for nationalized U.S. firms in Peru, both of which were precursors of the stress which the Secretary of State placed, at the Conference, on the need for "community" in the Western Hemisphere. At the outset, the pledge was made by the Secretary of State that—

* * * We will not impose our political preferences;

* * * We will not intervene in the domestic affairs of others;

* * * We will seek a free association of proud people.

Together, these initiatives reflected the kind of national restraint which this country is prepared to exercise in dealing with the American States. It is a restraint which is sought by them but is also in our national interests because it is an essential ingredient in a satisfactory transition of inter-American relations into a new era of close hemispheric cooperation.

Ancient anxieties do not disappear overnight, of course, but the initial response of the Latin American and Caribbean nations was generally favorable to the new approach offered by the United States. As the Conference progressed, moreover, the opening position of the United States was elaborated with candor and erudition by the Secretary of State. There was a perceptible growth in acceptance of the fact that the United States did intend to move into a new era of active cooperation on the basis of equality and mutuality. Expressions of concurrence with Secretary Kissinger's analyses and proposals began to be heard with increasing frequency. In the end, the Conference subscribed, unanimously, to a pledge, to work in cooperation rather than confrontation to try to develop a new sense of inter-American community. This, in essence, was the "Spirit of Tlatelolco" the final note of the Conference of Tlatelolco.

IV. Concluding Comments

The spirit of community engendered at the Conference in my judgment, was genuine and substantial, if not necessarily universal. From the point of view of the United States, the Conference served the highly useful purpose of checking what had been a growing aversion to aspects of this nation's policies and practices. The durability of the new spirit, of course, is another matter. Foreign Ministers meeting face-to-face, can agree on grand designs. It remains for foreign ministries, however, to spell out the details of their agreement. How effectively the conversion is made depends on many functionaries in twenty-four of the capitals of the Western Hemisphere.

The test of the new spirit may come as soon as the next meeting of O.A.S. Foreign Ministers which is scheduled to take place next month in Atlanta, Georgia. In the interim, it is anticipated that substantial progress will have been made by the foreign ministries on questions involving aid, trade, the rights and responsibilities of foreign corporations, and other specific issues. Also to be faced sooner or later are the questions of Cuban ostracism and the still unresolved status of the Panama Canal.

On the initiative of this nation, Cuba was excluded form O.A.S. affairs in 1962. Other American States followed our example of breaking diplomatic relations with Cuba until at one time only Mexico continued to retain contact. Now, however, seven American States have established diplomatic ties with Havana and it would appear to be only a matter of time until others follow suit. Through the intercession of Switzerland, moreover, this nation has reached a satisfactory understanding with the Cuban government on what had been a major source of friction, the handling of hi-jacked airlines. Furthermore, resettlement and attrition have eased the refugee problem and the more bloodly and ruthless aspects of revolution have shifted elsewhere in the Hemisphere.

There is the likelihood of increasing support in the Hemisphere for re-inclusion of Cuba in the over-all affairs of the Americans and the Caribbean. In anticipation of that time, this nation would be well advised to consider its present non-policies on Cuba as they relate to over-all Hemispheric needs.

Insofar as the Panama Canal is concerned, special Ambassador Ellsworth Bunker, did find common grounds with the Panamanian government for considering a new status for the Zone. However, there is still a great deal to be negotiated before that status, in fact, can be redefined. In the best of circumstances, these negotiations would be difficult because the problem is highly complex in a technical and judicial sense. But there are also historic emotions enmeshed in the situation and vested political and other interests, not only in Panama and the United States but elsewhere in Latin America and the Caribbean. If there is restraint on all sides, it may be that an acceptable solution can be devised in due course. Certainly, it would be most undesirable from the point of view of Hemispheric unity, if the avenue for the consideration of this issue were to be shifted to the United Nations or some other international setting.

These, then, are some of the lesser and greater shoals on which the newly-emerging sense of inter-American community could come to grief. If they are to be avoided, a great deal of restraint will have to be shown on all sides. It would be well to remember that this is not the first attempt to breathe new life into the Organization of the American States. For a long time to come, it may be the last, if the momentum which was generated at the Conference of Tlatelolco is not maintained in the months ahead.

It cannot be emphasized too much that our interests in regard to Latin America and the Caribbean are much wider than a Cuban problem or the status of the Canal Zone or any other particular aspect of our present policies. The sum is far greater than any of the parts. Before all else, it should be noted that the existence of generally nonhostile neighbors to the South is of incalculable value to a nation which must also look both East and West at a vast complex of unknowns in its international relations. Friendly Southern borders, to say the least, mean greatly reduced costs in maintaining the nation's military security. The several thousand military forces assigned for defense purposes in the Southern regions are negligible. In contrast a garrison of over 300,000 is maintained in Western Europe and some 200,000 in Southeast Asia and the Pacific.

Complimentary economies with the other Americas yield a total U.S.-Latin American trade of over $12 billion annually, the third largest regional component in our overseas commerce. U.S. investments in Latin America are estimated to be $13.5 billion. There are recreational, educational, social and other ties between this nation and the diverse cultures to the South which enrich the lives of people and which can yield increasing satisfactions to all of the peoples of the Western Hemisphere in a world of growing interdependency.

This vast sweep of interests is the appropriate background against which to consider specific points of friction, whether the Canal Zone or some other. It would be well in the Congress, therefore, to keep an open mind on the efforts of the President and the Secretary of State to negotiate a path through the many pit-falls of inter-American relations and to give them such support and cooperation as can be given in the light of the separate constitutional responsibilities of the two Branches. It is essential for this nation's present well-being and for its future that the common bonds of the Hemisphere are maintained in satisfactory condition. Not only the Executive Branch but Members of Congress and of the Senate, in particular, have responsibilities in this connection.

V. A note on United States-Mexico parliamentary relations

The Congressional Members of the United States delegation to the Conference of Tlateloco took the occasion of their presence in Mexico City to meet with colleagues of the Mexican Congress (including the Chairman of the Mexican delegation, Senator Olivares Santana) to the coming 14th U.S.-Mexico Parliamentary Meeting. We discussed arrangements for the meeting which will take place in this country in the spring in a spirit of cordiality and accommodation. Indeed, that is the attitude which has characterized all of the previous thirteen meetings of this bi-national Parliamentary institution and it has contributed greatly to the maintenance of beneficial relations between the two nations. These meetings have led not only to greater understanding and tolerance between legislators of the two countries, they have also been a principal instrument in resolving such complex issues, for example, as the Chamizal question and the salinization of the Colorado River waters.

* U.S. Committee on Foreign Relations. Latin American and United States Polices. Report of Senator Mike Mansfield, Jan. 13, 1962, p. 15.

In a meeting with the President of Mexico, Luis Echeverria Alvarez, we discussed the future of these Parliamentary meetings. Among the suggestions which emerged were the desirability of joint parliamentary consideration of issues which are presently before the Foreign Ministers of the O.A.S. This proposal seems particularly appropriate since the resolution of some of these issues will require legislative concurrence. Viewpoints which emerge at the next Parliamentary meeting may also have relevance to the work of the Foreign Ministers of the two countries. Reference was also made to the desirability of considering the question of promoting greater exchanges of students, teachers and others on a mutual basis between Mexico and the United States. It would seem to me that the Parliamentary meetings should be prepared to explore any issue or proposals which relates to the possibility of developing greater harmony in Mexico-United States relations to the end that each nation may contribute to the other's well-being and both, more fully, to the progress of the Hemisphere and the stability of international peace.

APPENDIX

1. THE INITIAL PROPOSAL

(Toast by Secretary Kissinger at a luncheon honoring Western Hemisphere delegations to the United Nations General Assembly, October 5, 1973)

President Benites [Leopoldo Benites, of Ecuador, President of the 28th U.N. General Assembly], Excellencies, ladies and gentlemen: There is a story of an Englishman who visited Sweden, and when he was going through passport control, he was confronted with two lines. One was marked for Swedes; the other one was marked for foreigners. After a while an official came by and found him sitting between these two lines. And the official said, "Sir, will you please go into one line or the other?" And he said, "That's just my problem. I am not a Swede, and I am obviously not a foreigner." [Laughter.]

I think that story is symbolic of our meeting today. We obviously do not belong all to one country, but we obviously are also not foreigners in this room.

I am grateful that you came and for this opportunity to tell you that we are serious about starting a new dialogue with our friends in the Americas.

As we look back at the history of relationships of the United States to its neighbors to the south, it has been characterized by alternating periods of what some of you have considered intervention with periods of neglect.

We are proposing to you a friendship based on equality and on respect for mutual dignity.

And such a relationship is needed for all of us, and I believe it is needed also for the rest of the world.

In the United States in the last decade, we have experienced many dramatic changes. Throughout most of our history we could overpower most of our foreign policy problems, and we could also substitute resources for thought. Today, without understanding, can meet world needs.

Throughout much of our history, indeed throughout much of this administration, we used to believe with respect to agriculture, for example, that our primary problem was how to get rid of seemingly inexhaustible surpluses. We have now learned that we share the world's problem: how to allocate scarce food resources in relation to world needs.

When I came to Washington, the discussions with respect to energy concerned means of restricting production and allocating it among various allies. Today the problem is to find energy sources around the world that can meet world needs.

So we in this country are going through a revolution of sorts, and the whole world is undergoing a revolution in its patterns. And the basic problem we face is whether we will chose the road of nationalism or the road of cooperation, whether we will approach it from the perspective of each party trying to get the maximum benefit for itself, or whether we can take a common view based on our common needs. And this is why our relations in this hemisphere are so crucial for all of us in this room and for all the rest of the world as well. We in this room, with all the ups and downs of our relationships, share a common history and similar values and many similar experiences. The value of human dignity is nowhere better understood than in the countries of our friends to the south of us.

So if the technically advanced nations can ever cooperate with the developing nations, if people with similar aspirations can ever achieve common goals, then it must start here in the Western Hemisphere.

We in the United States will approach this dialogue with an open mind. We do not believe that any institution or any treaty arrangements is beyond examination. We want to see whether free peoples, emphasizing and respecting their diversity but united by similar aspirations and values, can achieve great goals on the basis of equality.

So we are starting an urgent examination of our Western Hemisphere policy within our government. But such a policy makes no sense if it is a U.S. prescription handed over to Latin Americans for your acceptance or rejection. It shouldn't be a policy designed in Washington for Latin America. It should be a policy designed by all of Latin America for the Americas.

And so as we examine our own policy, we must also ask for your help. We know that there isn't one Latin America, but many different countries. We know also that there are certain subregional groups. But it isn't for us to say with whom to conduct the dialogue. That has to come from our guests here in this room.

And so as we form our policy, I would like to invite your suggestions, whatever form you think appropriate, as groups or subgroups of individual nations.

And when our final policy emerges, we will all have a sense that we had a share in its making, and we will all have a stake in maintaining it.

So, President Benites and Excellencies, I would like to propose a toast to what can be an adventure of free peoples working together to establish a new relationship that can be an example to many other nations. I would like to propose a toast to Western Hemisphere relationships, to our distinguished guest of honor, President Benites.

2. BASES FOR A NEW DIALOGUE BETWEEN LATIN AMERICA AND THE UNITED STATES ADOPTED AT THE CONFERENCE OF CHANCELLORS OF LATIN AMERICA FOR CONTINENTAL COOPERATION HELD IN BOGOTA, COLOMBIA, IN NOVEMBER OF 1973

During the Conference, the validity of the principles and concepts—which the Latin American countries have consecrated in different well-known documents such as the Consensus of Viña del Mar of 1969 and others which have consequently been approved—were reiterated as was the need to take essential measures to effectively enforce them.

Bearing in mind that during the "new dialogue" to be held soon with the Secretary of State it will not be possible to extensively examine all and each of the present problems which interest Latin America, the Conference reached the conclusion that it would be profitable to begin an exchange.

Cooperation for development

Inter-American cooperation for development should effectively contribute to integral development; therefore, it should be applied to all fields—economic, commercial, financial, social, technological, scientific, educational and cultural. Cooperation through the multilateral mechanism of the inter-American system should be integral and not be made conditional unilaterally by the assisting country, nor should it be discriminatory.

It is necessary to establish a system of collective economic security to protect the conditions inherent in the intergal development of the countries.

There is a pressing need to take measures for the free access of Latin American products to the United States market where they are subject to various kinds of unjustified restrictions such as tariff, non-tariff, health, quota and other similar restrictions.

Bases for a new dialog between Latin America and the United States

On October 5, 1973, by invitation of the Secretary of State of the United States of America, Mr. Henry A. Kissinger, a meeting was held of the representatives of the Latin American countries attending the Twenty-Eighth Session of the United Nations General Assembly.

On that occasion, the Secretary of State on proposing to Latin America a "friendship based on equality and respect for individual dignity," offered to initiate a "new dialog" with the Latin American countries to deal with matters which interest the hemisphere.

In view of this initiative, the Government of Colombia issued an invitation to the Secretary of State, Mr. Henry A. Kissinger who stated that "he hopes to be able to participate actively and in person in such a dialog at an opportune moment". The Government of Colombia then convened a conference of Ministers of Foreign Affairs to exchange opinions on the best way to set the bases for a new dialog.

The conference was held in Bogota from November 14th through 16th, 1973, with the attendance of the Ministers of Foreign Affairs of Barbados, Chile, Peru, Venezuela, Ecuador, Honduras, El Salvador, Costa Rica, Nicaragua, Guatemala, Panama, Mexico, Dominican Republic, Trinidad and Tobago, Guyana, Colombia and the Special Representatives appointed for that purpose by the Ministers of Foreign Affairs of Jamaica, Bolivia, Haiti, Brazil, Uruguay, Paraguay, and Argentina.[1]

Coercive economic measures

It is necessary to establish an effective mechanism of protection against the proposal, adoption or implementation of this type of measures.

Restructuring the Inter-American system

It is necessary to intensify the work of restructuring the inter-American system so as to adapt it to new political, economic, technological, social and cultural conditions of the American States and to hemispheric and world circumstances. Likewise, it is necessary for the United States to share the aspirations and join the Latin American efforts to achieve the deep changes which the system requires.

Solution to the question of the Panama Canal

In view of the information that the bilateral negotiations which began in 1964 between the Republic of Panama and the United States of America on the question of the Panama Canal shall soon be resumed, all the other countries of Latin America, reaffirming their solidarity with the Republic of Panama, manifest that the resolution of that matter is of common and urgent interest for Latin America and they hope that the already extensive negotiations shall culminate in a solution which satisfies the just aspiration of the Republic of Panama.

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[1] Order of precedence established by lot.

International trade structure and monetary system

The Latin American countries are determined to contribute to the correction of the existing economic distortions and to ensure their right to prosperity and peace. Therefore, their total effective participation in the multilateral trade negotiations and in the reform of the international monetary system is essential so that their efforts for development may not be injured by decisions in which they do not participate. Likewise, particularly in trade negotiations, it is necessary to abide by the principle that each country's obligations should be in accordance with its economic capacity; and therefore, the developing countries should receive differential treatment.

The United States should urgently put in force its general preference system and apply it without reciprocity and discrimination of any type. Standing preference should not be impaired during multilateral trade negotiations; they should be expanded. The preferences given within the general system should have the character of an international legal obligation.

During multilateral trade negotiations or independent of them, agreements and mechanisms relating to basic commodities of regional interest must be reestablished or created to contribute to the attainment of just and remunerative prices and their long-term stability.

Transnational enterprises

There is a deep concern in the Latin American sphere due to the attitude of transnational enterprises which interfere in domestic questions of countries where they carry out their activities and try to elude the legislation and jurisdiction of competent national tribunals.

Transitional enterprises constitute an adequate factor of Latin American development, as long as they respect the sovereignty of the countries in which they operate and adjust to their development programs.

Latin America considers that the United States' cooperation is necessary to overcome the resulting difficulties of frictions and avoid those that could originate from the conduct of transnational enterprises which violate the principles mentioned herein.

Technology transfer

Integral development of the Latin American countries requires an adequate technology. To comply with that objective and as a supplement to national efforts, technology transfer should be obtained from the different world sources among which the United States plays an important role. In this matter, Latin America hopes to obtain maximum coperation from the United States government.

Technology transfer should contribute to improve the economic, social and cultural levels in fields such as those of education, health, housing, nutrition, agriculture and industry. This transfer should be adapted to the needs, possibilities and characteristics of the Latin American countries, bearing in mind their development projects and programs.

General panorama of the relations between Latin America and the United States of America

Consideration of the political problems of hemispheric interest in the light of the present world and regional situation.

The selection of the above subjects obeys a criterion of priority, and consequently, does not mean that other problems cannot be discussed on another occasion.

The Conference likewise expresses the willingness of the participating countries to discuss any other matters which the United States of America may wish to propose.

Finally, it is considered advisable to jointly agree, as soon as possible, on the date for the proposed meeting that is to be held in Mexico.

3. DOCUMENT OF BOGOTÁ ADOPTED BY THE CONFERENCE OF CHANCELLORS OF LATIN AMERICA FOR CONTINENTAL COOPERATION HELD IN BOGOTÁ, COLOMBIA, IN NOVEMBER OF 1973

Document of Bogotá

The Ministers of Foreign Affairs and the Special Representatives of the Latin American States, meeting in Bogotá from November 14 through 16th, 1973.

After having analyzed the circumstances under which a new dialogue could be held between Latin America and the United States, in response to the invitation of the Secretary of State of the United States, Mr. Henry A. Kissinger.

Aware that deep changes have occurred in the international situation and that it is necessary to establish a new direction for Continental Cooperation.

Desiring to promote this new Cooperation based, among others, on the principles of solidarity, non-intervention, respect for national sovereignties as well as the self-determination of peoples and the legal equality among states.

Have decided on the bases for the "new dialogue" between Latin America and the United States to be presented to the Secretary of State by the Minister of Foreign Affairs of Colombia, Dr. Alfredo Vásquez Carrizosa, and, likewise,

Have agreed on the following:

1. Latin America is aware of its new situation which allows it to use and encourage the elements of international cooperation as a support to the necessary national efforts to accelerate its own development, improve the economic, social and cultural levels of its peoples and contribute to universal peace and coexistence, pursuant to the lofty objective corresponding to a continent of considerable economy potential, vast natural resources and high human values.

2. The increasing and positive Latin American nationalism constitutes a substantial element in Latin American unity and implies the common will of strengthening its personality and of jointly developing its historical destiny, since it is a community of free and sovereign states, with its own values derived from historic, cultural and social evolution.

3. The economic and social development is mainly the responsibility of each of the Latin American peoples and imposes upon the states integral, shared and solidary cooperation as a necessary condition for their effective progress.

4. On this occasion, the Ministers of Foreign Affairs want to reaffirm their governments' desire to reach the objectives of integration and of an integral, harmonic and self-supporting development, aiming at the realization of the individual and of international social justice.

5. On this occasion we should reiterate the will of the States for CECLA to continue its positive work as an agency of coordination and joint Latin American action, both on a continental and world scale; and the decision that all should contribute to its strengthening in order to make it more effective.

6. Likewise, it is necessary to promote, together with the other developing countries, the establishment of different Latin American coordination mechanisms in order to efficiently utilize their basic commodities and natural resources, in accordance with their sovereign rights. In that sense, the adoption of the Agreement Establishing the Latin American Power Organization (OLADE) is a cause for deep satisfaction.

7. The Ministers of Foreign Affairs reaffirm the need to intensify the work of restructuring the Inter-American system in order to adapt it to the new political, economic, social and cultural conditions of the American States and hemispheric and world circumstances. They express their confidence in the success of the Special Committee established by Resolution 127 of the General Assembly of the Organization of American States.

8. The Ministers of Foreign Affairs reiterate the urgent need to draw up a draft of the Charter of Economic Rights and Duties of States to be analyzed and approved by the Twenty-Ninth Session of the United Nations General Assembly.

9. The Ministers of Foreign Affairs, on expressing their pleasure with the effort made by the Latin American representatives in the specialized subregional, regional and international agencies, exhort them to intensify the work tending to encourage adequate Latin American and world corporation.

10. The ministers of Foreign Affairs reiterate the need to intensify common action in continental and world spheres so as to obtain the establishment of just and equitable conditions in the international economic structure. They stress the urgency of attaining an increase in their participation in world trade; just and remunerative prices for their basic commodities and favorable terms of trade; adequate financial support for their exports; elimination of tariff and non-tariff barriers; the exercise and perfecting of a General Preference System, legally guaranteed; access to adequate technology and the creation of favorable conditions in international loans.

11. Likewise, with a view to achieving some of the common Latin American objectives, the Ministers of Foreign Affairs recommend:

(a) That the representatives of the member countries of LAFTA, Cartagena Agreement, Caribbean Community (CARICOM) and the Organization of Central American States (ODECA), study the means of perfecting their mechanisms so as to speed up these processes; the possibility that those countries which still do not belong to any of these groups may participate; the way to establish permanent contacts among those entities to exchange information and cooperate with each other in order to facilitate progress in the integration processes which are so important in the Latin American countries' development.

(b) That the possibility of harmonizing the methods and procedures to increase trade among the Latin American countries be studied.

(c) That the system of conventions drawn up among the Central Banks of Latin America be completed to improve the system of payments and reciprocal credits.

(d) That the studies being made as regards air, maritime and land transportation be accelerated.

12. The Ministers of Foreign Affairs ratify the basic principles and concepts of the declarations and other instruments adopted by Latin America in different forums where the common political will of their countries is expressed.

13. In conclusion, the Ministers of Foreign Affairs declare that Latin America's constant purpose is to intensify its action within the context of the developing world so as to struggle against the dependence which, in several ways, opposes the just aspirations of its peoples intended to eradicate once and for all the obstacles restricting and conditioning the progress of their respective nations.

4. SPEECH DELIVERED BY MR. LUIS ECHEVERRIA ALVAREZ, PRESIDENT OF MEXICO, DURING THE INAUGURAL CEREMONY OF THE CONFERENCE OF TLATELOLCO

Your Excellencies, Ministers of Foreign Relations, Ambassadors, Ladies and Gentlemen: I extend to you most cordial welcome on behalf of the people and the government of Mexico. It is a source of particular pleasure to me to be able to offer you our hospitality and it is a great honor that this Conference,

which is significant for so many reasons, is being held in our capital city.

The meeting which today brings you together is evidence of a common desire to begin a different stage of coexistence in our hemisphere. However, neither the objectives of this gathering nor the problems which will be presented are new. Some appeared at the very moment in which our countries became independent. Most of them have been the subject of countless studies, discussions, and agreements during the decades of existence of our regional organization.

The troubled history of hemispheric relations records many attempts at renewed understanding and announcements of promising eras which never materialized. In fact, the channels of communication between our countries have almost never been closed. What has happened is that they have been inoperative and that events have too often belied our purposes and commitments.

The nature of this Conference and the unanimous interest it has aroused reveal, however, the urgency of restating the assumptions and methods of the inter-American system. For this reason, executives of the nations here represented gave their consent for our Ministers of Foreign Affairs to participate in this unusual procedure for consultation.

We believe, despite everything, in the efficacy of dialogue, but we also know that true solutions require persevering action. Diplomatic styles are transitory and the only thing that endures are the efforts which, followed by concerted decisions, succeed in modifying reality. Let us not confuse history with anecdotes or good intentions. The problems which hemispheric relations pose are structural ones and we must confront them as such.

Even the best doctrines and programs of Pan Americanism, those which were inspired by the ideal of Bolivar, were frustrated by the effect of the correlation of real forces in the hemisphere. Territorial plundering; armed aggressions; intervention in the political affairs of our peoples and in their processes for democratic liberation; restrictions to the exercise of sovereignty over our natural resources; as well as the barriers raised against our active participation in world affairs were features, which in different forms, were part of an economic and geopolitical design for hemispheric domination.

Today, effective possibilities for change in hemispheric relations exist, on the one hand, because the widespread economic crisis makes a more equitable interdependence necessary and implies a revision both of prevailing economic patterns and of the political strategies on which they are based, and on the other hand, because of the explosive nature of problems that have accumulated throughout vast areas of Latin America which demands an acceleration of internal changes and solidarity action to reorganize our exchanges with industrialized countries.

The terms for coexistence in this hemisphere can only be reformulated within the broader framework of world politics. The problems we are facing are not exclusive to our region. They have their own characteristics but to restrict our vision to them alone would be to fall into a narrow view which would conceal true solutions from us. We need to apply to our case an analysis of the real causes and the true alternatives to the world problem of underdevelopment.

Latin America forms part of the Third World. Its struggles are coincident with and parallel to those being made by other nations against colonialism, modern attempts at subjugation, injustice in international transactions, and the concentration of political power, of wealth and of their means of multiplication.

The historical cycle which began at the end of World War II is coming to an end and we must forever eradicate its ideological, political, and economic sequels. The schemes for hegemony which led to a provincial division of the world, closed spheres of influence, intolerance and neo-colonial wars, traditional systems of exploitation, and an economy at the service of excessive waste are being transcended by a series of problems which herald the advent of the twenty-first century.

The current energy crisis, together with other equally acute phenomena, is but a symptom of profound imbalances in the international economy. The scarcity of food, the dramatic prospects of unemployment, monetary disorders, overpopulation, pollution, and the relative exhaustion of natural resources all constitute reasons for serious concern by all thinking persons of our time.

Taken separately, none of these phenomena can be controlled. They only acquire meaning within a global perspective which in turn includes and conditions them. It is the system of international coexistence itself and not the special contradictions it generates which we must change. A centuries-old stratification of relationships based on domination is what sustains the world of affluence and expands the boundaries of the underprivileged in a marginal position.

What is needed, consequently, is to find replies in depth, capable of subjecting the irrational forces of history to the demands for the security, well-being and survival of mankind.

These which until only recently were used to support vanguard attitudes are today recognized as proven scientific evidence. In the light of the magnitude of the problems of our era, failure to act, skepticism or routine acceptance would be unpardonable. On the other hand, times of crisis often provide fertile soil for negotiations and long-term reforms.

In these days, many different sectors have been insisting, with a revealing emphasis, on the need to restate the objectives and methods of world economy. A group of representatives of forty countries is at present studying, in accordance with the mandate of the General Assembly of the United Nations, the creation of an instrument which, through compulsory norms for economic behavior, will provide a framework of cooperation for equitable development.

The project currently being drafted is a serious effort to define, through the consensus of sovereign states, the real possibilities for transforming international life. It raises to the status of rights demands for justice which have been denied many times. It indicates ways to complement interests and so establishes the indispensable general framework for dealing with each problem through specific rules and mechanisms of operation which are both practical and just.

The Charter will contain the essence of the historical aspirations of Latin America. It will redefine the attributes of sovereignty in the contemporary world and will determine, in the economic sphere, the principles of self-determination and nonintervention. It will consecrate the right of every state to choose the social and economic system in accordance with its desires and peculiarities, free from any kind of external coercion.

It will recognize that a State's jurisdiction includes the free right to dispose of its natural resources and that since expropriations and nationalizations are expressions of this jurisdiction, all controversies arising therefrom are to be considered as exclusively within the competence of the courts of the State in question.

All nations will acknowledge the rights of all other nations to regulate foreign investment, in order to adjust it to the needs of their own development; to participate fairly in international trade; to receive a fair price for their products, to enjoy nonreciprocal preferences according to their individual degree of development; and to receive the benefits of a broad and adequate transfer financial, scientific and technological resources.

The activities of transnational corporations will also be the object of specific regulations which proscribe at the same time the exercise of economic pressures and interference in the political affairs of our countries.

The channeling of resources used at present for the stockpiling of arms toward tasks for economic progress; the preservation of the environment through an effort to be made primarily by those countries mainly responsible for its deterioration; the exploitation of marine and ocean beds for the benefit of all mankind and the recognition of sovereignty over the patrimonial sea, all problems which vitally affect the future of Latin America, will also be subject to legal provisions.

The adequate application of these principles will favor internal and external conditions so that our countries may satisfy their own needs and assure, on equitable bases, the supply of products which are indispensable to maintain the economic growth of the industrialized societies themselves. It will lead, finally, to a modification of the structure of the international division of labor and take advances made in economic life to areas which possess greater natural resources and manpower.

It is irrational to continue to restrict our peoples to a role as punctual producers of raw materials. Neither would this make real development possible becuse it would favor an internal concentration of wealth and would distort the economic apparatus converting our peoples into passive receptors of models of production and consumption foreign to their needs and interests.

Latin America finds itself in the antechamber of an imminent process of internal mutations: either its ruling classes take the initiative to accelerate and lead this process of demands for justice or they will be inevitably overwhelmed by the direct action of their growing marginal social groups.

Attitudes responsible for change in the area of underdevelopment, therefore, deserve the determined support of the community of nations. In a period ruled by the imagination, all internal efforts designed to safeguard the essential dignity of man and incorporate it as a feature of social and economic life demand the greatest understanding and should never be obstructed from abroad. They presuppose a tight and progressive equilibrium between the forces of stability and those of renewal. They nearly always imply the strengthening of civic spirit capable of overcoming regressive tendencies and the effective participation of the people as a creative force in history.

These same efforts require the coordinated action, within a constitutional framework, of all individual and collective energies; of laborers and modern entrepreneurs; of farm workers and the middle class; of the intelligentsia and of the younger generation. They definitely signify transcending that recurrent cycle between dictatorship and anarchy which during more than a century obstructed the viability of the national State in Latin America.

In the search for elements to promote its modernization, Latin America should not confine itself to the inertia of its hemispheric relations which often prolong ancient servitudes and decrease the multiple choices offered by open exchanges with the whole world.

Let us strike out assumed geopolitical determinism which is anachronic in the complexity of contemporary economics. Let us consolidate, in this hemisphere, bonds based on autonomy, equality and justice. Let us establish the bases for sincere cooperation and let us exercise the militant solidarity of the peoples of the Third World in our own hemispheric home.

At the beginning of the last third of the past century we Mexicans learned from Benito Juárez that the guarantee of peace resides in the respect for the rights of others. Now, together with all the developing countries, we demand that same respect as a basic formula for coexistence.

5. SPEECH BY THE MINISTER OF FOREIGN RELATIONS OF COLOMBIA, DR. ALFREDO VASQUEZ CARRIZOSA, DURING THE OPENING MEETING OF THE CONFERENCE OF TLATELOLCO

The Americans are truly represented in this hall where the Foreign Ministers of twenty-five countries of this hemisphere have come together. We are a group of persons with long and ancient experience. We have proposed to create in this part of the world a rule of law based on a series of values that are our very own; outstanding among which are the integrity of sovereignty and the equality of rank of all States. But we find ourselves on the threshold of a new era in which the economic uncertainties of countries are predominant issues. The subject of poverty occupies a principal place in international meetings and we cannot hope to escape this sign of the new era.

The deliberations which are now beginning, and the dialogue which is about to commence between Latin America and the United States, may well signify a fundamental turning point in hemisphere politics, as a start for a new orientation in the relations between the United States and the other countries of this hemisphere. It is a task, we realize, of historic proportions to which we promise to dedicate the best efforts of our respective countries. Latin America and the United States cannot elude the need to review the whole context of their relations in order to place them on a clearer multilateral plan of equality based on economic justice and the elimination of every vestige of colonialism.

In the beginning of this new chapter of our history, the Latin American Foreign Ministers have entrusted me, in the first place, with the high and honorable mission of thanking His Excellency the President of Mexico, Mr. Luis Echeverria, for his eloquent words and attendance at this opening ceremony. It is fortunate for all that this hemispheric Conference is being held in Mexico, a country which symbolizes today, as it has throughout its great past, the greatest human striving of any people and race for their liberty and a perennial sacrifice to maintain the Mexican national spirit.

The cry of *"Viva Mexico!"* has sounded in many different corners of America as a permanent evocation of Hidalgo and Morelos, the true heroes of the dawn of liberty in the Americas; of Juárez, Madero and Zapata, those immortal leaders of a country whose people in bitter days learned to shoulder a rifle along with farm tools and carry in their knapsacks the bill of rights with which to challenge the dangers which threatened their historic destiny. This great tradition of Mexico is built of legend, music and heroism and Your Excellency has worthily represented it when as Chief of State of Mexico you made pilgrimages of friendship to other countries to defend the urgent needs of developing countries and when you carried out your policy of direct dealing in your contacts with other nations and stated high principles at international conferences.

This is the objective pursued by the Charter of the Economic Rights and Duties of States which is destined to be the code of moral conduct in the contemporary economy of an international community consisting of countries with different levels of development and organized according to different ideologies and political, economic and social systems. "The sign of our times", Your Excellency has said, "is that of a world battle for development", and this phrase sums up the expectations which are harbored at this Conference.

The problems which bring us together here are derived from a fundamental imbalance between the more powerful nations and those which have suffered centuries-old poverty. Since the close of World War II in 1945 an unstable and fragile peace has been constantly threatened by the ravages of poverty which lies latent in three-fourths of mankind without our having yet glimpsed that so-often proclaimed and promised new international economic order. To power rivalries and shifting borders, which are the consequences of every war, have been added—and certainly to a great extent—the yearnings of the inhabitants of the underdeveloped world.

There is no region of the earth where there is not an awareness of the so-called development gap which separates the wealthy, rapidly-industrialized societies from those where the average per capita income is still insufficient. The emancipation of the colonial peoples of Africa and Asia has only confirmed the existence of mass societies which demand the enforcement of economic and social justice within their countries and on the international scene; which is one of the most outstanding historical and political phenomena of our time. This is a situation which recalls the old struggles of labor to change an unjust distribution of income, put an end to inequality and fight monopolies.

The coexistence of these two areas of wealth and poverty definitely threaten world peace. The new incentive for proletarian solidarity among nations is called underdevelopment and it is important to modify the trade structure that has given rise to this situation which has come down from ancient and well-entrenched privileges in the international community. It is a chronic economic and social inequality which has not been corrected by the procedures followed until now through a deficient system of international collaboration and selfish attitudes on the part of the nations with the most power, technological capacity and wealth.

A few statements of this theory have not been enough to remedy the situation. The First United Nations Development Decade, for example, only established a modest growth rate of 5 per cent for the income of the poor countries.

That experience became the First United Nations Disappointment Decade for the poor countries. The greatly negative results of that period demonstrated that it was essential to convince the big countries to open their markets and in such event the 5 per cent growth rate of the poor countries should be accompanied by corresponding measures by the rich countries to admit a proportional increase of the exports of the former and to accept a new international division of labor in which an economic system inherited from the previous centuries—in which the rich countries grew richer and the poor ones poorer—would not be continued.

Latin America has agreed with these demands of the Third World countries and our problems, in addition to their political aspects, can also be examined in their economic and social context. Several periods of confrontation have occurred until Latin America finally obtained from the United States its acceptance of the principle of non-intervention in the internal affairs of every independent state. It was a long and hard struggle, because the countries south of the Rio Grande never accepted that models of governments acceptable to other countries be imposed on them from the capital of another country nor would they accept patterns for economic and social development imposed from abroad. Such intervention has always signified for us the exercise of a foreign tutelage over the destiny of free countries. Non-intervention and free determination are truly the cornerstones in the structure of our

In the field of hemispheric politics we have accepted general principles common to other areas. It is no longer novel to speak of the rights of states and of the obligation to refrain from threats and the use of force against the territorial intergrity of political independence of any country. Now we must look to see if in the economical and social fields conditions of justice and cooperation exist which will satisfy our peoples and it is in this aspect that we have to confess to the lack of a policy of inter-American social and economic cooperation.

The principal problem of Latin American economic policy is that none exists. We say this without passion but with friendly frankness toward the United States. The regional system is equally in crisis and only a theoretical level have we studied formulas for reciprocal acceleration of trade only slightly based on reality. We have had programs for cooperation which were not intended at the time to meet the development requirements of Latin America or programs for cooperation surrounded by solemn declarations which evaded, in their concrete applications, the appropriate solutions to problems originating in the inequalities of trade conditions.

The self-evident and abysmal result of that situation in our hemisphere is that in the early seventies Latin America still has no continental policy of a broad, progressive, and generous economic and social nature. It must be admitted once and for all that we have avoided finding solutions to the basic problems. This occurred in 1934 with the Good Neighbor policy of Franklin Delano Roosevelt, which marked the beginning of a new age of political collaboration in the Americas but lacked an economic concept. It was only when deep rifts had appeared in the regional system that, twelve years later, we were to hear of cooperation for progress; but the Alliance proclaimed in 1961 by another President of the United States, John F. Kennedy, began to pale and decline following the immense tragedy that forever ended the promise to mankind of a youthful spirit so imbued with intelligence.

The Alliance for Progress signified an unquestionable step forward, but it soon lost its original meaning and was not employed to implement fully the fourth point of the Charter of Punta del Este, which deals with the position of basic products. For ten years, the war in Viet Nam held the attention of the United States to such an extent that it was impossible to carry out any far-reaching examination of the measures intended to facilitate the expansion of Latin American trade or to demand that the industrialized countries, particularly the United States, fulfill the obligations assumed in the United Nations Conferences on Trade and Development.

Latin America has had occasion in recent years to ask itself just what is its so-called "special relationship" with the United States, although we do understand that a world power has obligations to all continents, and not just to one of them. But what is wrong in the Americas is not simply one aspect or another nor even the end of the Alliance for Progress, which is a well-known factor, nor the decline of the assistance policy, whose crisis was noted in the 1967 Pearson Report to the World Bank. What is wrong is the whole of hemispheric economic relations, which must undergo a fundamental and positive change if we are to prevent frustration and discontent from growing even more acute.

Latin America could take no satisfaction from mere repetition of well-known principles. In coming years, relations with the United States should be based on a policy of participation by all the countries of this hemisphere in every decision that affects their vital interests or their political or economic situation in the world. The developing countries of this hemisphere cannot continue to be mere distant spectators of discussions concerning the balance of peace

and securtiy in its many political and economic aspects. We are living in an era of such close interdependence that any abnormal situation in the areas of peace or economics affects all countries.

These new relations between Latin America and the United States also call for a concept of regional security that is not simply based on or limited to the bare facts that we have included in existing treaties but rather takes into account the factor of the economic insecurity that results when acts of one nation vitally affect the economies of other developing countries. Similarly, these relations imply the detachment of the interests of private foreign capital from a multilateral inter-American policy whose dimensions surpass those of the great transnational enterprises and whose direction corresponds in purity to the governments of the sovereign States that compose our hemisphere.

The clear and undeniable fact recorded by the United Nations Economic Commission for Latin America in its last yearly report is the enormous trade deficit—more than 1.2 billion dollars—of the poor countries of this hemisphere, which results from the fact that United States exports to Latin America are far greater than its imports from those same countries. The industrial progress of Latin America has been almost miraculous. It has meant overcoming the difficulties implicit in the limited domestic markets and the tariff barriers encountered in foreign markets. All of this has occurred within an accelerated process of urbanization that restricts the amount of domestic funds available for attending to the needs of depressed areas, hunger zones, and poverty belts.

What will be the policy of the United States of America toward Latin America in the coming years of this decade? In recent years we have attended innumerable regional and world conferences. We have attended all the United Nations Conferences on Trade and Development and have come away as disappointed as other Third World countries. What can be done to lighten the burden of Latin American farmers and workers? How can we achieve true transfer of technology to Latin America and offset growing urbanization with greater production? We have forgotten the goals set by the Presidents of the American States at the Punta del Este Conference in 1967 regarding Latin America's economic integration and industrial development and consequently the agreements reached on multinational integration to improve Latin America's international trade conditions have remained as mere words on paper.

In 1967, the President of the United States declared his firm support of the promises made. But the focus of international problems has most certainly changed since then. Negotiating mechanisms of a global type have been created that include more than one hundred and thirty nations; regionalism in the economic and political fields has lost much of its reason for being because of the inclination shown by Latin American countries to be heard at world forums in order to solve their most urgent problems, closely related to those occurring in other hemispheres. We are still convinced that it is necessary to preserve our regional organizations while basically reforming their structures and procedures. Nevertheless, we live in a world of close global relationships.

Because of this, we have searched for a new form of dialogue that will set aside artificial forms of diplomatic protocol, the prefabricated phrases contained in declarations and repeated with different city names, in short, the repetition of useless things. Together with His Excellency, Dr. Henry Kissinger, Secretary of State of the United States, of whose capacity, universal vision of international problems, knowledge and tact we are convinced, we wish to attempt a diplomacy of reality and truth, of an acknowledgement of facts, because we are certain that it will be less detrimental for our countries to be aware of the true state of hemispheric relationships, than to deceive each other by manifestations of artificial solidarity. [Applause.]

The era of conference rhetoric is over for Latin America, and more particularly the period of general statements on economic and social development which so interested the economists in the 1960's. From the time of the Act of Bogotá of 1960 to the Viña del Mar Declaration in 1969 an enormous amount of basic texts was accumulated, each representing a step forward in the crystallization of collective thought realized on the occasion of the 1960 Declaration. The decade came to a close in Viña del Mar with a substantial text defining all aspects of inter-American and international cooperation.

All these declarations reflect the firm and unequivocal affirmation of the Latin American personality, a personality with its own criteria and values which, as was defined at Viña del Mar, has contributed to growing and justified continental nationalism. This is supported by Latin America's unfailing rejection of all kinds of intervention and pressures both in the political and economic fields. Latin America accepts no form of colonialism nor even attenuated paternalism inasmuch as one of the fundamental rights of a nation is that of choosing its political and social system. [Light applause.]

The policy of plurality of ideologies is one of the bases for hemispheric cooperation. The framework for the principles of inter-American cooperation has been delineated many times.

What has been lacking are the necessary mechanisms for incorporating such principles into the everyday life of countries of the hemisphere, and to ensure that these principles do not remain static, alien to the anxieties of development. The Declaration of Vina del Mar, as previous ones, did not further them with a subsequent dialogue as is now envisioned. The result was that shortly thereafter, the noble principles found their way back into the file of good intentions which, according to popular saying, pave the way to Hell.

On the other hand, we now find ourselves in a time of dialogue and negotiations between great powers, between continents and even between economic groups. Confrontation was the strategy of the Cold War, in the same manner in which dialogue is an institution characteristic of the "Detente", an institution which has found in His Excellency Dr. Henry Kissinger, a statesman imbued with faith and an unfaltering determination to obtain results based on reality. Dialogue is, furthermore, very much in keeping with this time of change and uncertainty in the international economic scene. We do not know what position will be reserved for poor countries and what to the rich.

A deeply-rooted monetary disturbance has been affecting highly industrialized nations to the point where the precepts established in the Bretton Woods Agreement of 1944 have been found to be inadequate. At that time, the possibility of establishing fixed parities was considered. And what we have been asking for insistently is that at least the effects of the devaluations in rich countries not rebound on the weak economies of poor countries. That is why we believe that the monetary problem is closely linked to other aspects of international economy such as commerce and the transfer of real resources.

Without considering the energy crisis, which erupted unexpectedly as one more issue in the field already eroded by the crisis suffered by strong currencies, we now face the most uncertain moment in the field of international economy since the beginning of the postwar period. We, then, cannot resort to rigid and intransigent texts for any of the two parties to the dialogue—the United States and Latin America—nor can we be carried away by the juridicial habit of our culture which seeks in solemn, multilateral treaties of an almost evangelical nature, the solutions for myriad problems which require the constant and patient effort of our countries, Latin America and the United States, together with other countries of the world.

No region can resolve all of its problems by itself. But we have wanted to be precise and this dialogue, which began in the fall of 1973 with the improvisation of easy and spontaneous things but with pressing matters in mind, was formalized during the Conference of Foreign Ministers of Latin America convened by my country, the Republic of Colombia. This step was taken by Colombia with the best wish to serve as the instrument for united and free action of Latin America. We felt we should think as a continent and act with the assurance and self-possession of mature societies, without useless discord or rhetorical verbosity, with new formulas to further progress and economic justice.

The eight points of the Bogota Document are a general framework, almost an index, of the issues of greatest concern to us which we submitted to His Excellency Dr. Henry Kissinger. What we had in mind for this conference was a new style in which we would use the simple forms of political dialogue, eliminating the antiquated procedures of an international bureaucratic system. The Secretary of State of the United States has, in turn, suggested other issues. In every instance, we are determined to bring to the conference table the central theme of Latin America, redemption of its poverty and the application of economic justice for this part of the world.

Colombia is proud of the fact that it promoted this dialogue, together with other nations of the hemisphere. It was our wish that there be no exceptions to Latin American unity, that in the future it should include all sovereign nations of this continent, each with its own way of life and its own economic or political system, but all united by that great goal of redeeming Latin American man from poverty, sickness and ignorance. The final objective of this policy which Latin America supports with fervor, enthusiasm and great expectations, is man, in an America where economic disparities still prevail.

Our thesis—the greatest among all—is that of the human being who suffers the rigors of cold in the mountains and the intensity of heat in the plains and which, day by day, creates the future of his country, with his hands, sinking tools in the soil or striking metals on the forge, as did the men of ancient Hellas when service to their city was a constant task. Man has suffered the stigma of later forms of slavery and submission. His spirit is nurtured by the sun, air, rain and murmuring streams. He is the living image of the countries towards which this dialogue must be directed.

It could well be that Latin America and the United are not fully identified in all of their international political and economic concepts. Each has a special situation; we are part of the underdeveloped world and the United States is the most prosperous nation in the world. We do not hold to a candid vision of international order which would lead us to confuse juridical equality with economic equality. But, we do feel that we can coexist within a mutual respect for our sovereignties and the free self-determination of our peoples. Not even the wealthiest nations can overlook the obligation of solidarity with the poor countries.

We aspire to an era of full economic and social justice for the nations of this hemisphere, for our peoples and for Latin American man. But behind simple words, we perceive reality. The challenge to poverty has

become a solidarity of poverty. And there will be no peace without a new economic and social order in the world which implies a better distribution of wealth among nations.

Our thesis is peace through justice for the hungry peoples of all continents.

6. ADDRESS OF SECRETARY OF STATE HENRY A. KISSINGER TO THE CONFERENCE OF TLATELOLCO, MEXICO CITY

Mr. President, distinguished colleagues and friends. When I listened to the previous speakers, I was seized by an uncharacterized feeling of humility. It became clear to me that in the art of epic oratory, the United States is an underdeveloped country.

We owe our host country and its leaders a profound debt of gratitude for sponsoring this meeting and for the excellence of the arrangements which they have made. Personally, I have spent many happy days in this great country. And I have had the privilege of the advice, wisdom and on occasion the tenacious opposition of the President of Mexico and his Foreign Minister who defend their concept of justice and their national interest with passion. I look forward to an equally frank, friendly, intense and constructive dialogue with all my colleagues at this conference.

On a plaque in Mexico's imposing Museum of Anthropology are etched phrases which carry a special meaning for this occasion:

"Nations find courage and confidence to face the future by looking to the greatness of their past. Mexican, seek yourself in the mirror of this greatness. Stranger, confirm here the unity of human destiny. Civilizations pass; but men will always reflect the glory of the struggle to build them."

We assemble in the splendid shadow of history's monuments. They remind us of what can be achieved by inspiration and of what can be lost when peoples miss their opportunity. We in the Americas now have a great opportunity to vindicate our old dream of building a new world of justice and peace, to assure the well-being of our peoples—and to leave what we achieve as a monument to our striving.

Our common impulse in meeting here is to fulfill the promise of America as the continent which beckoned men to fulfill what was best in them. Our common reality is the recognition of our diversity. Our common determination is to derive strength from that diversity, and forge our historical and geographical links into shared purpose and endeavor.

In this spirit the United States offered a new dialogue last October.

In this spirit the countries of the Americas responded in Bogota last November.

We meet here as equals—representatives of our individual modes of life, but united by one aspiration—to build a new community.

We have an historic foundation on which to build; we live in a world that gives our enterprise a special meaning and urgency.

On behalf of President Nixon, I commit the United States to undertake this venture with dedication and energy.

The U.S. commitment

Our concern has dominated all others as I have met privately with some of my colleagues in this room. Does the United States really care? Is this another exercise of high-sounding declarations followed by long periods of neglect?

These questions—not unrelated to historical experience—define our task. On behalf of my colleagues of the American delegation and myself let me stress that we are here to give effect to a new attitude and to help shape a new policy. The presence of so many distinguished leaders from the United States Congress underlines the depth of the United States concern for its neighbors and the determination of our government to implement our agreements through a partnership between the Executive and Legislative branches.

The time has come to infuse the Western Hemisphere relationships with a new spirit. In the nineteenth and early twentieth centuries, the United States declared what those outside this hemisphere should not do within it. In the 1930's we stipulated what the United States would not do.

Today we meet on the basis of our agenda and our common needs. I agree with one of my distinguished colleagues who said on arrival that the time had come to meet as brothers, not as sons. Today—together—we can begin giving expression to our common aspirations and start shaping our common future.

In my view, our fundamental task at this meeting—more important even than the specifics of our agenda—is to set a common direction and infuse our efforts with new purpose. Let us therefore avoid both condescension and confrontation. If the United States is not to presume to supply all the answers, neither should it be asked to bear all the responsibilities. Let us together bring about a new commitment to the inter-American community.

Let us not be satisfied with proclamations but chart a program of work worthy of the challenge before us.

Let us create a new spirit in our relations—the spirit of Tlatelolco.

An interdependent world

A century ago a U.S. President described to the Congress of his time the difficulties facing the country: "It is a condition which confronts us—not a theory."

The condition we confront today is a world where interdependence is a fact, not a choice.

The products of man's technical genius—weapons of incalculable power, a global economic system, instantaneous communications, a technology that consumes finite resources at an ever spreading rate—have compressed this planet and multiplied our mutual dependence. The problems of peace, of justice, of human dignity, of hunger and inflation and pollution, of the scarcity of physical materials and the surplus of spiritual despair, cannot be resolved on a national basis. All are now caught up in the tides of world events—consumers and producers, the affluent and the poor, the free and the oppressed, the mighty and the weak.

The world and this Hemisphere can respond in one of two ways.

There is the path of autarchy. Each nation can try to exploit its particular advantages and skills, and bargain bilaterally for what it needs. Each nation can try to look after itself and shrug its shoulders at the plight of those less well endowed.

But history tells us that this leads to ever more vicious competition, the waste of resources, the stunting of technological advance, and—most fundamentally—growing political tensions which unravel the fabric of global stability. If we take this route, we and our children will pay a terrible price.

Or we can take the path of collaboration. Nations can recognize that only in working with others can they most effectively work for themselves. A cooperative world reflects the imperatives of technical and economic necessity, but above all the sweep of human aspirations.

The United States is pledged to this second course. We believe that we of the Americas should undertake it together. This Hemisphere is a reflection of mankind. Its diversity of the globe. It knows the afflictions and frustrations of the impoverished. At the same time, many of its members are leaders among modernizing societies. Much has been done to overcome high mortality rates, widespread illiteracy, and grinding poverty. This Hemisphere uniquely includes the perceptions of the post-industrial societies, of those who are only beginning to sample the benefits of modernization and of those who are in mid-passage.

The Americas reach out to other constellations as well. The nations of Latin America and the Caribbean share much of the stirrings of the Third World. The United States is engaged in the maintenance of peace on a global basis. Pursuing our separate ways narrowly, we could drift apart toward different poles. Working together, we can reinforce our well-being and strengthen the prospects for global cooperation.

So let us begin in this Hemisphere. If we, here in this room, fail to grasp the consequences of interdependence, if we cannot make the multiplicity of our ties a source of unity and strength, then the prospects for success elsewhere are dim indeed. The world community which we seek to build should have a Western Hemisphere community as one of its central pillars.

President Echeverria foresaw the gathering force of interdependence in 1972 when he set forth his Charter of the Economic Rights and Duties of States as a guide for the conduct of relations among countries at different levels of economic development. Last September before the United Nations General Assembly I endorsed that concept. At first, some were concerned because they saw the Charter as a set of unilateral demands; it has since become clear that it is a farsighted concept of mutual obligations. In the emerging world of interdependence, the weak as well as the strong have responsibilities, and the world's interest is each nation's interest.

We can start by making the concept of the Charter a reality in the Western Hemisphere.

THE U.S. VIEW OF THE AMERICAN COMMUNITY

The United States will do its full part to see that our enterprise succeeds. We can make a major contribution, but it would be in nobody's interest if we raised impossible expectations, leaving our peoples frustrated and our community empty.

We will promise only what we can deliver. We will make what we can deliver count.

I have carefully studied the agenda for this meeting you prepared in Bogota. I will respond in detail to its specifics in our private sessions. But I will say here that I have come to a greater understanding of the deeply felt motivations behind the phrases of this agenda.

You are concerned—

That the United States has put aside its special commitment to the Hemisphere;

That we will allow old issues to go unresolved while new ones are created;

That we seek not community but dominance;

That our relationship does not adequately contribute to human welfare in the hemisphere, that it is often irrelevant to your needs and an obstacle to their fulfillment.

In response let me outline the direction the United States proposes to its friends in rededicating itself to a new era of Western Hemisphere relationships. I look forward to hearing your own views so that together we can make the Western Hemisphere Community a reality.

The United States will do its utmost to settle outstanding differences. During the past year, the United States and Mexico solved the long-standing Colorado River salinity dispute. Two weeks ago Panama and the United States—taking account of the advice of their partners at Bogota—signed a document that foreshadows a new relationship. And just 48 hours ago, Peru and the United States settled a dispute over compensation for the exercise of Peru's sovereign right to nationalize property for public purposes.

The United States is prepared to work with the other nations of this hemisphere on methods to eliminate new disputes or to mitigate their effect.

Some of our most troublesome problems have arisen over differences concerning the respective rights and obligations of private United States firms operating in foreign countries, and the countries which host them.

On the one hand, in keeping with the Calvo Doctrine, most nations of this hemisphere affirm that a foreign investor has no right to invoke the protection of his home government. On the other hand, the United States has held that nations have the right to espouse the cause of their investors. This conviction is reflected in the legislative provisions of the Gonzales and Hickenlooper Amendments.

Realistically, we must admit that these two conceptions cannot be quickly reconciled. But the United States is prepared to begin a process to this end immediately and to mitigate their effects. Even before a final resolution of the philosophical and legal issues, we are ready to explore means by which disputes can be removed from the forefront of our inter-governmental relations.

In our private meetings I shall make specific proposals to establish agreed machinery which might narrow the scope of disputes. We might consider the establishment of a working group to examine various procedures for fact finding, conciliation, or the settlement of disputes. Other approaches are possible, and I shall welcome the views of my colleagues. Let me affirm here that a procedure acceptable to all the parties would remove these disputes as factors in United States decisions respecting assistance relationships with host countries. We would be prepared to discuss with our Congress appropriate modification of our legislation.

* * * * *

But we cannot achieve our goals simply by remedying specific grievances. A special community can only emerge if we infuse it with life and substance.

We must renew our political commitment to a Western Hemisphere system. Thomas Macaulay once observed, "It is not the machinery we employ, but the spirit we are of that binds men together." We are here because we recognize the need for cooperation. Yet we can only cooperate if our people truly believe that we are united by common purposes and a sense of common destiny.

The United States will be guided by these principles:

We will not impose our political preferences;

We will not intervene in the domestic affairs of others;

We will seek a free association of proud peoples.

In this way, the Western Hemisphere community can make its voice and interests felt in the world.

We realize that United States global interests sometimes lead to actions that have a major effect on our sister republics. We understand, too, that there is no wholly satisfactory solution to this problem.

However, to contribute to the sense of community we all seek, the United States here commits itself to close and constant consultation with its hemispheric associates on political and economic issues of common interest—particularly when these issues vitally affect the interests of our partners in the Western Hemisphere.

In my view, the best way to coordinate policies is to make a systematic attempt to shape the future. I therefore recommend that today's meeting be considered the first of a series. The foreign ministers assembled here should meet periodically for an informal review of the international situation and of common Hemispheric problems. In the interval between our meetings, the heads of our planning staffs or senior officials with similar responsibilities should meet on a regular basis to assess progress on a common agenda. The principle of consultation on matters affecting each other's interests should be applied to the fullest extent possible.

Specifically:

The United States is prepared to consult and adjust its positions on the basis of reciprocity, in the multilateral trade negotiations.

The United States also recognizes a fundamental congruity of interests among the countries of the Hemisphere in global monetary matters. We favor a strong voice for Latin America in the management of a new monetary system—just as we favor its effective participation in the reform of this system.

The United States is ready to undertake prior consultation in other international negotiations such as the Law of the Sea Conference, the World Food Conference and the World Population Conference.

The Western Hemisphere should promote a decent life for all its citizens.

No community is worthy of its name that does not actively foster the dignity and prosperity of its peoples. The United States as the richest and most powerful country in the Hemisphere recognizes a special obligation in this regard.

Let me sketch here the program which President Nixon has authorized and which I shall discuss in greater detail with my colleague this afternoon.

First, in trade. During the period of great conomic uncertainty arising from the energy situation, it is essential that nations behave cooperatively and not take protective or restrictive action. I pledge to you today that the United States will do its utmost to avoid placing any new limitations on access by Latin America to its domestic market.

In the same spirit we renew our commitment to the system of Generalized Tariff Preferences. We shall strongly support this legislation. Once it is enacted, we will consult closely with you on how it can be most beneficial to your needs.

Second, in science and technology. We want to improve our private and governmental efforts to make available needed technology, suited to varying stages of development in such vital areas as education, housing and agriculture. Private enterprise is the most effective carrier of technology across national borders, but government can usefully apraise the overall needs and spur progress. The United States therefore recommends that we establish an Inter-American Commission on Science and Technology. It should be composed of leading scientists and experts from all the Americas and report to governments on the basis of regular meetings.

Third, in energy. This Hemisphere, linking oil-producing and oil-consuming countries, is uniquely situated for cooperative solutions of this problem. The United States is prepared to share research for the development of energy sources. We will encourage the Inter-American Development Bank to adapt its lending and fund-raising activities to cushion the current strains. We are also prepared to explore ways of financing oil deficits, including the removal of remaining institutional impediments to your access to United States capital markets.

Fourth, in development assistance. The United States government in its Executive Branch is committed to maintain our aid levels, despite rising energy costs. On the other hand, the development problem can no longer be resolved simply by accelerating official assistance. We need a comprehensive review and recommendations on how all flows of capital and technology—whether from concessional assistance, world capital markets or export credits—can contribute most effectively to hemispheric needs. I recommend charging an inter-American body with these tasks.

Fifth, in reshaping the inter-American system. We must identify and preserve those aspects of the Rio Treaty and the Organization of American States which have shielded the Hemisphere from outside conflict and helped preserve regional peace.

Some form of institutional structure for peace and cooperation is clearly necessary. However, we must reinforce the formal structure of the OAS by modernizing its institutions and agreeing on the principles of inter-American relations. The United States is prepared to cooperate in creative adjustments to meet new conditions.

Next steps

A Spanish poet once wrote: "Traveler, there is no path; paths are made by walking."

This is our most immediate need. We are not here to write a communique but to chart a course. Our success will be measured by whether we in fact start a journey. I suggest we move ahead in three ways:

First, let us make clear to our peoples that we do have a common destiny and a modern framework for effective cooperation.

Second, let us agree on an agenda for the Americas, a course of actions that will give substance to our consensus and inspiration to our peoples.

Third, let us define a program that brings that agenda to life.

Mr. President, my distinguished colleagues, four centuries ago totally alien cultures met for the first time near here. We are moving toward a world whose demands upon us are nearly as alien to our experience as were the Spaniards and the Aztecs to each other.

Today, if we are to meet the unprecedented challenge of an interdependent world, we will also have to summon courage, faith, and dedication. The United States believes we can build a world worthy of the best in us in concert with our friends and neighbors. We want future generations to say that in 1974, in Mexico, the Nations of the Western Hemisphere took a new road and proclaimed a common destiny.

I am reminded of the closing words of the remarkable book by an author whose human insight we recognize in spite of very real and very deep political differences. People condemned to a hundred years of solitude do not have a second opportunity on earth. We are meeting in a moment of opportunity for the Americas. We can choose community or solitude, fulfillment or frustration. One hundred years hence, let men say we chose community.

7. ADDRESS BY DR. ARISTIDES CALVANI, MINISTER OF FOREIGN AFFAIRS OF VENEZUELA, AT THE CLOSING SESSION OF THE CONFERENCE OF TLATELOLCO

Mr. Chairman of the Conference, and Minister of Foreign Affairs of Mexico; my colleagues, the Ministers of Foreign Affairs; Distinguished Ambassadors; Delegates; Ladies and Gentlemen: Through the kindness and affection of my colleagues, the Foreign Ministers, I have been selected to act as their spokesman and express their sentiments at this closing session. I firmly desire to act as the faithful interpreter of all that each one of them would undoubtedly like to say, which I must reduce to a bare synthesis in these remarks.

Something has occurred in recent years: To use the terminology of today, in the last two decades our Hemisphere has become clearly aware of the progressive emergence of a Latin American consciousness. The countries of Latin American are going through a long process that is leading them, first, to

the realization that they possess a personality of their own, and second, to the affirmation of that personality, the personality of the Latin American community. Something else has taken place in our Hemisphere during the last twenty years: The independence of the British territories of the Caribbean and their integration into the Latin American community.

And when we try to express the significance that this new apportionment has for this community, words fail us, because, on the one hand they constitute—as they themselves have said—the Caribbean Community; but on the other, there are other territories in the Caribbean area that were already independent when these new nations were born.

This event is already showing us how those who make up this community are enriched by the very fact of their membership in it; but, by having been so enriched, they complicate the very composition of the community.

Latin America aspires to dialogue, as Latin America; another—the third—decisive and fundamental fact.

Latin America as a whole—they tell us—cannot be considered a valid participant in such a dialogue, and books have even been written about "The 21 Latin Americas." In reality, there have been effective attempts at dialogue, attempts that, like all attempts, are at first wavering and unsteady, but which are progressively affirming the Latin American personality and its aspiration to the role of valid participant. Attempts at Santiago: We met at Santiago, Chile in 1969; we had been asked to express our will and aspirations to the United States. From this meeting came the consensus of Viña del Mar. Through CECLA, we presented the consensus: Silence.

The following year, in Buenos Aires, we tried again to establish a dialogue—on this occasion, with Europe; once again, CECLA served as our forum for the coordination of our opinions. We were speaking to Europe, but Europe was not listening. And it was only after a number of such efforts that the first working commissions appeared.

The attempt was also made with other areas, but in such cases it was more as the traditional Latin American group than as an actual Latin American personality that we carried on our conversations.

At the end of that decade—that is, at the beginning of the seventies, there was one criticism that was constantly directed at the United States.—"They have no Latin American policy", it was said at various meetings and on many occasions. "Rather", others said, "it is not that they have no Latin American policy, but that their policy is not to have one".

It was under these conditions that President Nixon, through his Secretary of State, issued an invitation to us on the occasion of the October session of the United Nations General Assembly. The United States invited Latin America to determine the procedure for establishing a dialogue between the North and the South.

This invitation resulted in another, this time a Latin American one. Colombia's Foreign Minister, Doctor Alfredo Vázquez Carrizosa, took up the idea and invited us to hold the first stage of the dialogue in Bogotá. In this meeting, we Latin American Foreign Ministers were to draw up the bases for establishing a dialogue with the United States.

The Conference was held in the month of November and during its course we Latin American Foreign Ministers did, indeed, draw up the bases for a dialogue, setting them forth in an Agenda which we presented to the Secretary of State of the United States.

The Secretary of State agreed to the Agenda, and added two more points.

And so was born the Conference of Mexico—the Conference of Tlatelolco.

The Conference of Tlatelolco marks the final step in the preparations. Through it the dialogue will become reality; the word will become flesh.

For the first time the United States and Latin America, Latin America and the United States, are sitting down together at a table, but this time in a different manner. We are faced with a new type of dialogue, which we are bound to analyze and study because the nature of this dialogue will determine the special historical importance of this Conference. A dialogue implies two participants, but in this case the two participants are not analogous: One of them, the United States, is individual in nature; the other, plural as it is constituted by a group of countries.

Therefore, a new type of diplomacy is actually being formed. The traditional diplomacy with which we are familiar is of two types: bilateral diplomacy, that is, country to country; and multilateral diplomacy, as practiced in conferences.

To use the same language of frankness and loyalty which has prevailed in our talks these past few days, I would say that in the dialogue of bilateral diplomacy the relationship of the stronger to the weaker is much more apparent. And in multilateral diplomacy the strength of the strong makes the strong even stronger, while the division of the weak makes the weak even weaker.

But this diplomacy is different. Latin America speaks with a single personality; it is attempting to unify its points of view. For this reason at no time have I dared to call this new diplomacy of inter-correlation, because it is taking place in two different dialectical times. In the first stage the Latin American countries coordinated their points of view—the first correlation of opinions and viewpoints; and in the second stage, the participants from the United States and their Latin American counterparts began their dialogue. What were the characteristics of this dialogue?: Directness, frankness, cordiality, respect. What was the content of this dialogue?: limited by the agenda we have drawn up because we wanted the dialogue to be realistic, and to be realistic both participants understood that it was not possible to encompass all subjects, but rather a few subjects in order to be able to analyze them in fitting, frank, cordial and respectful dialogue. It dealt with political and economic aspects in ordinary language, but in reality all the subjects were political, inasmuch as international relations are always political even though the emphasis may vary accordto the nature of the relation and the subject matter of the relations.

Cooperation for Development, International Trade, Transnational Enterprises, Foreign Investment, Transfer of Technology, the Panama Canal, Reform of the Inter-American System, etc.—all these topics were approached in the form of dialogue. New procedures had to be created because we were dealing with a new matter and in private meetings had to agree on the means of framing it. Secretary of State Kissinger was amenable to the general agenda and the dialogue was subseqently initiated on the different topics. However, I would like to emphasize a point: Latin America spoke with a single voice; the dialogue took place as a perfect dialogue with two participants. In other words, we achieved in Latin America an expression of collective will and in this manner were able to coordinate our point of view in order to constitute a Latin American personality. The dialogue was profoundly realistic. We were aware that we had to create the conditions for a new economic order as the best means of arriving at a new political order. At the same time we understood that it was necessary to create conditions for a new type of political relations as the best means of achieving a new economic order.

Structures and spirit. A new spirit prevailed a new dialogue; a spirit, the spirit of Tlatelolco. Why? Because in this new spirit both participants wish to affirm the mutual respect and autonomy of each, and at the same time their firm desire to cooperate in common goals: Mutual respect, confidence fortified by the facts of history, equality, a vision of the future. Some, perhaps dazzled by the glitter usually characteristic of these conferences, thought this was just an ordinary conference and that specific conclusions would emerge from it. The question was repeatedly asked: What are the concrete points you seek agreement on? They were forgetting that this was a dialogue and that dialogue does not necessarily result in precise and concrete conclusions. Dialogue is of value in itself, because dialogue allows us to speak the same language, and this is fundamental to clear communication in political relations.

With regard to impressions of the Conference, I am reminded of the optimists who see the glass as half full and the pessimists who see it as half empty. I would say that it is neither half full nor half empty; rather, it is exactly as it should be at this point in history: the beginning of a new dialogue.

What, then are the prospects? Hopes. Hopes, you say. Yes, true and well-founded hopes. There is already a perceptible change in the dynamics of the world. Just as the poor workers of times past became aware of their misery and united, today the developing countries have become aware of their situation and have joined hands to achieve more equitable international order in which the new awareness of great socioeconomic, sociopolitical and sociocultural gaps will lead the world to narrow them.

This Latin American personality, this emergence, is not a thing of chance but the result of profound changes in the international situation. The inversion of balances and the very power of modern weapons have transformed the world; and prudence and equilibrium to redress the imbalance, coupled with dissuasion from the use of such weapons have become an absolute necessity.

However, spirit is not enough. The President of Mexico told us so in the inaugural speech in phrases which I take the liberty of quoting because they are admirably well turned, as was all the poetic oratory which he delivered at the opening session of this Conference. President Echeverria said: "We believe, despite everything, in the efficacy of dialogue, but we also know that true solutions require persevering action. Diplomatic styles are transitory, leaving in their wake only impulses which followed by well-funded decisions, actually modify reality. Let us not confuse history with anecdotes nor with good wishes. The problems which arise from hemispheric relations are structural and must be confronted as such".

For this reason we must continue the dialogue institutionalizing it and implementing its results. That is, to the extent that dialogue by its own dialectics produces and engenders conclusions which are worth following up, such conclusions must be implemented in the political field to be duly acted upon. It is necessary to continue with our dialogue. It is up to us, the United States and Latin America: Latin America and the United States.

And apropos of this, ladies and gentlemen, let us see at this moment how these relationships present themselves and what is our analysis of the two participants.

The United States is part of the Western Hemisphere and as such is a member of its regional organization. But at the same time it is the greatest world power and as such exerts not only regional but worldwide influence.

Although sharing a common base, Latin America, with its diversity of countries and

individual conditions, has internal conflicts. Why deny them? Within this diversity, however, a unity and a personality which is affirmed in a clear and evident manner.

At the same time, to the extent that it asserts its personality, it understands that its destiny is not just an American affair but is linked to that of other developing countries. This is to say that Latin American relations have a worldwide aspect which includes all developing countries, even as these relations have a universal and international aspect with regard to the United States as a world power.

Obviously, this shows us that in our dialogue dialectically difficult and complex situations will arise because of dissimilar interests. But this is the great challenge, we face in the dialogue we have commenced; it is the great challenge of the decade in which we live. We must strengthen everything we have in common, and on the basis of this dialogue we must create the machinery to overcome our differences.

In effect, today we speak of the interdependence of all countries on earth, which is true, but we have also been interdependent in the past as well as in the present. We were interdependent because the developed countries received raw materials from developing countries, but now a series of events has occurred to make the developed countries realize that their own growth may be threatened if there is no coordination on a worldwide and international level.

This already existing interdependence which is now perceived by the great powers, also gives added dimension to this challenge, because our great political objective is not to conceal an old situation under a new name. Our high political objective must be, for both great and small countries, to break down the barriers of domination in order to create the new world of tomorrow, to create a new dimension of history which must not be based on relationships of strength but rather on justice, a new kind of a relationship developed, in the words of Secretary of State Kissinger, "through a new, direct, and frank dialogue."

Today's world shows that we are all part of one humanity, and that problems are worldwide and require solutions on a worldwide scale, as President Echeverria has so correctly pointed out. The injustice lies in the system, and therefore it is the system itself which we must reorganize and reorient.

We find ourselves in the hour of great decisions. Latin America has received a challenge: to overcome past differences; to progress from national to international concerns, which is to say to pass from individual affairs to matters involving the Latin American personality in order for Latin America to occupy the place it deserves in the vanguard of developing countries. It is for the United States, like the great nation it is when it wants to be, to accept this reality of the new world, the Lain American dimension; to take up the new diplomacy, and, through a new dialogue, build the new dimension of history which is required.

And now, gentlemen, let us speak from the heart. On behalf of my colleagues, I wish to express our deep-felt, sincere and profound appreciation to the President and to the Government of Mexico and to the Mexican people who have welcomed us with unrivaled hospitality, for as the popular song has it, "There is no other land like Mexico"; to Minister of Foreign Affairs Rabasa, who has taken such pains during all these and preceding days to organize this complex conference; to Minister of Foreign Affairs Váquez Carrizosa, who laid the groundwork in the Conference of Bogotá (I have coupled their names in this public testimonial because it is due to their efforts and long hours of work that this conference has become a positive reality in the history of this hemisphere); to the General Secretariat under the able direction of Ambassador Manuel Tello which has had to suffer and endure all the papers we have requested, the translations we have asked for, and the urgency with which we have demanded them; the staff of the Foreign Ministry and, most especially, the Protocol Section which is always held responsible when things go wrong but never appreciated when they go well, as they have on this occasion; the secretaries and all secretarial personnel, the receptionists and the doormen; to all who have contributed to the development of this Conference and to the extraordinary manner in which it has been carried out; to our experts and Ambassadors for the aid they have rendered; to the Secretary of State of the United States who has broken down old barriers between the North and the South and invited us to a new dialogue where together with him we have asserted the personality of Latin America in our relationship with the United States.

I also thank my colleagues, the Foreign Ministers, who have accompanied us and have permitted us to enjoy the essence of this Latin American personality which, though born in pain like any child is a constant source of pleasure to the mother which has borne it.

Finally, there can be no changes without changed names nor new policies without true renewal. We must create a new kind of man and renew our very selves in a soul-rending probe of our failings.

We must report to our peoples; we cannot accentuate what is negative; rather, we must accentuate what is positive. This Conference is definitely positive and we must maintain our faith in our hemisphere.

We must also have hope, because man also lives by hope. Nor must we mock it, but rather say, as the French say of illusion, that there is no falser illusion than to believe that one has none. In reality, hope moves men and moves our hearts, and the days we have spent here and the new situation created by the spirit of Tlatelolco have shown us that there is hope in every heart that beats and that we too, can continue to hope. Because in the final instance hope is based on the solidarity of mankind, on understanding among men, and up to now we have found no better instrument, for if it is utopian to speak of hope it would be more utopian still to believe that the way marked by lack of faith, negative criticism, despair, selfish national pride, and the reign of force and violence will lead us to more promising results.

I would like to close my remarks with a children's tale. I believe these tales can always take us back to our true childish innocence. The story is a Bavarian folk tale by father Coloma. It tells of a little girl living in the high mountains of Bavaria. Christmas was near an her father, a woodcutter, went to the woods to cut a Christmas tree and was swept away by an avalanche. Soon the family was reduced to abject poverty.

The following Christmas came, and the ragged little girl had only a necklace made of string with three simple glass beads.

On Christmas Eve her mother was too weak to go to church with her and the little girl trudged through the snow until she met a boy who said: "Tread in my footsteps, and you will feel new warmth and life will stir again in your heart." She did so, and followed him as the boy began to climb the mountain. And presently they came to a place where there was an old man who was saying: "I have lost faith; I have lost everything; I do not believe in men; I do not believe in myself," And at that moment he saw the girl and—Lo!—the glass beads on her breast were suddenly transformed into pearls. He saw that one was a beautiful blue pearl and he said: "Little girl, give me that pearl. Give it to me so that I can smile again." And the girl took off the pearl and gave it to him, and the man smiled and once more had faith in men.

They continued their climb and soon met an even older man who moaned and cried because he had lost hope. He had believed in his children and had great hopes for them; he had lost his fortune—everything. And when he saw the green pearl gleaming on the girl's breast he asked her for it. She gave it to him, and he smiled again, and there was hope in his heart.

And finally, at the top of the mountain, they came upon an ancient man whom the world had forgotten, and when he saw the little girl he asked for the last pearl that was left—a red pearl, red for love. The little girl gave it to him but at that moment, weakened by his struggles, he died. And the legend says that in spite of the winter cold and the snow, fountains gushed forth and flowers covered his grave.

Ladies and gentlemen: this children's tale tells us that there are three things that move mankind, whether we choose to admit it or not: faith in men, hope for a better world and human solidarity. For this reason we, the Foreign Ministers of this hemisphere, must proclaim this spirit of Tlatelolco which, like the blue, green and red pearls stands for faith, hope and human solidarity.

I thank you.

8. SPEECH MADE BY THE SECRETARY OF FOREIGN RELATIONS, EMILIO O. RABASA, AT THE CONFERENCE OF TLATELOLCO

Foreign Ministers, Ambassadors, Ladies and Gentlemen: We have reached the end of a journey. We are starting another. It would not be fitting to consider this Tlatelolco Conference as an event that has solved all our concerns and problems. I feel that it is more realistic to consider it as a starting point. The great tasks—the effective implementation of the points of agreement—are yet to be carried out. We must start to do so from today.

When we affirm the above, we do not mean that our efforts of these days have been in vain. In my opinion, if one may speak of the spirit of Tlatelolco it is in the sense that here, for the first time in many years we meet on a level of absolute equality, of mutual respect and of friendly frankness to examine, in a critical manner, what it is that has separated us and what may now bring us together.

This Conference has used—and perhaps used too much—the word dialogue. But it is a true fact that, as has been said, we have progressed from political speeches to political dialogue. And what is more, I would like to add that we now engage in political consultation. The United States of America has pledged its word on it. It must be done in advance and for all areas. As a matter of course, and this should be clearly understood, when dealing with the large interests that affect Latin-America.

Our relationship with the United States of America has fluctuated hopelessly between subordination and confrontation. At Tlatelolco we have solved the dilemma and replaced it with a concept of solidary cooperation based on the following premises: that the country that lies North of the Rio Grande will not attempt to impose its political preferences; that it will not intervene in the internal matters of others; that it will try to find formulas of accommodation precisely at the point where our interests may be divergent, and that through consultation it will cordinate efforts for our mutual benefit.

Throughout our deliberations, we have confirmed the existence of a new approach of the United States of America toward the Hemisphere and we are certain that bases have been laid for what must be—if to the sincerity of purpose we add the will to take action—a mutually respectful, working and effective cooperation.

Even while we recognize the need for, and the benefits of such cooperation, we maintain that it is the responsibility of Latin America and of each and every one of our countries to safeguard our rights to defend our interests in any forum we choose.

It has been said of Latin-America that we do not march in step with history. The eight Bogota points that at least united us in the same common cause, and the Tlatelolco Conference prove precisely the opposite. We did not come here to review past grievances nor did we wish to bury past history, since history must remain a constant lesson for the future.

We are not lowering our flag, and we still believe that the legal equality of the States, the economic equality that we are now seeking, and the self-determination of the peoples, constitute the base for peace, freedom and human dignity.

We are well aware that two hundred and eighty million human beings have not only the right, but demand to know the truth. Weary as they are of hearing unkept promises, they impatiently demand food, housing, health, education and other age-old requirements that we must satisfy now.

We are all equal. However, in a well ordered society, the weak must be protected by law, lest they be oppressed by the strong. This is one of the intentions of the Letter on the Economic Rights and Duties of the States, a document that not only Mexico but many nations are anxious to put into effect as soon as possible.

We must be fully conscious of the fact that a certain era is over and another begins. International order, as established at the end of the Second World War, has become disrupted and must accept a new regulation of international relations. we demand—in all justice—to participate in the drawing up of the new norms. We must take part in the decisions that are to be made on the monetary system, international trade, the energy crisis, the population explosion and other grave matters that affect the daily lives of hundreds of millions of human beings. And we cannot agree the road to progress can be allowed to bypass the sovereignty of each State.

Internal Democracy and external peace are indispensable bases for man's happiness. Democracy is not merely a system that puts into operation the formal mechanisms that permit the acts of the government to be controlled by the people. Democracy is social justice. Democracy is economic equality and equal opportunity. Democracy is peace, not only as an absence of armed conflict but as international harmony and cooperation to achieve a more just distribution of wealth among the peoples.

Alfonso Reyes, an illustrious Mexican writer, said "The destiny of America lies in continuing to afford protection to all attempts to improve mankind and also in serving as a setting for the grand adventure of good."

This, and this alone, is the intent of the Tlatelolco Conference.

9. DECLARATION OF TLATELOLCO

I

At the request of President Nixon, Secretary of State Kissinger, invited the Foreign Ministers and other representatives of Latin America and the Caribbean attending the Twenty-Eighth Session of the United Nations General Assembly to meet with him on October 5, 1973. At that time the Secretary of State suggested the initiation of a new dialogue to deal with matters of concern to the Americas.

Mindful of this important initiative, the Government of Colombia extended an invitation to Dr. Kissinger to participate actively and personally in such a dialogue at an opportune time. Dr. Kissinger immediately accepted this invitation. Thereafter, the Government of Colombia convoked the "Conference of Foreign Ministers of Latin America for Continental Cooperation", held in Bogota from November 14–16, 1973. On that occasion the Foreign Ministers of Latin America and the Caribbean agreed it would be advantageous to initiate a dialogue on the following topics:

Cooperation for Development;

Coercive measures of an Economic Nature;

Restructuring of the Inter-American System;

Solution of the Panama Canal Question;

Structure of International Trade and the Monetary System;

Transfer of Technology; and

General Panorama of the Relations between Latin America and the United States of America.

In accordance with the agreement reached at the "Conference of Foreign Ministers of Latin America for Continental Cooperation", and with the concurrence of the Government of the United States of America, the Government of the United Mexican States convoked the Conference of Tlatelolco. This Conference took place in Mexico City from February 18–23, 1974.

The Agenda of the Conference of Tlatelolco comprised the eight items listed above, with the addition of two others suggested by the Secretary of State in accordance with the agreement reached in Bogota regarding "the willingness of the participating countries to discuss any other matters the United States of America wishes to propose". The topics suggested by the Government of the United States were "Review of the International Situation" and "the Energy Crisis".

Attending the Conference of Tlatelolco were the Foreign Ministers of Argentina, Bahamas, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Trinidad and Tobago, the United States of America, Uruguay and Venezuela.

The Conference was held in two parts, one with exclusively Latin American participation, from February 18–20, and the other from February 21–23, with the participation of Secretary of State Kissinger. In the first phase of the Conference of Tlatelolco, the Latin American and Caribbean Foreign Ministers agreed on procedures for the initiation of the new dialogue, which Secretary Kissinger had proposed be founded on "friendship based on equality and respect for the dignity of all", and upon methods for delineating the "Bases for a New Dialogue between Latin America and the United States". The Secretary of State agreed to these procedures.

II

The Conference took place in an atmosphere of cordiality, free from the old rigidities which have so often obstructed our dialogues in more traditional forums. The participants met as equals, conscious that the policy initiated here may be of deep historical significance. But for it to be so we must recognize that we are at a turning point, and be prepared to dedicate ourselves to new horizons of understanding and cooperation.

The Foreign Ministers agreed that the Americas have arrived at an historic moment—a time of unprecedented opportunity for achieving the goals of justice, peace and human dignity which have for so long been the essential promise of the New World.

They recognized that in the modern age the demands of technology and the drive of human aspirations make impossible the narrow pursuit of purely national interests.

They agreed, as well, that interdependence has become a physical and moral imperative, and that a new, vigorous spirit of Inter-American solidarity is therefore essential.

Relations between the countries of the Americas must be placed in the context of today's world; a world characterized by interdependence, the emergence onto the world stage of the developing countries, and the need to overcome inequalities. The existence of a modern inter-American System; the affirmation of the reality of Latin American unity; and the similarity of the problems of Latin America and those of other developing countries are the foundation for a dialogue and a frank and realistic relationship with the United States.

Inter-American relations should be based on an effective equality between States; on non-intervention; on the renunciation of the use of force and coercion and on the respect for the right of countries to choose their own political, economic and social systems. Inter-American relationships, thus redefined by an authentic political will, would create the necessary conditions for living together in harmony and working cooperatively for expanded and self-sustaining economic development.

The Foreign Ministers reaffirmed the principle that every State has the right to choose its own political, economic and social system without foreign interference and that it is the duty of every State to refrain from intervening in the affairs of another.

The new opportunities for cooperative development call for a revision of the concept of regional security, which cannot, and should not, be based solely on political-military criteria, but must also encompass a practical commitment to peaceful relations, cooperation and solidarity among States.

To this end, inter-American cooperation should be supplemented by the establishment of a system of collective economic security that protects the essential requirements of integral development: that is to say parallel progress in the social, economic and cultural fields.

By mandate of the United Nations General Assembly, a group of countries representing diverse economic systems is engaged in examining the possibilities of restructuring international economic relations, through the preparation of a Draft Charter on the Economic Rights and Duties of States. This Charter can create the general framework for facing specific problems through practical and fair regulations and mechanisms.

The Conference of Tlatelolco agreed that a just application of the principles of the Charter can foster the internal and external conditions necessary for the American nations to satisfy their own needs and ensure their full development on an equitable basis. The Conference also recognized that peace and progress, in order to be solid and enduring, must always be based on respect for the rights of others, and the recognition of reciprocal responsibilities and obligations among developed and developing countries.

III

In the course of permanent dialogue that has been successfully initiated at the Conference of Tlatelolco, a continuing effort should be made to reach, as soon as possible, joint solutions to the pending questions included in the Bogota Document, which served as the basis for this Conference.

IV

The Conference goes on record as follows:

(1) The Foreign Ministers recognized that the success of the Conference of Tlatelolco emphasizes the value of the new dialogue of the Americas. Mindful of the growing interaction between themselves and the rest of the world and that their countries have different needs and different approaches on foreign policy, the Foreign Ministers were nevertheless agreed that the relations between their countries, which history, geography and sentiment have produced and continued to sustain, call for an expansion of the processes of consultation between their Governments.

As an initial step in this continuing process of consultation they agreed to continue on April 17, 1974 at Atlanta, Georgia, in the United States of America, the dialogue initiated in Mexico. In the same spirit they agreed to consult with the view to seeking, as far as possible, common positions in appropriate international consultations, including multilateral trade negotiations.

(2) The Conference welcomes the agreement reached in Panama City on February 7, 1974 by the Governments of Panama and the United States of America, by which they established the guiding principles for their current negotiations leading to a new Canal treaty. The Conference holds that this agreement is a significant step forward on the road to a definitive solution of that question.

(3) The Foreign Minister agreed that, if progress toward a new Inter-American solidarity is to be made, solutions must be found not only to existing differences, but means must also be provided for the solution of problems that may arise.

(4) In this spirit, the Foreign Ministers of Latin America have taken due note and will continue to examine the suggestion advanced by the Secretary of State of the United States of America with respect to the controversies that may arise from matters involving private foreign investment.

The Secretary of State of the United States proposed the establishment of a fact-finding or conciliation procedure that would limit the scope of such controversies by separating the issues of fact from those of law. This could provide an objective basis for the solution of disputes without detriment to sovereignty.

He further proposed the creation of an inter-American working group to study the appropriate procedures that might be adopted.

(5) With regard to the problems of transnational corporations, the Foreign Ministers discussed the different aspects of their operation in Latin America and have agreed to continue the examination of the matter at a later meeting.

(6) The Foreign Ministers agreed on the need for intensifying work on the restructuring of the Inter-American system.

(7) The Foreign Ministers agreed that one of the principal objectives is the accelerated development of the countries of the Americas and the promotion of the welfare of all their peoples. In this regard, the United States accepts a special responsibility; and the more developed countries of the Americas recognize that special attention should be paid to the needs of the lesser developed.

They further agreed that development should be integral, covering the economic, social and cultural life of their nations.

(8) The United States offered to promote the integral development of the region in the following fields:

Trade

(a) Make maximum efforts to secure passage of the legislation on the System of Generalized Preferences during the present session of Congress, and then work with the other countries of the hemisphere to apply these preferences in the most beneficial manner.

(b) Avoid, as far as possible, the implementation of any new measures that would restrict access to the United States market.

Loans for development

(a) Maintain, as a minimum, present aid levels despite growing costs.

(b) Cooperate throughout the region and in international institutions to facilitate the flow of new concessional and conventional resources toward those countries most affected by growing energy costs.

(c) Examine with others in the Committee of Twenty and the IADB all restrictions on the entry of hemispheric countries to capital markets in the United States and other industrialized countries.

(9) The Foreign Ministers further declare:

(a) They reaffirm the need of Latin American and Caribbean countries for an effective participation of their countries in an international monetary reform.

It was acknowledged that the net transfer of real resources is basic, and that ways to institutionalize transfers through adequate mechanisms should be considered.

It was reaffirmed that external financial cooperation should preferably be channeled through multilateral agencies and respect the priorities established for each country, without political ties or conditions.

(b) With respect to "Transfers of Technology", the Foreign Ministers agreed to promote policies facilitating transfer of both patented and unpatented technical knowledge among the respective countries in the fields of industry as well as education, housing and agriculture, taking into account conditions prevailing in each country and in particular the needs of the Latin American and Caribbean countries for introduction of new manufactures, for greater utilization of the human and material resources available in each country, for increased local technical development and for creation of products for export. It was further agreed that transfers of technology should be on fair and equitable terms without restraint upon the recipient country. Particular emphasis is to be placed upon sharing knowledge and technology for development of new sources of energy and possible alternatives.

(10) The Foreign Ministers agreed that it would be desirable to establish an Inter-American Commission of Science and Technology. They left over for later decision whether this commission should be adapted from existing institutions or whether a new body should be formed.

V

In adopting this document, the Foreign Ministers expressed their confidence that the spirit of Tlatelolco will inspire a new creative effort in their relations. They recognized that they are at the beginning of a road that will acquire greater significance through regular meetings and constant attention to the matters under study.

The Conference expresses its satisfaction over the fact that the mutual understanding which has prevailed throughout encourages the hope that future conferences of a similar nature, within a permanent framework devoid of all rigid formality, will produce fruitful results for the benefit of the peoples of the Americas.

Mr. MANSFIELD. Mr. President, there are two items of significance which we ought to emphasize.

One is the appreciation on the part of the Latin American foreign ministers—and that includes the foreign ministers of the Caribbean states—in the fact that Secretary of State Kissinger, who had been spending much time, of necessity, in Asia and Africa, was the initiator of this Conference, in effect, and by his presence and his participation made a tremendous impression on the representatives of the nations to the south of us.

The second significant factor, from our point of view, was the meeting we had with President Luis Echeverria at Los Pinos, a 1½-hour meeting which consisted of give-and-take conversation, a frank discussion of matters of mutual interest to Mexico and the United States, and one which I believe indicates the candor which now marks the relations between our two countries. Not only have Mexican Presidents seen fit to meet with U.S. parliamentarians and to discuss matters with the utmost frankness, but by the same token U.S. Presidents have met with Mexican parliamentarians and discussed questions with the utmost frankness, questions such as the Chamizal, which was settled after many decades, and the Colorado River problem, which hopefully is in the process of being settled at the present time.

Mr. HUGH SCOTT. As well as economic relations with Peru.

Mr. MANSFIELD. That is correct. That was also brought out in that Conference. While the Conference results are not clear in a way that would definitively set out what we did or did not do, I think the foundation has been laid for the meeting in Atlanta next month and future meetings, and that once again we are beginning to recognize the importance of Latin America in relation to the United States. We hope this time it is not a hop-skip-and-jump affair, but something which will endure, be permanent, and bring to all nations of the hemisphere a greater degree of understanding, a better degree of stability, and economic independence.

Mr. HUGH SCOTT. I thank the majority leader. The Senator has made several important points.

The nations of the hemisphere will be watching this to satisfy themselves whether this was a one-shot effort of good will or whether we really make progress toward better and better relations. In that regard the contribution of our own distinguished Secretary of State was remarkable. There is no question he made a great and favorable impression on the foreign ministers of other nations; there is no question that his candor was a refreshing innovation in diplomatic affairs, and I believe he convinced many of the diplomats there, foreign ministers, that the United States is genuinely interested in the affairs of our friends and neighbors in this hemisphere. I hope that at some future time the Secretary of State will be able to return to similar meetings in Latin America or in the Caribbean so that there will be visible evidence of this continuity.

I, too, was much impressed with the meeting with Luis Echeverria, the President of Mexico. We spoke very candidly to him and, I might add, the distinguished Speaker discussed matters with Luis Echeverria in Spanish as well as in English. I am told he reacted very well toward the friendly meeting with our American delegation and I do believe something very good will come out of it. In other words, it is up to the United States now to prove by its actions, by its restraint, and by its policy of frankness and understanding of the problems of our friends in this hemisphere that we can, indeed, coexist in a harmonious manner without causing any of the other nations to feel that we are in any way impinging on their sovereignty or on their own rights and responsibilities as a nation.

Mr. McGEE. Mr. President, I want to take this opportunity to express my agreement with the observations offered by the distinguished majority leader (Mr. MANSFIELD) and the distinguished mi-

nority leader (Mr. HUGH SCOTT) in their colloquy on the Inter-American Conference in Mexico City last month.

As a member of the congressional delegation attending the Conference of Tlatelolco in my capacity as chairman of the Western Hemisphere Affairs Subcommittee of the Senate Committee on Foreign Relations, I, too, was impressed with the openness and the positive atmosphere which permeated the 3-day gathering.

Indeed, I believe the presence of the congressional group with the Secretary of State represented a united commitment by the United States to seek a greater understanding and cooperation in our Inter-American efforts. This presence was tangible evidence that the citizens of this Nation are sensitive to their Latin American and Caribbean neighbors and are willing to explore all avenues in an effort to achieve closer and more constructive relations.

Secretary of State Henry Kissinger deserves tremendous credit for laying the groundwork for the Mexico City meeting. It was evident, from the atmosphere of the Conference, that all the participants were seeking a common understanding and a mutual accommodation on the basis of equality. It was also strongly evident that the presence of Secretary Kissinger was deeply appreciated by the 24 Foreign Ministers of the Latin American and Caribbean States.

I believe the Conference has laid the foundation for a realistic approach to our relations. In the past, we have often been guilty of allowing our rhetoric to obscure reality. However, I believe we are in the process of establishing a process whereby mutual understanding and mutual respect will allow us to avoid confrontation.

In no small part, Secretary Kissinger is responsible for the new dialog in United States-Latin American and Caribbean relations. His openness and candor were deeply appreciated.

I agree with the distinguished majority leader in the conclusion of his report when he states:

> The spirit of community engendered at the Conference, in my judgment, was genuine and substantial, if not necessarily universal. From the point of view of the United States, the Conference served the highly useful purpose of checking what had been a growing aversion to aspects of this nation's policies and practices.

I also strongly support the distinguished majority leader in his appeal to Members of Congress to exercise responsibility and to:

> Keep an open mind on the efforts of the President and the Secretary of State to negotiate a path through the many pit-falls of inter-American relations and to give them such support and cooperation as can be given in the light of the separate constitutional responsibilities of the two Branches.

The time is for responsibility in the Congress, and not the pursuit of political ends which could destroy the delicate groundwork being laid in an effort to enhance relations with our fellow members of the Western Hemisphere. These relations must be based upon the realities of the 1970's and not the outmoded and impractical self-deceptions of the past.

AIRCRAFT PIRACY AMENDMENTS OF 1973

The Senate continued with the consideration of the bill (S. 872) to facilitate prosecutions for certain crimes and offenses committed aboard aircraft, and for other purposes.

Mr. McCLELLAN. Mr President, I ask unanimous consent that the following members of the staff of the Subcommittee on Criminal Laws and Procedures be allowed on the floor for the duration of the consideration and votes on S. 872 and S. 1401: Paul Summitt and Dennis Thelen.

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

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

Mr. McCLELLAN. I yield.

Mr. HRUSKA. Mr. President, I ask unanimous consent that Mr. Kenneth Lazarus, minority counsel to the Committee on the Judiciary, and Mr. Douglas Marvin, minority counsel to the Subcommittee on Criminal Laws and Procedures, be granted the privileges of the floor during the debate and votes which might occur on S. 872 and S. 1401.

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

Mr. McCLELLAN. Mr. President, crimes directed against aircraft or other mass transportation systems are acts that cause danger and fear to multitudes of people in a single incident. They affect the confidence of every traveler in interstate commerce and make apprehension a constant companion for those using public air carrier facilities. Since the rash of aircraft hijackings began a number of years ago, progress has been made in airport control and prevention of hijacking opportunities. But we have not reached the point of preventing air piracy because only yesterday a plane was hijacked with a hundred or more passengers.

The bill being considered today (S. 872) corrects some deficiencies and closes some loopholes in the protection afforded air and other transportation systems.

Mr. President, in relation to present aircraft destruction and related offenses in title 18, United States Code, hoaxes are punished on two levels: First, a civil penalty for conveying false statements concerning attempts to commit such offenses; and second, felony penalties for conveying such statements willfully and maliciously, or with reckless disregard for the safety of human life. There is no provision to punish a threat to destroy an aircraft, or commit other enumerated offenses, even where the person fully intends to carry it out.

S. 872 would add a "threats" provision by making it a felony to threaten to commit a felony prohibited by 18 U.S.C. 32, 33, 1992, or 2275 "with an apparent determination and will to carry the threat into execution."

When we turn to title 49 of the United States Code for present aircraft hijacking offenses, any false statement concerning attempts being made or to be made to commit aircraft piracy (sec. 1472(i)), interference with flightcrew member (sec. 1472(j)), certain crimes of violence aboard aircraft (sec. 1472 (k)), and carrying weapons aboard aircraft (sec. 1572(l), is punished as a 1-year misdemeanor (sec. 1472(m) (1)). False statements concerning such attempts are raised to the felony level when made willfully and maliciously, or with reckless disregard for the safety of human life (sec. 1472(m)(2)). There is no provision to punish threats to commit such offenses. S. 872 would change the simple false statement misdemeanor to a civil penalty; eliminate the anomalous situation of imposing felony penalties for false statements concerning acts which, if actually committed, would be misdemeanors; and add a threats provision to make it a felony to threaten to commit acts constituting felonies under section 1472(i) [aircraft piracy], section 1472(j), interference with flightcrew, or section 1472(l)(2) endangerment of human life by boarding or attempting to board an aircraft in possession of weapons, explosives, et cetera.

Mr. President, the bill makes some improvements in provisions involving dangerous weapons aboard aircraft. With certain law enforcement officer exceptions, present law punishes as a misdemeanor possession of a concealed deadly or dangerous weapon while aboard or attempting to board an aircraft (49 U.S.C. 1472(l)). S. 872 creates two offenses for possession of weapons and explosives while on board an aircraft or attempting to board an aircraft. Identical provisions passed the Senate on February 21, 1973, as a part of S. 39, which is still pending in the House. They are included in S. 872 simply to enhance eventual enactment into law. Simple possession is retained as a misdemeanor and clarified in its coverage to clearly include explosives or other destructive devices on or about the person or his property. Possession of such items "willfully and without regard for the safety of human life or with reckless disregard for the safety of human life" is made a 5-year felony. The felony also extends to placing or attempting to place such devices aboard an aircraft.

Exceptions are expanded to include persons transporting weapons for sporting or hunting purposes, provided the weapons are publicly declared prior to boarding, checked as baggage, and not transported with the person in the passenger compartment.

Mr. President, S. 872 also amends 28 U.S.C. 1395 to provide that process may be served against any defendant or witness in civil proceedings to recover a penalty under 18 U.S.C. 35(a) and 49 U.S.C. 1471(c) in any judicial district of the United States upon a showing of good cause. This provision recognizes the transit status of the usual defendant or witness in such cases.

Mr. President, the Senate approved all of these provisions in the 92d Congress. The House failed to act. I believe they are sound improvements on present law protecting air transportation. I urge immediate enactment of this legislation.

Mr. HRUSKA. Mr. President, if the Senator will yield, I should like to take this opportunity to applaud the efforts of the distinguished chairman of the Criminal Laws Subcommittee (Mr. McCLELLAN) in acting on S. 872, the bill which is currently before the Senate.

This measure passed the Senate unanimously in the identical form during the 92d Congress. It is intended to close some current loopholes in Federal criminal law by proscribing threats to commit aircraft hijacking and the unauthorized possession of weapons aboard aircraft. Hopefully, it will be of utility to Federal law enforcement agencies in their efforts to reduce the incidence of aircraft piracy, and I, therefore, urge the support of my colleagues.

The chairman of the subcommittee has well and thoroughly detailed the substance of the bill and its several provisions. It will not be my purpose to duplicate those remarks.

Essentially, the object of the measure is to facilitate and implement prosecutorial and adjudication responsibilities in order to more effectively deal with the problems of piracy in aircraft as well as other means of transportation systems.

Mr. President, that concludes my remarks with respect to the bill.

Mr. GURNEY. Mr. President, on behalf of myself and the Senator from Idaho (McCLURE) I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER (Mr. METZENBAUM). The amendment is not in order until all committee amendments have been acted on.

Mr. McCLELLAN. Mr. President, I ask unanimous consent that the committee amendments be agreed to en bloc and that the bill as thus amended be considered as original text for purpose of further amendment.

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

Mr. McCLELLAN. Mr President, have all the committee amendments been agreed to?

The PRESIDING OFFICER. The committee amendments have been agreed to.

Mr. McCLELLAN. Now the bill is open to amendment.

The PRESIDING OFFICER. The Senator from Florida.

Mr. GURNEY. Mr. President, I have an amendment at the desk. I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will state the amendment.

The assistant legislative clerk read the amendment, as follows:

On page 5, line 12, after the word "activities", add a comma and insert the words "or for gun collecting, or for other lawful purposes".

Mr. GURNEY. Mr. President, first of all, I want to congratulate the distinguished Senator from Nebraska (Mr. HRUSKA) for offering this bill, which is badly needed, and I certainly want to congratulate the distinguished chairman of the Criminal Laws and Procedures Subcommittee for bringing the bill out so promptly. Surely, it is a welcome addition to the Federal laws on criminal procedures, and ought to be another nail in the plan to aid against highjacking and bombing which seem to be so prevalent in or time so far as airplanes are concerned.

While I agree with the purpose of the bill and its language, I have offered language which I think somewhat clarifies the language on page 5, line 12. The language as it is now says that the bill shall not apply to persons transporting weapons for hunting or other sporting activities. My amendment would simply add two other categories. One is gun collectors. Sometimes they go to places, purchase guns, and bring them back. They, of course, can declare them and bring them back in the cargo of an airship with this additional language.

Then there are other people who do occasionally carry personal weapons for their self-protection. This amendment would enable them to be exempted from the law, too. The words are "or for other lawful purposes."

I have checked the language with the distinguished chairman of the subcommittee who is handling the bill on the floor as well as the ranking minority member who authored the bill, and, as far as I know, this language is acceptable to both.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

Mr. McCLELLAN. Mr. President, will the Senator state again what falls in the category of "other lawful purposes"?

Mr. GURNEY. Yes. I will say to the distinguished Senator from Arkansas that all I intend here is simply to permit people who do carry weapons with them for self-protection—and there are a few—to be able to fit into this same category as those who are going hunting, for sporting activity, or for gun collecting. That is the sole purpose of this language "for other lawful purposes."

Mr. McCLELLAN. Would that mean that a person could carry it with him on his person?

Mr. GURNEY. No, indeed.

Mr. McCLELLAN. He would have to check it as baggage until he got to his destination.

Mr. GURNEY. That is precisely so, as the language applies to other people.

Mr. McCLELLAN. Can the Senator give me some specific case where one would be carrying a gun for a lawful purpose?

Mr. GURNEY. Yes. I can think of a case. I have talked to a couple of ladies in Florida in past years who make a general effort to carry along weapons with them in their purses for self-defense purposes these days. And I think that probably other people fit into the same category.

Mr. McCLELLAN. Are they carrying these guns with a lawful permit?

Mr. GURNEY. The Senator is correct.

Mr. McCLELLAN. In other words, they would have to have a lawful permit to carry them in order to come within the category of "other lawful purposes."

Mr. GURNEY. That is the exact intent.

Mr. McCLELLAN. It is not the intent to open this provision to anyone who might want to carry a gun for his own protection?

Mr. GURNEY. No, indeed. They would have to be carrying the gun with a permit and under the law.

Mr. McCLELLAN. It would have to be under a lawful permit issue for some lawful purpose.

Mr. GURNEY. The Senator is correct.

Mr. McCLELLAN. They could not carry the weapon on the plane. They would have to check it with their luggage and declare it.

Mr. GURNEY. The Senator is correct.

Mr. McCLELLAN. I am trying to make a legislative history of what we are trying to do.

Mr. GURNEY. That is exactly correct. We do not want to loosen up the bill in any respect.

Mr. McCLELLAN. I have no objection to the amendment. The only thing is that we want to make certain that we reflect the precise purpose of the amendment and that it does not open up the law in any way so that one having some illegal motive could be shielded or protected by this provision.

The amendment is only intended to extend this provision to those who lawfully have the right to possess a weapon and to transport it under some legal authority that has been conferred upon them by law. Is that correct?

Mr. GURNEY. I would answer the distinguished Senator by saying that is precisely the narrow confines under which the language is intended.

Mr. GRIFFIN. Mr. President, will the Senator yield for a question?

Mr. GURNEY. I yield.

Mr. GRIFFIN. Mr. President, I am not on the committee. However, like others on the floor, I am very interested in making sure that we are tightening up the laws against skyjacking. We would not want to do anything that would in anywise loosen the laws or make them easier to circumvent.

I want to make a point clear, too, although I think the chairman has put his finger on what I am about to inquire into. Let me ask, insofar as any weapons for hunting purposes or sporting activities are concerned—and I guess my inquiry would be directed to the chairman of the committee—there would be no violation if a person having a weapon for sporting activities or for hunting purposes publicly declared that he had such a weapon at the airport terminal.

Mr. McCLELLAN. As I understand it, he would have to declare it. It would be subject to inspection if they wanted to inspect it. He would have to declare that he was transporting it for hunting purposes or for sporting activities or for some lawful purpose and do so before he got on the plane. Otherwise, he would be in violation of the law.

Mr. GRIFFIN. Even though it were a weapon for hunting purposes or for other lawful purposes, if he failed to declare it in advance, he would be liable.

Mr. McCLELLAN. He would certainly be technically guilty under the statute.

Mr. GRIFFIN. I thank the chairman. I think it is very important that that point is understood.

As I understand, the amendment of the Senator from Florida (Mr. GURNEY) would add to other categories and exempt

weapons carried for the purpose of gun collecting, or some other lawful purpose. I, like the chairman, am a little bit concerned about whether they would have to be publicly declared in order to be exempt. That is where protection, primarily, would come into play.

Mr. McCLELLAN. Taking the language already in the bill which would also qualify this amendment—the coverage exemption from the criminal sanctions would apply only:

If the presence of such weapons is publicly declared prior to the time of boarding, checked as baggage which may not be opened within the airport confines, and not transported with such person in the passenger compartment of the aircraft.

It is a restriction fully applicable to the amendment offered by the Senator from Florida.

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

Mr. McCLELLAN. I yield.

Mr. HRUSKA. In that same connection, and supplementing what the Senator from Michigan (Mr. GRIFFIN) has said, the situation does arise where one who is desirous of transporting a weapon for hunting purposes carries a gun and checks it at the counter of the anti-skyjack guards.

He hands him the gun, which is in a case, and the gun is carried on board by an official of the airline. It is placed in the pilot's compartment, or elsewhere, where it is secure. The question I ask is this: Would not that confirm that the weapon has been publicly declared and checked as baggage, and is being transported with the person? Would not that be sufficient to comply with the law?

Mr. McCLELLAN. If it is presented in a case, as the Senator said, it would be inspected and then carried onto the plane. In my judgment, that would be a public declaration. If he is acting under the direction of a statute, in order to comply with the statute, in order to give the official an opportunity to perform his public duty, that is a public declaration. That is certainly what the statute intends. It does not mean that the person has to publish a notice in a newspaper or to stand on a housetop somewhere with a megaphone to announce that he is going to carry a gun. I would interpret that to mean—and I am sure that is the intent—that this is a public statement, that the carrier knows about it, and has an opportunity to handle it in the manner prescribed by law.

Mr. HRUSKA. The procedure I have outlined has been the practice for a long time and has been found to be satisfactory, without objection. The reason I have raised the question is to make a legislative history, to the effect that such a practice is not proscribed by the subject bill. This history we have now made.

Mr. McCLURE. Mr. President. I welcome the opportunity to support Senator GURNEY's amendment. This change in the law will give those Americans with legitimate and lawful reasons for transporting weapons on air carriers every assurance that their rights will not be infringed upon.

The constitutional right to bear arms is not limited to "hunting and other sporting activities" alone, and neither should the lawful transport of arms by individuals be so limited. I am sure this amendment clears the law of any confusion and will insure that there will be no opportunity of misinterpretation or narrow interpretation that twists congressional intent. We must guarantee that in the future, those rights that we define today will remain intact.

It is especially important that in a measure dealing with air piracy, the language be clear so that law-abiding citizens are not liable to technical violations of laws against air piracy.

I have prepared an amendment to the bill which would accomplish the same thing. I am glad to have the help of the Senator from Florida and support his amendment in lieu of my own.

Mr. GURNEY. I thank the Senators.

Mr. President, I yield back my time.

The PRESIDING OFFICER. All time has been yielded back. The question is on agreeing to the amendment of Mr. GURNEY.

The amendment was agreed to.

Mr. McCLELLAN. I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

Mr. HATHAWAY. Mr. President, I call up my amendment to the desk and ask for its consideration.

The amendment reads as follows:

On page 4, line 9, after the comma insert the word "knowingly".

Mr. HATHAWAY. Mr. President, this amendment corrects what I believe is an oversight, and I am sure it complies with the intention of the committee with respect to subsection (1) of section (l). The committee must certainly have intended that the person who has the weapon in his possession would have to know about it.

It is conceivable that as a passenger was boarding an aircraft, someone else might secrete in the passenger's purse or in the pocket of her coat or his coat a weapon that he or she would not know about. With the possibility of this situation in mind, I am simply asking that the word "knowingly" be inserted at the appropriate place in that particular subsection.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Maine.

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

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

Mr. McCLELLAN. Mr. President, I have considered the amendment offered by the distinguished Senator from Maine, and I personally am glad to accept the amendment. It is a technical amendment that strengthens the bill and actually says what is intended with respect to this particular section of the bill. I am glad to accept it, and I do not think there will be any objection.

Mr. HRUSKA. Mr. President, I can perceive, in the insertion of the word "knowingly" pursuant to the amendment proposed by the Senator, both good points and bad points about it.

Imagine a man walking down a corridor of an airport, and he has his overcost draped over his arm in such a fashion that the pocket opening is exposed. Someone comes along and slips into that pocket a Saturday night special, and the man presents himself at the counter, presents his ticket, and goes through. The guard finds that gun there. He did not place it there, and it is not knowingly a transgression.

On the other hand, suppose that same man knew it was there, he put it there, he walked through, and he got caught at it. He could assert that he did not know about it, but the prosecutor would have the opportunity to prove that he knowingly had it and thereby obtain a conviction.

I wonder if the danger that someone could be convicted under the bill for innocent conduct is not something which we should consider in this regard.

I call attention to the language in the following subsection, which says, beginning on line 17:

(2) Whoever willfully and without regard for the safety of human life or with reckless disregard for the safety of human life.

and so on, and then it names the same elements of an offense. Would that not cover the situation of "knowingly"? I direct that question to the Senator from Maine.

Mr. HATHAWAY. The Senator refers to subsection (2)?

Mr. HRUSKA. Yes.

Mr. HATHAWAY. I assume, since "willfully" denotes "knowingly" also, the person would have to be aware of the fact in that situation.

I might add that the second part of subsection (1), the part which deals with placing such a weapon in a package, does very definitely connote the fact that he knows about it. My amendment would simply bring the first part of that subsection into line with the second part.

Mr. HRUSKA. Mr. President, I suggest this further thought, in addition to the others I have already expressed: In subsection (1) there is provided a penalty of a $1,000 fine, or imprisonment for 1 year, or both, for knowingly doing something which is considered illegal—assuming the amendment is accepted. In the next subsection, there is a $5,000 penalty and 5 years imprisonment for one who acts willfully and without regard for the safety of human life, or with reckless disregard for the safety of human life.

So we have that discrepancy in penalties. I wonder if that is sufficient discrepancy in the tests that we set forth in the bill, under the amendment proposed by the Senator from Maine.

Mr. HATHAWAY. I assume that the second one involves a more severe penalty because the person who is involved has a reckless disregard for human life aboard the aircraft. In the first case, although it may be the same person, it may be impossible to prove that reckless disregard; nevertheless, we have a section that can be used to punish that person to some extent.

Mr. McCLELLAN. Mr. President, if the Senator will yield, I do not see how adding "knowingly" in section (1)(1) detracts in any way from the crime that we are undertaking to cover. Without the word "knowingly" or a similar term—something to charge the offender with knowing what he was doing—if we just left it as it is, "Whoever, while aboard, or while attempting to board, any aircraft in or intended for operation in air transportation or intrastate air transportation, has on or about his person," he could be convicted with complete ignorance of the fact that a weapon was in his possession. It seems to me that the word "knowingly" simply clarifies that he must know what he was doing, and that he would be violating the law if he attempted to board. Without the word "knowingly" you could undertake here to establish a crime where the person was wholly innocent and had no knowledge of what was happening, or that circumstances were present which constituted a crime.

I do not think "knowingly" hurts it. The Senator may have some technical explanation or justification for questioning it, but it seems to me it simply does what we really want to do.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Maine.

Mr. GRIFFIN. Mr. President, once again I speak as one who is not on the committee. But, frankly, as one who is very concerned, as I know all Senators are, about skyjacking, it seems to me that we ought to be as strict as possible and impose as serious a penalty as is reasonable under the circumstances.

I notice that in subsection (2), beginning on line 17, there is already a provision which covers a person who "willfully and with reckless disregard for the safety of human life" goes aboard an aircraft with a concealed weapon. In that case, the penalty is a fine of not to exceed $5,000 or imprisonment for not more than 5 years, or both.

To me, that does not seem to be an excessive penalty, when you consider the circumstances and the danger implied for an airplane full of passengers.

Then, there is another case—kind of case—a case which I think the committee was trying to deal with in the first section—the case when it is difficult to prove what is in a person's mind as he goes aboard a plane with a concealed weapon. How can it be established what his intent is? Should he go completely free? Or should there be strict liability with a lesser penalty in a situation like that, where the lives of so many people are involved? I realize that under the traditional concepts of criminal law the matter of scienter is important. Yet, the law does impose criminal liability in some instances where there is only gross negligence—and even though no willful intent can be proved. I would think that one who goes aboard a plane carrying a dangerous weapon would at least be grossly negligent if he did not know it.

To impose a criminal penalty to the extent of not more than $1,000 or not more than 1 year in prison does not seem unreasonable to me. After all, the judge and jury can take into account extenuating circumstances. If the accused should be completely free of any liability or any negligence of any kind, I am sure that would be taken into account.

Mr. McCLELLAN. Mr. President, will the Senator from Michigan yield?

Mr. GRIFFIN. I am delighted to yield to the distinguished chairman.

Mr. McCLELLAN. Well, traditionally, the fact is, there is no other way to prove what is in a person's mind except by what he does. We have got a circumstance here where he is boarding a plane and has got the weapon on him, so we presume he knows what he is carrying. As the Senator from Nebraska (Mr. HRUSKA) pointed out a few minutes ago, there can be circumstances which might well be that one is planning to try to sneak a weapon on the plane by the process of slipping it into someone's pocket or into someone's briefcase and, in that way, an innocent person could board the plan, or try to board the plane, without knowing he had a weapon on him. Certainly we do not intend the law to reach a circumstance like that. I doubt the wisdom of leaving it without being required to establish that the man knew. He should not be charged with violating the law if he did not know it was happening.

Mr. HRUSKA. Mr. President, in that connection—and I agree with what the Senator from Arkansas has said—but in that subsection (1), the knowledge has to do with the offense of having a concealed weapon. That is a lesser offense and therefore warrants the sanction of a $1,000 fine or 1 year in jail or both.

In subsection (2) we have the element of having a gun with reckless disregard for the safety of human life, or who willfully disregards the safety of human life. If it can be proven that he recklessly or willfully disregarded the safety of human life, as opposed to knowingly concealing a weapon which is the subject of subsection 1, then he should suffer the potential of a greater penalty—to wit, $5,000 or 5 years in jail, or both.

Mr. McCLELLAN. The Senator is correct in his analysis. Where the fellow has purchased a gun and is carrying it home or carrying it back to his State, he would be violating the law if he undertook to board the plane in that fashion, whether he intended to commit a crime with the gun or not. But the second section carries with it the circumstances where obviously he intended to commit a crime or to intimidate or use the gun for an illegal purpose on the plane.

Mr. GRIFFIN. I am not going to make a big battle out of this point. My purpose, however, is to make this provision as strict as we can make it. It may be that a judge trying the case would instruct the jury that there would have to be knowledge in order to convict the accused. I do not know. But I would think there could be circumstances of gross negligence——

Mr. McCLELLAN. I would agree, if he is found with a gun on him under the circumstances he would be presumed to have knowledge, and the burden would shift to him to show that he had no knowledge of it.

Mr. GRIFFIN. It is conceivable that there could be negligent circumstances when a person should be held criminally responsible. I wish, myself—and I say this most respectfully—that the committee drafting the language had considered the question whether knowledge should be an element of the crime. I assume since the word "knowingly" is not there, that the committee concluded it was not necessary, especially since the penalty is only $1,000 or 1 year in jail.

Mr. McCLELLAN. I hope the Senator does not regard committees as being perfect. Otherwise we would never have any amendments on the floor to any bill. We do overlook things in committee. Sometimes technical amendments are not only necessary, they are essential.

Mr. GRIFFIN. I thank and commend the able Chairman who has been so effective in this field. However, I do regret that we appear to be in the position on the floor weakening a bill to deal with skyjacking. If anything, I would like to make it stronger.

Mr. McCLELLAN. I think we are all in accord on what we are trying to do but there are certain requirements of the law that the innocent need to be protected as well as the guilty punished.

If a person is found to be going on a plane innocently with a gun on him, and he had no knowledge that he had a gun on him, I do not think he should be held amenable to this section of the bill. I might say with respect to some of the penalties here, maybe they do not appear to be enough. But, after all, we do not get everything we want in legislation. Certainly this would have some effect and would serve, in my judgment, as a deterrent.

Mr. HRUSKA. Mr. President, may I say, as one who had a part in drafting this language, that I would have no objection to the amendment proposed, by inserting the word "knowingly." I have raised a number of questions. The purpose has been to bring out the precise impact of the bill and the precise meaning. I believe that purpose has been served. So I want to be on record as not being in opposition to the amendment.

The PRESIDING OFFICER (Mr. NUNN). The question is on agreeing to the amendment of the Senator from Maine (Mr. HATHAWAY).

The amendment was agreed to.

Mr. McCLELLAN. Mr. President, I know of no further amendments to be proposed to the bill.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

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

S. 872

An act to facilitate prosecutions for certain crimes and offenses committed aboard aircraft, and for other purposes

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

SEC. 2. (a) Chapter 2 of title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 36. Imparting or conveying threats

"Whoever imparts or conveys or causes to be imparted or conveyed any threat to do an act which would be a felony prohibited by section 32 or 33 of this chapter or section 1992 of chapter 97 or section 2275 of chapter 111 of this title with an apparent determination and will to carry the threat into execution, shall be fined not more than $5,000 or imprisoned not more than five years, or both."

(b) The analysis of chapter 2 of title 18 of the United States Code is amended by adding at the end thereof the following new item:

"36. Imparting or conveying threats.".

SEC. 3. Subsection (a) of section 1395 of title 28, United States Code, is amended by striking the period at the end of such subsection and adding the following: ", and in any proceeding to recover a civil penalty under section 35(a) of title 18 of the United States Code or section 901(c) of the Federal Aviation Act of 1958 (72 Stat. 731; 49 U.S.C. 1471 (c)), all process against any defendant or witness, otherwise not authorized under the Federal Rules of Civil Procedure, may be served in any judicial district of the United States upon an ex parte order for good cause shown."

SEC. 4. Section 901 of the Federal Aviation Act of 1958 (49 U.S.C. 1471) is amended by adding at the end thereof the following new subsection:

"FALSE INFORMATION

"(c) Whoever imparts or conveys or causes to be imparted or conveyed false information, knowing the information to be false, concerning an attempt or alleged attempt being made or to be made, to do any act which would be a crime prohibited by subsection (i), (j), (k), or (l) of section 902 of this title, shall be subject to a civil penalty of not more than $1,000 which shall be recoverable in a civil action brought in the name of the United States."

SEC. 5. Section 902 of the Federal Aviation Act of 1958 (49 U.S.C. 1472) is amended as follows:

(a) Section 902(l) is amended to read as follows:

"CARRYING WEAPONS ABOARD AIRCRAFT

"(1) (1) Whoever, while aboard, or while attempting to board, any aircraft in or intended for operation in air transportation or intrastate air transportation, knowingly has on or about his person or his property a concealed deadly or dangerous weapon, explosive, or other destructive substance, or has placed, attempted to place, or attempted to have placed aboard such aircraft any property containing a concealed deadly or dangerous weapon, explosive, or other destructive substance, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

"(2) Whoever willfully and without regard for the safety of human life or with reckless disregard for the safety of human life, while aboard, or while attempting to board, any aircraft in or intended for operation in air transportation or intrastate air transportation, has on or about his person or his property a concealed deadly or dangerous weapon, explosive, or other destructive substance, or has placed, attempted to place, or attempted to have placed aboard such aircraft any property containing a concealed deadly or dangerous weapon, explosive, or other destructive substance shall be fined not more than $5,000 or imprisoned not more than five years, or both.

"(3) This subsection shall not apply to law enforcement officers of any municipal or State government, or the Federal Government, while acting within their official capacities and who are authorized or required within their official capacities, to carry arms, or to persons who may be authorized, under regulations issued by the Administrator, to carry concealed deadly or dangerous weapons in air transportation or intrastate air transportation; nor shall it apply to persons transporting weapons for hunting or other sporting activities, or for gun collecting, or for other lawful purposes if the presence of such weapons is publicly declared prior to the time of boarding, checked as baggage which may not be opened within the airport confines, and not transported with such person in the passenger compartment of the aircraft.".

(b) Section 902(m) is amended to read as follows:

"FALSE INFORMATION AND THREATS

"(m) (1) Whoever willfully and maliciously, or with reckless disregard for the safety of human life, imparts or conveys or causes to be imparted or conveyed false information knowing the information to be false, concerning an attempt or alleged attempt being made or to be made, to do any act which would be a felony prohibited by subsection (i), (j), or (l) (2) of this section, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

"(2) Whoever imparts or conveys or causes to be imparted or conveyed any threat to do an act which would be a felony prohibited by subsection (i), (j), or (l) (2) of this section, with an apparent determination and will to carry the threat into execution, shall be fined not more than $5,000 or imprisoned not more than five years, or both."

(c) The table of contents of the Federal Aviation Act of 1958, in the matter of title IX (subchapter IX, chapter 20 of title 49, United States Code, section 1472(m)), is amended by redesignating

"(m) False information."

to read

"(m) False information and threats.".

SEC. 6. Section 903 of the Federal Aviation Act of 1958 (49 U.S.C. 1473) is amended by striking "Such" at the beginning of the second sentence of subsection (b)(1) of that section, and substituting therefor, "Except with respect to civil penalties under section 901(c) of this title, such".

SEC. 7. Section 101 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301), is amended by adding after paragraph (21) the following:

"(22) 'Intrastate air transportation' means the carriage of persons or property as a common carrier for compensation or hire, by turbojet-powered aircraft capable of carrying thirty or more persons, wholly within the same State of the United States.".

SEC. 8. Section 1201(a)(3) of title 18 of the United States Code is amended by striking out "(32)" and inserting in lieu thereof "(33)".

Mr. McCLELLAN. Mr. President, I move that the vote by which the bill was passed be reconsidered.

Mr. HRUSKA. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. McCLELLAN. Mr. President, I ask unanimous consent that the Secretary of the Senate be authorized to make such technical and clerical corrections as may be necessary in the engrossment of S. 872.

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

CAPITAL PUNISHMENT

The PRESIDING OFFICER (Mr. NUNN). Under the previous order, following the disposition of S. 872, the Senate will now proceed to the consideration of S. 1401, which will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 1401) to establish rational criteria for the mandatory imposition of the sentence of death, and for other purposes.

The Senate proceeded to consider the bill, which had been reported from the Committee on the Judiciary with an amendment to strike out all after the enacting clause and insert:

That chapter 227 of title 18 of the United States Code is amended by adding after section 3562 a new section 3562A, to read as follows:

"§ 3562A. Sentencing for capital offenses

"(a) A person shall be subjected to the penalty of death for any offense prohibited by the laws of the United States only if a hearing is held in accordance with this section.

"(b) When a defendant is found guilty of or pleads guilty to an offense for which one of the sentences provided is death, the judge who presided at the trial or before whom the guilty plea was entered shall conduct a separate sentencing hearing to determine the existence or nonexistence of the factors set forth in subsections (f), (g), and (h) for the purpose of determining the sentence to be imposed. The hearing shall not be held if the government stipulates that none of the applicable aggravating factors set forth in subsections (g) and (h) exists or that one or more of the mitigating factors set forth in subsection (f) exists. The hearing shall be conducted—

"(1) before the jury which determined the defendant's guilt;

"(2) before a jury impaneled for the purpose of the hearing if—

"(A) the defendant was convicted upon a plea of guilty;

"(B) the defendant was convicted after a trial before the court sitting without a jury;

"(C) the jury which determined the defendant's guilt has been discharged by the court for good cause; or

"(D) appeal of the original imposition of the death penalty has resulted in a remand for redetermination of sentence under this section; or

"(3) before the court alone, upon the motion of the defendant and with the approval of the court and of the government.

"(c) In the sentencing hearing the court shall disclose to the defendant or his counsel all material contained in any presentence report, if one has been prepared, except such material as the court determines is required to be withheld for the protection of human life or for the protection of the national security. Any presentence information withheld from the defendant shall not be considered in determining the existence of the factors set forth in subsections (g) and (h) or the nonexistence of factors set forth in subsection (f). Any information relevant to any of the mitigating factors set forth in subsection (f) may be presented by either the government or the defendant, regardless of its admissibility under the rules governing admission of evidence at criminal trials; but the admissibility of information relevant to any of the aggravating factors set forth in subsections (g) and (h) shall be governed by the rules governing the admission of evidence at criminal trials. The

government and the defendant shall be permitted to rebut any information received at the hearing, and shall be given fair opportunity to present argument as to the adequacy of the information to establish the existence of any of the factors set forth in subsections (f), (g), and (h). The burden of establishing the existence of any of the factors set forth in subsections (g) and (h) is on the government. The burden of establishing the existence of any of the factors set forth in subsection (f) is on the defendant.

"(d) The jury or, if there is no jury, the court shall return a special verdict setting forth its findings as to the existence or nonexistence of each of the factors set forth in subsection (f) and as to the existence or nonexistence of each of the applicable factors set forth in subsections (g) and (h).

"(e) If the jury or, if there is no jury, the court finds by a preponderance of the information that one or more of the applicable factors set forth in subsections (g) and (h) exists and that none of the factors set forth in subsection (f) exists, the court shall sentence the defendant to death. If the jury, or if there is no jury, the court finds that one of the applicable aggravating factors set forth in subsections (g) and (h) exists, or finds that one or more of the mitigating factors set forth in subsection (f) exists, the court shall not sentence the defendant to death but shall impose any other sentence provided for the offense for which the defendant was convicted.

"(f) The court shall not impose the sentence of death on the defendant if the jury or, if there is no jury, the court finds by a special verdict as provided in subsection (d) that at the time of the offense—

"(1) he was under the age of eighteen;

"(2) his capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law was significantly impaired, but not so impaired as to constitute a defense to prosecution;

"(3) he was under unusual and substantial duress, although not such duress as to constitute a defense to prosecution;

"(4) he was a principal, as defined in section 2(a) of this title, in the offense, which was committed by another, but his participation was relatively minor, although not so minor as to constitute a defense to prosecution; or

"(5) he could not reasonably have foreseen that his conduct in the course of the commission of murder, or other offense resulting in death for which he was convicted would cause, or would create a grave risk of causing, death to any person.

"(g) If the defendant is found guilty of or pleads guilty to an offense under section 794 or section 2381 of this title and if no mitigating factor set forth in subsection (f) is present, the court shall impose the sentence of death on the defendant if the jury or, if there is no jury, the court finds by a special verdict as provided in subsection (d) that—

"(1) the defendant has been convicted of another offense under one of such sections, committed before the time of the offense, for which a sentence of life imprisonment or death was authorized by statute;

"(2) in the commission of the offense the defendant knowingly created a grave risk of substantial danger to the national security; or

"(3) in the commission of the offense the defendant knowingly created a grave risk of death to another person.

Provided, That if the charge is under section 794(a) of this title, the sentence of death shall not be imposed unless the jury or, if there is no jury, the court further finds that the offense directly concerned nuclear weaponry, military spacecraft or satellites, early warning systems, or other means of defense or retaliation against large-scale attack, war plans, communications intelligence or cryptographic information or any other major weapons system or major element of defense strategy.

"(h) If the defendant is found guilty of or pleads guilty to murder or any other offense for which the death penalty is available because death resulted and if no mitigating factor set forth in subsection (f) is present, the court shall impose the sentence of death on the defendant if the jury or, if there is no jury, the court finds by a special verdict as provided in subsection (d) that—

"(1) the death or injury resulting in death occurred during the commission or attempted commission of or during the immediate flight from the commission or attempted commission of an offense under section 751 (Prisoners in custody of institution or officer), section 794 (Gathering or delivering defense information to aid foreign government), section 844(d) (Transportation of explosives in interstate commerce for certain purposes), section 844(f) (Destruction of government property by explosives), section 844(i) (Destruction of property in interstate commerce by explosives), section 1201 (Kidnaping), or section 2381 (Treason) of this title, or section 902(i) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1472(i)) (Aircraft piracy);

"(2) the defendant has been convicted of another Federal offense, or a State offense resulting in the death of a person, committed either before or at the time of the offense, for which a sentence of life imprisonment or death was authorized by statute;

"(3) the defendant has previously been convicted of two or more State or Federal offenses with a penalty of more than one year imprisonment, committed on different occasions before the time of the offense, involving the infliction of serious bodily injury upon another person;

"(4) in the commission of the offense the defendant knowingly created a grave risk of death to another person in addition to the victim of the offense;

"(5) the defendant committed the offense in an especially heinous, cruel, or depraved manner;

"(6) the defendant procured the commission of the offense by payment, or promise of payment of anything of pecuniary value;

"(7) the defendant committed the offense as consideration for the receipt, or in the expectation of the receipt, of anything of pecuniary value; or

"(8) the defendant committed the offense against—

"(A) the President of the United States, the President-elect, the Vice President, or if there is no Vice President, the officer next in order of succession to the office of the President of the United States, the Vice-President-elect, or any person who is acting as President under the Constitution and laws of the United States;

"(B) a chief of state, head of government, or the political equivalent of a foreign nation;

"(C) a foreign official listed in section 1116(b)(1) of this title, if he is in the United States because of his official duties; or

"(D) a Justice of the Supreme Court, a Federal law-enforcement officer, or an employee of a United States penal or correctional institution, while performing his official duties or because of his status as a public servant. For purposes of this subsection a 'law-enforcement officer' is a public servant authorized by law or by a government agency to conduct or engage in the prevention, investigation, or prosecution of an offense."

SEC. 2. Section 34 of title 18 of the United States Code is amended by changing the comma after the words "imprisonment for life" to a period and deleting the remainder of the section.

SEC. 3. Section 844(d) of title 18 of the United States Code is amended by striking therefrom the words "as provided in section 34 of this title".

SEC. 4. Section 844(f) of title 18 of the United States Code is amended by striking therefrom the words "as provided in section 34 of this title".

SEC. 5. Section 844(i) of title 18 of the United States Code is amended by striking therefrom the words "as provided in section 34 of this title".

SEC. 6. The second paragraph of section 1111(b) of title 18 of the United States Code is amended to read as follows:

"Whoever is guilty of murder in the first degree shall be punished by death or by imprisonment for life."

SEC. 7. Section 1116(a) of title 18 of the United States Code is amended by striking the words "except that any such person who is found guilty of murder in the first degree shall be sentenced to imprisonment for life".

SEC. 8. Section 1201 of title 18 of the United States Code is amended by inserting after the words "or for life" in subsection (a) the words "and if the death of any person results, shall be punished by death or life imprisonment".

SEC. 9. The last paragraph of section 1716 of title 18 of the United States Code is amended by changing the comma after the words "imprisonment for life" to a period and deleting the remainder of the paragraph.

SEC. 10. The fifth paragraph of section 1992 of title 18 of the United States Code is amended by changing the comma after the words "imprisonment for life" to a period and deleting the remainder of the section.

SEC. 11. Section 2031 of title 18 of the United States Code is amended by deleting the words "death, or".

SEC. 12. Section 2113(e) of title 18 of the United States Code is amended by striking therefrom the words "or punished by death if the verdict of the jury shall so direct" and inserting in lieu thereof the words "or may be punished by death if death results".

Section 902(i)(1) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1472(i)(1)), is amended to read as follows:

"(1) Whoever commits or attempts to commit aircraft piracy, as herein defined, shall be punished—

"(A) by imprisonment for not less than twenty years; or

"(B) if the death of another person results from the commission or attempted commission of the offense, by death or by imprisonment for life."

SEC. 14. The analysis of chapter 227 of title 18 of the United States Code is amended by inserting after item 3562 the following new item:

"3562A. Sentencing for capital offenses.".

SEC. 15. Chapter 235 of title 18 of the United States Code is amended by inserting immediately after section 3741 thereof the following new section:

"§ 3742. Appeal from sentence of death

"In any case in which the sentence of death is imposed after a proceeding under section 3562A of chapter 227 of this title, the sentence of death shall be subject to review by the court of appeals upon appeal by the defendant. Such review shall have priority over all other cases. On review of the sentence, the court of appeals shall consider the record, including the entire presentence report, if any, the evidence submitted during the trial, the information submitted during the sentencing hearing, the procedures employed in the sentencing hearing, and the findings under section 3563A(d). If the court of appeals finds that: (1) the procedures employed in the sentencing hearing were not contrary to law, or were contrary to law only in a manner constituting harmless error, and (2) the findings under section 3562A(d) were not clearly erroneous,

or were clearly erroneous but the sentence was not affected, it shall affirm the sentence. If the court of appeals finds that the procedures employed in the sentencing hearing were contrary to law in a manner not constituting harmless error, it shall set aside the sentence and remand the case for redetermination of sentence in accordance with section 3562A. If the court of appeals finds that a finding under section 3562A(d) was clearly erroneous and that the sentence was affected by such clearly erroneous finding, it shall set aside the sentence and remand the case for imposition of a sentence other than death. The court of appeals shall state in writing the reasons for its disposition of the review of the sentence.

SEC. 16. The analysis of chapter 235 of title 18 of the United States Code is amended by adding at the end thereof the following new item:

"3742. Appeal from sentence of death.".

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

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

RECESS UNTIL 1:30 P.M.

Mr. McCLELLAN. Mr. President, I ask unanimous consent that the Senate stand in recess until 1:30 p.m. today.

There being no objection, at 12:15 p.m. the Senate took a recess until 1:30 p.m.; whereupon, the Senate reassembled when called to order by Mr. HATHAWAY.

MESSAGES FROM THE PRESIDENT

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

EXECUTIVE MESSAGES REFERRED

As in executive session,

The PRESIDING OFFICER (Mr. NUNN) laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

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

CAPITAL PUNISHMENT

The Senate continued with the consideration of the bill (S. 1401) to establish a rational criteria for the mandatory imposition of the sentence of death, and for other purposes.

Mr. ROBERT C. BYRD. Mr. President, what is the pending question before the Senate?

The PRESIDING OFFICER. The pending business is S. 1401.

Mr. ROBERT C. BYRD. Is that the death penalty bill?

The PRESIDING OFFICER. The Senator is correct.

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

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

Mr. McCLELLAN. Mr. President, in June of 1972, the Supreme Court handed down its decision in the case of Furman against Georgia, one of the Court's most significant decisions in recent years. It was in the Furman decision that a bare majority of the Court—five of the nine Justices—determined that the death penalty could not constitutionally be imposed as administered in the cases before it. The effect of that decision was to eliminate capital punishment throughout the country as an authorized deterrent and punishment for even the most violent and brutal crimes.

It is most important to note that the Furman decision did not declare that the death penalty itself was unconstitutional. There was no majority opinion. Each of the five Justices in the majority filed his own opinion in which none of the others joined. Justices Marshall and Brennan felt that the death penalty is per se unconstitutional. Justices Douglas, Stewart, and White were unwilling to reach that conclusion but focused on the discretion given to judge and jury under present statutes. The essence of their opinions, particularly those of Justices Stewart and White, was not that the death penalty itself was unconstitutional, but rather that it had come to be imposed so arbitrarily as to constitute cruel and unusual punishment in violation of the eighth amendment.

Mr. President, if a procedure can be devised where the death penalty will be imposed in a more rational manner, it seems clear that Justices White and Stewart would join with the minority in Furman in upholding its constitutionality.

S. 1401 is intended to provide such a procedure. It does so through its use of the two-stage trial and by specifically listing the factors that are to be considered in determining whether or not the death penalty should be imposed.

Under the bill's provisions, capital offenses are limited to treason, espionage, and offenses resulting in the death of another person. A prosecution for a capital offense would involve a two-stage trial. During the first stage, the jury would deal solely with the question of guilt and only hear evidence on that question. Only if the defendant were found guilty of the specified offense would the second stage of the trial be entered. In the second stage, the jury would then find the facts that would determine whether or not the death penalty was to be imposed.

The bill then sets out a list of "aggravating" factors and a separate list of "mitigating" factors that apply to all capital offenses. If one or more of the "aggravating" factors is found to exist and there is an absence of all the "mitigating" factors, the death penalty must be imposed. If, on the other hand, none of the "aggravating" factors is found to exist or one or more of the "mitigating" factors is present, the death penalty cannot be imposed. The "mitigating" factors are broad enough to insure that only those deserving of the death penalty would be executed. Finally, S. 1401 provides the defendant with the right to appeal to the court of appeals whenever the death penalty is imposed.

S. 1401 meets the constitutional requirements set out by the Supreme Court in the Furman decision. It is not an ideal bill. I will be the first to admit it. It is a compromise measure that represents many concessions in an effort to draft a constitutionally acceptable statute. The bill does not go as far as I would like. What it will do, however, is reestablish once again the constitutional acceptability of the death penalty and make it applicable to at least the most aggravated violent crimes. I think it is the very minimum and not the maximum of what should be enacted. It can serve as a minimum model for those States that have not yet passed legislation to reinstitute the penalty in their own jurisdictions.

I recognize that we are not only faced with the question of whether or not legislation can be drafted that will meet the requirement of Furman. We are also faced with a much more basic question—whether or not this country should have a death penalty at all.

The answer to that question becomes clearer and clearer with every new kidnaping, with every new hijacking of a plane filled with innocent people, with every new murder by the Symbionese Liberation Army, with every murder committed for hire. The death penalty must be restored if our criminal justice system is to combat effectively the ever-increasing tide of violent crimes—crimes of terror—that threaten to engulf our Nation and if the confidence of the American people in our system of justice is to be restored.

Mr. President, those who argue against the death penalty claim that it serves no useful purpose and should therefore be eliminated. Perhaps most importantly, they say that there is no proof that it deters crime.

I simply do not agree with that.

I can recall from my youth that the knowledge that I would be punished for doing wrong was indeed a deterrent. And the more severe I thought the punishment was likely to be, the less likely was it that I would misbehave. I would suggest that everyone in this Chamber has had a comparable experience.

To say that the death penalty, the severest penalty society can impose, does not deter is to say that no punishment deters—and with that I believe no one here can agree.

Some will say that the real issue is not whether the death penalty deters, but whether it deters more than life imprisonment. To me the answer to that question is obvious.

Life is our most precious possession. So long as the premeditated murderer has his life there is the chance for parole, for freedom, for escape. There is often the opportunity and the temptation for one convicted of murder or imprisoned for some crime to kill a guard or a fel-

low prisoner—there are many instances of such tragic occurrences. If a criminal knows that he will forfeit his own life if he commits one of the crimes enumerated in this bill, he will certainly be much less likely to commit that act than if all he had facing him was a prison sentence and eventual parole.

What better example of this do we have than the case of the man robbing a bank with a gun when the police get the drop on him. The robber is told to drop his gun or he will be killed. What does he do? If he believes he is going to be killed, he drops his gun. If the police told him to drop his gun or he would be slapped in the face, or kicked, or even put in prison, it might not be enough to stop him.

Where the criminal—the murderer—knows that he is going to pay a price for his crimes and that price is death, he will be deterred.

Mr. President, it is here that the problem exists. The criminal must be made to realize that he is going to die himself if he chooses to murderously deprive someone else of his life. If penalties are not imposed, the mere prescribing of them by law will not deter. We can be sure of that. A punishment is only going to be effective as long as it is imposed. Once it stops being applied, it loses its potency.

The death penalty is a perfect example. The last execution in this country took place in 1967—not because the country disapproved of the penalty, but out of a desire to let the Supreme Court rule on the question. In the 5 years between 1967 and 1971 the number of murders in this country rose 61 percent. More importantly, the rate of murder for every 100,000 persons rose 52 percent in that same 5-year period of time. Can anyone seriously argue that this was a mere coincidence?

Not only our law enforcement officers but even criminals themselves have told us that it was not. Very shortly after the Furman decision was handed down a bank robbery took place in New York City. Hostages were taken and threats were made. The Washington Star-News quoted one of the robbers as saying:

> I'll shoot everyone in the bank. The Supreme Court will let me get away with this. There's no death penalty. It's ridiculous. I can shoot everyone here, then throw my gun down and walk out and they can't put me in the electric chair. You have to have a death penalty, otherwise this can happen every day. [The Washington Star-News, Aug. 23, 1972, p. 1, col. 1.]

I agree completely.

Mr. President, when all is said and done, when all the talking about deterrence and retribution and incapacitation is finished, what it all boils down to is whether it is ever "just" to impose the death penalty. Can a man ever be found to have acted so viciously, so cruelly, so much like an animal as to justify society in imposing upon him the ultimate punishment? I firmly believe he can.

What other punishment is "just" for a man, found to be sane, who would stab, strangle, and mutilate eight student nurses?

What other punishment is "just" for men who would invade the home of members of a rival religious sect and shoot to death men, women, and children, after forcing a mother to watch as her three young children were drowned before her eyes?

What other punishment is "just" for a band of social misfits who would invade the homes of people they had never even met and stab and hack to death a woman 8½ months pregnant and her guests?

What other punishment is "just" for people who would force a 24-year-old woman to douse herself with gasoline so that they could turn her into a human torch and watch as she burned to death?

There are other current cases that I could cite that we would all recognize, that come within the category of those I have just described. But since some of the defendants are now in the process of being tried for their crimes I will not mention or identify them in my remarks today. But, Mr. President, pick up almost any newspaper, today, yesterday, or the day before, or pick one up tomorrow, and you can read about some of these current cases to which I am now referring.

Mr. President, human justice is not feeding and clothing such people for a few years and then returning them to society on parole to do what they wish.

People who commit crimes like these have forfeited their own right to life. They have merited the clearest statement that such inhuman action cannot and will not be tolerated and that people who perform such acts will not be allowed to do so again. Justice demands no less.

It is indeed a great tragedy that a Nation, a civilized Nation, such as ours, that offers so much to so many, needs the death penalty to protect its citizens. Although it is sad and lamentable, there is no other course that squares with equal justice under the law. Nothing less will provide ample protection for the innocent, or insure a safe society.

Mr. President, as I conclude, I ask unanimous consent to have printed in the RECORD at this point the following exhibits:

A memorandum prepared by the staff of the Subcommittee on Criminal Laws and Procedures outlining the provisions of S. 1401.

Next, a letter from former Attorney General Elliot Richardson to Senator Eastland, dated October 8, 1973, expressing his support for S. 1401, as amended by the Committee on the Judiciary.

Third, a Department of Justice summary of the nine opinions rendered in the case of Furman against Georgia.

Then, I ask unanimous consent to have printed in the RECORD a summary of recent public opinion polls prepared by the Library of Congress, indicating that the majority of the American people favor the death penalty as a punishment for certain serious crimes.

I note, the last item to be inserted in the RECORD are polls showing that public sentiment in favor of the death penalty has steadily risen from 47 percent in 1970 to 59 percent in 1973, in one instance; and from 49 percent in 1971 to 57 percent in November 1972, in another poll; 42 percent were opposed in 1970, in one instance, with 11 percent undecided; and in the other case, 40 percent were opposed in 1971, and 32 percent in November 1972, with 11 percent undecided at those two times.

Obviously, these statistics indicate that in the last 3, 4, or 5 years, after the experience of a rise in the number of murders for crimes occurring during the 5-year period since the last execution in this country, the American people have sensed, however lamentable it may be, that the death penalty is essential to protecting society in this country.

As a consequence of the Supreme Court decision which I must assert again is complex, with nine Justices expressing divergent views—it becomes imperative, if we are to restore the death penalty, that we follow the guidance indicated in that decision to set up standards by which the death penalty, when imposed, will be imposed under proper guidance from the Congress. It should be applicable to all, not leaving anything in the imposition of the death penalty to the mere whim of a jury, court, or judge. It should set sound standards by which all persons charged and found guilty of such serious crimes shall be judged alike, and that equal justice will be administered to all.

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

MEMORANDUM

To: Senator McClellan.
From: Paul Summitt.
Re: S. 1401—Reinstatement of Capital Punishment as an Authorized Sentence for Certain Crimes.

It was in June of 1972 that the Supreme Court decided *Furman* v. *Georgia* (408 U.S. 238) and declared that capital punishment, *as then applied and administered* in the United States was unconstitutional. The punishment itself, then, was not declared unconstitutional—merely the manner *in* which it was being imposed. Crucial to the decision in this case were the opinions of Justices Stewart and White, two of the five justices making up the majority. (There was no majority opinion in the case. The five justices constituting the majority handed down five separate opinions in which none of the other justices joined.) Mr. Justice Stewart objected to the imposition of the death penalty in "so wantonly and freakishly" a manner. Mr. Justice White complained of the jury's complete discretion in imposing the penalty regardless of the circumstances of the particular case. The conclusion derived from these opinions is that, if a procedure could be devised for the imposition of capital punishment in a manner that would not be "wanton and freakish" and would not leave the jury totally unfettered in its sentencing decision, the votes of Justice Stewart and White could be joined with the minority in *Furman* to restore the death penalty as a constitutional sentence.

S. 1401, as amended by the Subcommittee, should provide a procedure that will meet the requirements set out in *Furman*, one that will be both fair to the individual and result in a rational and consistent sentencing policy. The provisions of the Subcommittee amendment are set out below:

I. CAPITAL PUNISHMENT CRIMES

Basically, S. 1401 would make those crimes under current Federal law which can be broadly characterized as treason, espionage, or murder, offenses for which the death pen-

alty would be an available sanction. Attached is a specific list of the crimes for which the death penalty would be an authorized sentence under the bill.

II. PROCEDURE

A prosecution for treason, (espionage,) or murder would involve a "bifurcated" or two-stage trial. In the first stage, the judge or jury (depending upon the circumstances) would deal solely with the question of guilt and only hear evidence relevant to that question. Only if the defendant were found guilty of the offense would the second stage of the trial be entered. It is at this stage that the judge or jury (again depending upon the circumstances of the case) would make the factual determinations that would determine whether or not the death penalty was to be imposed.

III. AUTOMATIC APPLICATION

The bill sets out a list of "aggravating factors" with respect to the treason and espionage offenses and a separate list of "aggravating factors" with respect to the murder offenses. It also contains a list of "mitigating factors" applicable to all three crimes. If one or more of the relevant "aggravating factors" is found to exist and there is an absence of all the "mitigating factors," the death penalty *must* be imposed. If, on the other hand, either none of the "aggravating factors" is found to exist or one or more of the "mitigating factors" is found to exist, the death penalty *cannot* be imposed. The various factors are set out below.

IV. AGGRAVATING FACTORS

A. Treason and Espionage [1]

1. Defendant has been convicted of another such offense, for which a sentence of death or life imprisonment was authorized.

2. Defendant created grave risk of substantial danger to the national security.

3. Defendant created a grave risk of death to another person.

B. Murder

1. The death, or injury resulting in death, occurs during the commission, attempted commission, or flight from eight specified offenses: escape, espionage, three explosive offenses involving personal injury or property damage, kidnapping, treason, and aircraft hijacking.

2. Conviction of another offense, either State or Federal, for which the sentence of death or life imprisonment was authorized by statute.

3. Previous conviction of two or more separate offenses involving serious bodily harm.

4. Defendant created grave risk of death to another person in addition to the victim.

5. Crime was committed in an especially heinous, cruel, or depraved manner.

6. Defendant paid for the crime to be committed.

7. Defendant was paid to commit the crime.

8. The victim was the President, Vice President, or another listed Government official.

V. MITIGATING FACTORS—APPLICABLE TO ALL COVERED OFFENSES: MURDER, TREASON, AND ESPIONAGE

1. Defendant was under the age of 18 at the time of the commission of the offense.

2. Defendant's mental capacity was significantly impaired.

3. Defendant acted under unusual and substantial duress.

4. Defendant had a relatively minor part in the crime in which the killing was committed by another participant.

5. The Defendant could not reasonably have foreseen that his conduct would cause or create a great risk of causing death.

VI. APPELLATE REVIEW BY COURT OF APPEALS

If a capital punishment is imposed in a case, the death sentence shall be reviewed by the court of appeals upon appeal by the defendant. Upon review, the court of appeals shall affirm the sentence if the procedures employed below were proper (or improper, but only in a manner constituting harmless error) and the findings of aggravating factors were not clearly erroneous (or, if erroneous, the sentence was not affected by the error. E.g. If the court found that two "aggravating factors" existed, but only one actually existed, the sentence would not be affected because the death penalty is mandated by the presence of just one aggravating factor.) If the court finds that the procedures employed were erroneous to the point of being more than merely harmless error, it shall remand the case for redetermination of the sentence. Finally, if the court finds that the finding of the presence of aggravating factors was clearly erroneous and the sentence was affected thereby (e.g. no "aggravating factors" actually existed), it shall set aside the death sentence and remand the case for the imposition of a sentence other than death. The court shall state in writing the reasons for its disposition of a case.

[1] If the Defendant is convicted of espionage, before the death sentence can be imposed, the court or jury must additionally find that the offense concerned a major weapons system or major element of defense strategy.

CRIMES FOR WHICH DEATH PENALTY IMPOSABLE UNDER S. 1401

18 U.S.C. § 34—Destruction of aircraft or aircraft facilities or motor vehicles or motor vehicle facilities where death results.

18 U.S.C. § 351—Assassination or kidnapping (where death results) of members of Congress.

18 U.S.C. § 751—Escape from custody—when the defendant is convicted of murder or any other capital offense and the murder or other capital offense occurred during an escape from custody.

18 U.S.C. § 794—Gathering or delivering defense information to aid a foreign government (espionage).

18 U.S.C. § 844(d)—Transportation of explosives in interstate commerce with knowledge they will be used to injure any person or destroy any property—where death results.

18 U.S.C. § 844(f)—Malicious damage by explosives of property owned or used by the United States or any organization receiving Federal financial assistance—where death results.

18 U.S.C. § 844(i)—Malicious damage by explosives of property in interstate commerce—where death results.

18 U.S.C. § 1111—Murder in the first degree.

18 U.S.C. § 1114—Murder of certain officers and employees of the United States.

18 U.S.C. § 1116—Murder of foreign officials or official guests.

18 U.S.C. § 1201—Kidnapping—where the defendant is convicted of murder or any other offense for which the death penalty is available if death results and he committed that offense during the commission, attempted commission, or immediate flight from the commission or attempted commission of a kidnapping.

18 U.S.C. § 1716—Mailing nonmailable injurious articles where death results.

18 U.S.C. § 1751—Presidential and Vice-Presidential assassination and kidnapping (where death results).

18 U.S.C. § 1992—Wrecking or disabling trains or other railroad property where death results.

18 U.S.C. § 2113(e)—Bank robbery and incidental crimes where kidnapping occurs during the commission or flight therefrom and death results.

18 U.S.C. § 2381—Treason.

49 U.S.C. 1472(i)—Aircraft piracy where death results from the commission or attempted commission.

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C., October 8, 1973.

HON. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: I appreciate your sending me the Subcommittee version of S. 1401, a bill "To establish rational criteria for the imposition of the sentence of death, and for other purposes."

The reported version is the result of close cooperation between the staffs of the Subcommittee on Criminal Laws and Procedures and the Department of Justice.

I fully support this legislation, and I urge prompt consideration of the bill by your committee and early passage by the Congress. I believe that, as the ultimate penalty, the death sentence is an important deterrent to the most serious crimes. Further, the legislation before you has been carefully drawn to avoid the constitutional problems cited by the Supreme Court in *Furman* v. *Georgia*, 408 U.S. 238 (1972).

I have enclosed for your information a copy of the September 28 letter to me from Senators Hart and Kennedy concerning this legislation and a copy of my reply.

Sincerely,

ELLIOT RICHARDSON,
Attorney General.

THE SUPREME COURT DECISION ON THE DEATH PENALTY

A Summary of the Opinions of the Individual Justices in Furman v. *Georgia.*

In three cases that will collectively go on the books as *Furman* v. *Georgia*, the United States Supreme Court on June 29, 1972, declared that under certain circumstances the imposition of the death penalty violates the Eighth and Fourteenth Amendments of the United States Constitution. In two of the cases the defendants were sentenced for rape; in the other case the sentence was for murder. Below is a summary of the nine separate opinions produced by this decision.

I. MAJORITY OPINIONS

Justices Marshall and Brennan felt that the imposition of the death penalty was unconstitutional under all circumstances.

A. Justice Marshall

Justice Marshall dwelt a great deal on the historical aspects of the question. He felt the legislative history of the Eighth Amendment showed that the provision was intended to prohibit cruel punishments. He went on to describe how the provision had been interpreted in the courts (emphasizing *Weems* v. *United States*, 217 U.S. 349 (1910), in which the Court "invalidated a penalty prescribed by a legislature for a particular offense") and deduced certain principles from these decisions. Citing *Trop* v. *Dulles*, 356 U.S. 86 (1958), he stated that the "most important principle" was that the Court, in assessing the constitutionality of a punishment, "must draw its meaning from the evolving standards of decency that mark the progress of a maturing society."

Marshall discussed the faltering progress of the legislative movement to abolish the death penalty in America. He then asserted that the Eighth and Fourteenth Amendments dictated abolition of the death penalty for two separate reasons.

First, Marshall found that the death penalty accomplished no legitimate legislative purpose that could not be accomplished equally well by a lesser penalty. Justice Marshall listed six purposes "conceivably served" by the imposition of the death penalty; retribution, deterrance, prevention of repetitive criminal acts, encouragement of guilty pleas and confessions, eugenics, and economy. He found that some of these pur-

poses (e.g., retribution) failed to justify the existence of any punishment and that the legitimate purposes of the death penalty (e.g., deterrence) were served equally well by less severe punishments.

Second, Marsall felt that abolition of the death penalty was alternately justified by the fact that it was "morally unacceptable to the people of the United States at this time in their history." He argued that the test of whether the penalty was morally unacceptable was whether American citizens would find it so "in the light of all information presently available." He stated that the average citizen would find capital punishment "shocking to his conscience" were he aware of the following facts: first, as mentioned earlier, that the death penalty accomplished no legitimate legislative purpose; second, that the penalty was imposed discriminately against "certain identifiable classes" such as racial minorities and the poor.

B. Justice Brennan

Justice Brennan felt that the legislative and judicial history of the clause demonstrated that "the Framers concern was directed specifically to the exercise of the legislative power." He asserted that in previous decisions the Court not only adopted this view but also took the position that the clause was not limited to penalties which the Framers intended to proscribe.

Brennan, like Marshall, stated that the constitutionality of the death penalty must be assessed in terms of society's evolving standards. However, he felt that the test of whether a punishment was "cruel and unusual" was whether or not it comported with human dignity.

Brennan argued that the issue of whether a punishment comported with human dignity turned on four questions: whether it was inflicted in an arbitrary manner; whether it was unacceptable to contemporary society; and whether it accomplished any legitimate purpose that was not accomplished equally well by a less severe punishment. He said that a review of past judicial interpretations of the Eighth Amendment demonstrated that no punishment adjudged cruel and unusual was fatally offensive under a single principle; indeed, it was unlikely that any legislature would enact such a statute. He felt, however, that the four principles were interrelated and that if a punishment "seriously implicated" several of the principles, the Court would be justified in concluding that the punishment failed to comport with human dignity.

Brennan felt that the death penalty in view of its "enormity and finality" was so severe as to be degrading to human dignity. He argued that the infrequent infliction of the death penalty gave rise to a strong presumption of arbitrariness. Our system of giving judges and juries discretion as to the imposition of the penalty failed to guard against the likelihood that the penalty was being inflicted arbitrarily. Brennan felt that the growing debate on the death penalty, the decrease of crimes for which the penalty was inflicted, and the current rarity of infliction for any crime, indicated that the penalty had been virtually rejected by society. He also argued that capital punishment accomplished no legislative purpose that could not be equally well accomplished by some less severe penalty. He felt that the retributive value of the penalty was undemonstrated, and that the manner in which the penalty was "currently administered" kept it from being a superior deterrent.

Since the death penalty was inconsistent to some degree with all four principles, Brennan concluded that it failed to comport with human dignity and thus violated the Eighth and Fourteenth Amendments.

C. Justice Douglas

Justices Douglas, Stewart and White did not find the death penalty to be unconstitutional in all instances, rather, they focused upon the discretion granted judge and jury under current death penalty statutes.

Justice Douglas asserted that the Fourteenth Amendment prohibited "cruel and unusual" punishment prohibited in the Eighth Amendment regardless of whether that prohibition was carried out under the privileges and immunities clause or the due process clause.

Like Marshall and Brennan, Douglas felt that the validity of the death penalty should be assessed in terms of the evolving standards of society. He felt that the legislative history of the Eighth Amendment indicated an intent on the behalf of the framers to prohibit the selective and discriminatory imposition of any penalty.

Douglas recognized the argument, put forth by Ernest van den Haag, that if a penalty was being inflicted unequally, the process by which the penalty was inflicted should be altered rather than the penalty itself. However, Douglas seemed to feel that the Court's previous decision of *McGautha* v. *California*, 402 U.S. 183 (1971), in which the Court allowed the jury "practically untrammeled discretion" in its imposition of the death penalty precluded such an approach. The Court in *McGautha* had noted that juries in the past, when confronted by statutes requiring mandatory death sentences, had exercised a sort of *de facto* discretion by acquitting defendants they did not wish to execute.

Douglas surveyed evidence that the death penalty had been inflicted in a discriminatory manner and noted that all the defendants in the instant cases were black. He did not feel ready to assert that discrimination had played a part in the imposition of any of the sentences. Rather, he emphasized that the system provided no standards to govern the imposition of the death penalty, leaving the fate of the defendants committing such offenses to the "uncontrolled discretion of judges or juries."

He felt that a function of the cruel and unusual punishment clause was to insure the even-handed application of all penalties and that equal protection was "implicit in the ban on 'cruel and unusual' punishments."

In striking down the discretionary death penalty statutes, Douglas noted that a statutory scheme employing the death penalty might be constitutional on its face, but unconstitutional in its use. He cited the example of a mandatory death penalty, only imposed upon minorities or members of the lower classes. He concluded with the statement that he did not reach the question whether or not a mandatory death sentence would be otherwise constitutional.

D. Justice Stewart

Justice Stewart emphasized the finality of the death penalty and expressed sympathy with arguments advocating prohibition of the death penalty in all circumstances. However, he found it "unnecessary to reach the ultimate question they would decide."

Stewart cited various examples of mandatory death sentences and stated that review of death sentences under such penalties would require the court to decide whether capital punishment was unconstitutional under all circumstances. More precisely, the question would be whether "a legislature could constitutionally determine that certain criminal conduct" was "so atrocious that society's interest in deterrence and retribution" outweighed "any considerations of reform or rehabilitation of the perpetrator. . . ."

On this question Stewart felt that "empirical evidence" that an "automatic death penalty" would provide "maximum deterrence" was "inconclusive." However, he did not feel that retribution was a "constitutionally impermissible ingredient in the imposition of punishment." He noted that retribution was instinctive in man and that the channelling of that instinct in the administration of criminal justice helped to prevent certain destructive manifestations of "self-help."

In the case at hand Stewart observed that none of the death sentences imposed were mandatory. The legislature, in other words, had not determined that the imposition of the death penalty was necessary to deter the respective crimes committed. The imposition of the death sentence was "cruel" *because* it went beyond what the state legislatures determined to be necessary; it was "unusual" because the imposition of the death sentence for either of the crimes involved was infrequent. Justice Stewart further stated that the defendants were among a "capriciously selected random handful" upon whom the sentence of death had been imposed. There were many others who, though convicted of the same crimes and "just as reprehensible" as the defendants, were, nevertheless, not sentenced to death. He concluded that the Eighth and Fourteenth Amendments cannot tolerate infliction of the death penalty under legal systems that permit this unique penalty to be so wantonly and so freakishly imposed."

E. Justice White

Justice White emphasized that he was not taking the position that the imposition of the death penalty was unconstitutional in all circumstances; however, he felt that that position had been "ably argued." White addressed himself to the constitutionality of a statute which left the ultimate imposition of the sentence to judge and jury.

He noted that in the instant cases the legislature had authorized the imposition of the death penalty for murder or rape without mandating it, and that the penalty had been imposed so infrequently that the odds were now "very much against imposition and execution of the penalty with respect to any convicted murderer or rapist."

White reasoned that under these statutes the legislative will is not frustrated if the death penalty is never imposed. He also asserted that the death penalty was so infrequently imposed under the statutes before the Court that the punishment failed to satisfy any general need for retribution and, more important, ceased to function as a credible deterrent. He thus concluded that the penalty was "patently excessive." He also noted that there was "no meaningful basis for distinguishing the few cases" in which it was imposed from "the many cases" in which it was not.

White stated that "for present purposes" he accepted the "morality and utility" of punishing one person to influence another. At one point he stated that he did not feel the need to reject the death penalty "as a more effective deterrent than a lesser penalty." Later, however, he stated that it was "difficult to prove . . . that capital punishment, however administered, *more* effectively serves the ends of criminal law than does imprisonment."

He felt that the Eighth Amendment obligated the judiciary to review certain penalties whether legislatively approved or not. In the present case, the claims for legislative judgment were particularly inappropriate because the legislature had delegated the ultimate imposition of the death penalty to judges and juries which, in their own discretion and without violating their trust or any statutory policy, could refuse to impose the death penalty no matter what the circumstances of the crime.

II. DISSENTING OPINIONS

Justices Burger and Blackmun, while expressing personal disapproval of the death penalty, did not feel that it was appropriate for the judiciary to overrule the legislature in the present cases.

A. Chief Justice Burger

Chief Justice Burger repudiated the argument that capital punishment had always been "cruel" and that it was "unusual" as well because of infrequent use. He stated that both the legislative history and subsequent judicial interpretation of the Eighth Amendment indicated that the provision was directed at inhuman punishment "regardless of how frequently or infrequently imposed." He felt that the adjective "unusual," whatever its function, was certainly not directed at a longstanding punishment such as the death penalty.

Surveying judicial interpretation of the Eighth Amendment, Burger noted that the Court had never held a punishment to be impermissibly cruel because of a shift in social values. More important, he observed, the Court had never held "that a mode of punishment authorized by a domestic legislature was so cruel as to be fundamentally at odds with our basic notions of decency."

The Chief Justice felt that in a democracy the presumption that the legislature embodied the prevailing standards of decency could be disproven only by showing a nationwide repudiation of the death penalty. He then cited the nationwide legislative endorsement of the penalty and noted that polls on the question fell far short of showing universal condemnation.

Burger admitted that juries imposed the death sentence infrequently. However, he felt that to characterize such imposition as "freakishly" rare was "unwarranted hyperbole." He further said that the conclusion that juries imposing the death penalty were acting arbitrarily ran against the Court's past endorsement of jury responsibility and had no empirical basis. Later in the opinion he asserted that the jury's infrequent imposition of the death penalty demonstrated that body's serious attitude towards its responsibility.

Burger felt that the argument that the death penalty accomplished no legitimate purpose was invalid; just as the approval of a punishment involving extreme cruelty could not be justified on the basis of its efficacy, the disapproval of a particular punishment could not properly be predicated on its inefficacy. In any event, the Chief Justice disagreed with the majority's repudiation of retribution as a legitimate end of punishment, and noted that the question of the deterrent value of capital punishment was "beyond the pale of judicial inquiry."

Burger asserted that the majority erred in depriving judges and juries of discretion to impose the death penalty. The actual scope of the Court's ruling, which he presumed to be embodied in the "pivotal" opinions of Justices Stewart and White, would demand a rigid system of sentencing in capital cases which "if possible of achievement, cannot be regarded as a welcome change." The Chief Justice argued that the Eighth Amendment was directed towards punishments, not sentencing processes, and that the issue had been foreclosed, at any rate, by the Court's earlier decision of *McGautha* v. *California, supra*. He further asserted that legislatures would have a difficult time establishing guidelines for judges and juries in imposing of the death penalty. Such attempts had not been successful in the past, and, even if guidelines could be established, juries might well retain *de facto* discretion by returning verdicts to lesser offenses in certain cases. If the only constitutional statutory scheme remaining is one in which judges and juries are faced with a choice between imposition of the death sentence, and acquittal, Burger would have preferred that the penalty be abolished altogether.

Burger, nevertheless, was somewhat pleased that the Court's decision gave the legislatures "the opportunity, and indeed the unavoidable responsibility," to re-evaluate the question of capital punishment. He felt the legislatures are far better forums than the courts for evaluation of such an issue, since the basic questions are factual rather than legal. Though the Court went "beyond the limits of judicial power," it "fortunately" left "some room for legislative judgment."

B. Justice Blackmun

Justice Blackmun felt that the death penalty should not be overturned judicially although he would vote against its retention were he a legislator. He noted that past decisions of the Court had implicitly recognized the constitutional validity of the penalty. Blackmun also observed that in recently enacted federal statutes the death penalty had been included by the "elected representatives of the people [who are] far more conscious of the temper of the times, of the maturing of society, and of the contemporary demands for man's dignity, than are we who sit cloistered on this Court."

Blackmun felt that legislatures would reenact statutes with mandatory death penalties. Such legislation, bereft of mercy, would be "regressive" in his opinion.

C. Justice Powell

Justice Powell generally endorsed Justice Burger's comments on the qualified nature of the majority repudiation of the death penalty. Powell's opinion was directed at the majority opinions advocating abolition of the death penalty in all circumstances.

Powell felt that the legislative history of the Eighth Amendment demonstrated that it was not the intent of the framers to prohibit the death penalty. Powell admitted that the Court was not barred from examining the imposition of the death penalty on a case-by-case basis, but felt it highly inappropriate to seek "total abolition of capital punishment by judicial fiat."

He noted that the Court had tacitly approved the existence of the death penalty in a long line of decisions. While acknowledging that notions of cruel and unusual punishment do evolve, Powell felt that this fact only justified a case-by-case examination of the death penalty. To abolish the death penalty altogether was to assert that "the evolutionary process" had come "suddenly to an end."

Powell argued that judicial restraint was especially required in deciding the instant cases. The issues presented a temptation to read personal opinions into the Constitution. Furthermore, the Court decision would affect numerous federal and state statutes.

He felt that legislative action, state referenda, and jury action through the country refuted the argument that contemporary society rejected the death penalty. Furthermore, the argument that contemporary society only tolerated the death penalty because of its infrequent and discriminatory imposition was speculative. The fact that the death penalty fell more frequently on the impoverished was not due to an evil inherent in the penalty, but rather to long-standing social and economic problems. Powell felt that Justice Harlan's opinion in *McGautha* v. *California, supra*, had disposed of the majority's assertion that the death penalty should be abolished where arbitrarily and/or discriminatorily applied. Powell felt that there were other ways to attack discrimatory imposition of the death penalty and that, at any rate, the problem was no longer one of great magnitude.

Powell then rejected the argument that the death penalty, because it served no rational legislative purpose, was unconstitutional. He noted that there was no justification in the legislative or judicial history of the Eighth Amendment for the proposition that the Court could strike down a statutory punishment because it found the same purposes served by a lesser penalty, that decisions in this area lie within the special competence of the legislatures and hence are entitled to a presumption of validity, and that it was at least arguable that retribution was a legitimate aim of deterrence.

Powell asserted that the Court should not strike down a punishment unless the punishment was "greatly" or "grossly" disproportionate to the crime. He asserted that the death penalty was not a disproportionate punishment for the crime of rape, particularly when the effects of that crime on the victim were considered.

Powell felt that in foreclosing future discussions—legislative or judicial—of the death penalty, the Court was overreaching itself. A case-by-case approach, though tedious, would have been far more desirable.

D. Justice Rehnquist

Justice Rehnquist argued that the Court was overreaching itself in striking down legislatively enacted death penalties. Advocating judicial restraint, he asserted that overreaching by the judiciary interfered with the "right of the people to govern themselves." He felt it particularly important that the judiciary restrain itself, because there was no truly effective outside restraint on that body. He observed that it was better for the Judiciary to err on the side of restraint since the result, at worst, was to leave standing a duly enacted law.

[The following letter was subsequently received.]

THE LIBRARY OF CONGRESS,
CONGRESSIONAL RESEARCH SERVICE,
Washington, D.C., July 9, 1973.

To: Criminal Laws Subcommittee, Attn: Mr. Thelen
From: Education and Public Welfare Division
Subject: Public Opinion surveys on the death penalty

In response to your request regarding public opinion surveys on the death penalty, we have compiled the following charts on recent Gallup Polls and Harris Surveys. We have no records of Harris Surveys on this topic before 1969.

GALLUP POLL

Question. "Are you in favor of the death penalty for persons convicted of murder?"

[In percent]

	Yes	No	No opinion
November 1972	57	32	11
March 1972	50	41	9
1971	49	40	11
1969	51	40	9
1966	42	47	11
1965	45	43	12
1960	51	36	13
1953	68	25	7

HARRIS SURVEY

Question. "Do you believe in capital punishment (death penalty) or are you opposed to it?"

[In percent]

	Believe in	Opposed	Not sure
1973	59	31	10
1970	47	42	11
1969	48	38	14

We are enclosing the original releases on most of these surveys and some newspaper articles on them in case you would like more detail.

On June 15, 1973, just a few days after the most recent general Harris Survey listed above was released, another more specialized Harris Survey on the death penalty came out. This survey (enclosed) revealed that, despite the fact that 59% of the American people believe in the death penalty, only 39%, as jurors, could say, "If guilt were pro-

ven, I would always vote guilty even though the defendant would automatically receive the death penalty". This finding suggests a reluctance to make imposition of the death penalty automatic or, similarly, a reluctance to convict if upon conviction imposition of the death penalty would be automatic.

We hope this information will be helpful to you. If we can assist you further, please let us know.

JENNIFER CLAPP.

Mr. HRUSKA. Mr. President, my mind goes back to a presentation of the same kind of case by the Senator from Arkansas (Mr. MCCLELLAN) some 3 or 4 years ago when there was before this body an amendment to a pending bill to eliminate or to abolish the death penalty. I wished then and I wish now that more of our colleagues could have heard the presentation of that case opposing abolition of the death penalty as set out by the Senator from Arkansas than the few who actually did witness the event because it was a logically presented argument. It was presented in a dramatic and effective fashion. I am confident that if more had heard that argument and considered it, they would have been impelled to the same conclusion regarding the subject as actually prevailed here in this body 4 years ago, in October 1970, when the vote was a little more than 2 to 1 against abolition of the death penalty.

Mr. President, before getting into my prepared statement, I should like to suggest that when we consider the pending legislation, the bill that is now the business of the Senate, we should remember a couple of matters and bear them in mind.

First, the occasion for this bill and the occasion for our debate today is the decision of the Supreme Court in the case of Furman against the State of Georgia rendered in 1972. That decision, however, did not hold that the death penalty was unconstitutional per se. It did not hold that the death penalty is something cruel and unusual to a degree that it violates the constitutional provision, that in America there shall be no infliction of penalties that are cruel and unusual.

The basis of the Supreme Court decision was that in the matter of sentencing, the method and the result were so freakishly seldom inflicted that in the process of sentencing there was a violation of at least two of the articles in the Constitution—articles 8 and 14. Because of the unusual fashion in which the penalty was imposed, or in which there was a failure to impose it under the circumstances and conditions which were nearly comparable or even identical, the application of the penalty, not the penalty itself, constituted cruel and unusual punishment. It is for this reason that we must conform to the standards and procedures which the Supreme Court believes must be followed in order to comply with the Federal Constitution.

Second, we should bear in mind that the pending bill pertains only to the infliction of the death penalty for Federal criminal offenses that qualify under it. It does not apply to State penalties or State judicial systems.

Mr. President, almost 1 year ago today, I introduced for myself and the distinguished senior Senator from Arkansas (Mr. MCCLELLAN) S. 1401, a bill to establish rational criteria for the mandatory imposition of the sentence of death, and for other purposes.

During the past year alone, we have witnessed the commission of some of the most heinous and shocking crimes in our history. Early last year, the worst massacre in the history of Washington, D.C., occurred. Seven people were killed and several more injured, including 5 innocent children, in a murder of horrid proportions both for the number of killed and the process of execution. In the summer of last year, the Nation was shocked by one of the largest mass murders in our history. Twenty-seven young boys were killed in brutal murders in Texas. No one is yet certain whether all of the bodies have been accounted for.

Just recently an offender killed a pilot and security guard at Baltimore-Washington Airport in an attempted hijack of a commercial airliner. According to newspaper accounts, the hijacker intended to crash the airliner into the White House in an assassination attempt on the life of the President of the United States.

And in just the past few weeks, we have all become weary, I am sure, of reading about the raft of kidnapings that have struck the Nation. It seems as though kidnapings have almost become a daily occurrence to the consternation of the public and the Nation.

These cases cry out desperately for tough, realistic new efforts to curb lawlessness and violence. And, particularly, they underscore the need to restore the death penalty to our laws.

Mr. President, the figurative statement that "a person can get away with murder nowadays" has all too often been the case in fact. Certainly, the offenders may be apprehended and even sentenced to prison. But, in the minds of peaceful citizens, the offenders have not received the punishment they deserve. The death penalty is the only punishment that can adequately reflect society's revulsion for particularly heinous crimes. It is the only punishment that fits the crime.

Nothing can undermine more the common citizen's respect for the law than the failure to impose upon criminals the punishment they justly deserve. Justice Stewart considered the circumstance of such failure to punish offenders adequately in Furman against Georgia. He said that—

[W]hen people begin to believe that organized society is unwilling or unable to impose upon criminal offenders the punishment they "deserve" then there are sown the seeds of anarchy—of self-help, vigilante justice, and lynch law.

S. 1401 is designed to reinstate capital punishment precisely because some crimes are so heinous as to justly merit the forfeiture of the offender's life.

Just as important, S. 1401 is intended to restore the death penalty because of its value as a deterrent. I am convinced that the death penalty can be an effective deterrent against specific crimes.

If this bill is enacted, the potential kidnaper will know that if his intended victim dies, he may die. The potential hijacker will realize that if he kills a person during the course of a hijacking, he may forfeit his own life. The man who throws a firebomb to destroy governmental property, the convict who assaults a prison guard, the person who attacks a law enforcement officer, all will know that if they take a life, they may pay with their own life.

Mr. President, I have listened to the social theorists talking about the "inhumanity" of tough punishment and have heard them question the deterrent value of the death penalty. My answer is to cite one actual case where 5 armed men held hostage about 25 employees during which time they beat, kicked, pistol-whipped and shot their victims in an apparent exercise of terror. Just for the hell of it, to put it very bluntly. In the midst of this mayhem, the victims were told by one of the criminals, and I quote:

There's no death penalty—what do I have to lose.

Tell these victims that there is no merit in restoring the death penalty.

S. 1401, if enacted, will restore the death penalty. It will cure the constitutional defects inherent in present law as revealed by the Supreme Court in Furman against Georgia. In that case, the Court did not hold that capital punishment per se is unconstitutional. Instead, the pivoted opinions of the Court found that "as presently applied and administered" capital punishment violated the 8th amendment. The system of discretionary sentencing in capital cases failed to produce evenhanded justice.

This bill squarely meets the Supreme Court's objection and narowly limits the offenses and circumstances in which the death penalty may be imposed, with full guarantees for judicial review.

Generally, S. 1401 would make those crimes under current Federal law which can be broadly characterized as treason, espionage, or murder, offenses for which the death penalty would be an available sanction. Prosecution for such crimes would be a two-step procedure.

In the first instance, a jury would be impaneled or, if there is no jury, a judge would hear the question of guilt. In the event the defendant were found guilty of the offense, a second proceeding would be held to determine whether or not the death penalty should be imposed.

In order for the sentence of death to be imposed, the jury impaneled for the second proceeding or the judge would have to find that one or more aggravating factors are present and all of the designated mitigating factors absent. The death penalty is mandatory if one or more of the "aggravating factors" is found to exist and there is an absence of all of the "mitigating factors." If, on the other hand, either no "aggravating factor" is found to exist or one or more "mitigating factors" is found to exist, the death penalty cannot be imposed.

Under the provisions of S. 1401 the number of crimes for which the death penalty can be imposed is reduced. The possibility of this sentence will now arise only upon conviction of treason, espionage, murder, and certain extremely serious offenses, such as aircraft hijacking and kidnaping, where death re-

sults, and only when one or more of the designated aggravating circumstances and none of the specified mitigating circumstances are found to be present. Different sets of aggravating circumstances apply with respect to the two types of crimes. With respect to the national security offenses, for example, the death penalty might be imposed if the defendant knowingly created a grave risk of substantial danger to the national security. Upon conviction of murder, this sentence might be imposed if the defendant were shown to be a hired killer, if the murder occurred during a kidnaping or if the victim was the President, Vice President or certain other high Government officials or the offender was a recidivist in violent crime.

The bill also sets forth five circumstances under which imposition of the death penalty would be precluded, regardless of the existence of one or more of the specified aggravating circumstances in a particular case. It is felt that these circumstances are such as to merit more lenient treatment of a convicted defendant in those cases where they occur. Thus a convicted defendant will not suffer the death penalty: If he was under the age of 18 at the time of the crime; if his mental capacity was significantly impaired; if he was under unusual and substantial duress; if his participation in the crime was relatively minor; or if he could not reasonably have foreseen that his conduct would cause or create a great risk of causing death to another person.

Finally, as another safeguard, S. 1401 provides that the case is reviewable at the option of the defendant in the event the sanction of capital punishment is imposed in a particular case. The court would be empowered to remand the case for a second sentencing hearing on the death penalty issue in the event the procedures set forth in the bill are not complied with. Additionally, if the jury's finding of fact which was the basis for the imposition of the death penalty was "clearly erroneous," the sentence of death would be vacated and the defendant's case would then be remanded to the district court for the imposition of a life sentence or a term of years, as appropriate. In the event procedures are complied with and there is no "clearly erroneous" finding of fact, the sentence of death will be affirmed.

Mr. President, a number of arguments are used against the imposition of the death penalty. During the hearings on this subject, we heard witnesses testify as to the permanence of the penalty that is imposed, testify as to the degrading impact it has upon the conscience and upon the feelings of the public when the event is made known, and testify right down the long list of horrible mental and moral feelings that are adversely affected. But the answer to these arguments in every instance is that that permanence or punishment is also imposed upon a victim, or many victims. The same debasement of the human spirit and of the human soul results from the reading of a cold-blooded murder of an individual or 27 or 11 or 5, as the case may be. This is also a degrading proposition.

The same argument and the same answer could be given right straight up and down the line. There is a way of avoiding the death penalty, and that is to obey the commandment which says, "Thou shalt not kill." It is an old saying. It is one that not even this great body in Congress would be able to repeal. It is those arguments that we will debate during the consideration of this bill. We will review them again, and it is well that we do so.

It is my hope that the net result in this instance, when we vote on the bill, will be the same as it has been heretofore—that it will be a very substantial vote for the passage of the bill and the adoption of its substance, modified as occasion will require to meet such sensible and acceptable amendments as the Senate, in its judgment, deems wise.

Mr. President, I yield the floor.

Mr. HART. Mr. President, as the able Senator from Arkansas and the able Senator from Nebraska have indicated, we are now taking up the consideration and the possible adoption of S. 1401. This is the administration's bill to revive the Federal death penalties, which penalties presumably have been made unconstitutional by the Supreme Court decision several times referred to—the Furman case.

I rise to urge my colleagues not to take this backward step, and I hope they will join me in opposing this bill as bad legislation. It is bad legislation whether or not one believes there is any present justification for some instances of capital punishment.

As my earlier votes in this body have indicated, and as I state again, I find capital punishment unjustified, period. I have introduced bills for abolition of the Federal death penalty in previous Congresses. Before the Furman decision, I offered a bill to stay all Federal and State executions for a 2-year period, while determination was made as to whether capital punishment was unconstitutional.

Before turning to the present bill, let me make clear again that I have not changed my own view one whit that the death penalty is wrong.

We are approaching the 200th anniversary of the establishment of this Republic. I would like to think that one goal would be the permanent relegation to the museum of criminal justice that capital punishment concept, where it can take its place with other things we have relegated to those museums—mutilation by branding and trial by torture—other reminders of a less-civilized time.

This is not to question in the least the depths of the beliefs held by those who differ with my view in this matter. All of us have been outraged and sickened by brutal murders in recent years, some very widely publicized, some called to our attention by hometown papers or by letters from bereaved constituents. We also seek ways to prevent new outbreaks of terror and kidnaping and skyjacking.

I have had letters from citizens in Michigan, anguished letters, written by those who have lost loved ones in a killing. They asked me how I could possibly seek any leniency for someone who would commit so gross a crime.

My answer, Mr. President, is this: Were it possible to bring back lost loved ones by killing other human beings, I would feel differently. Were there any significant evidence that further killing deters potential murderers if they are rational enough to be deterred at all, more than life imprisonment, I would feel differently.

Were there not the danger of error, if not in some of the most *recent* cases, than in others—as long as human fallibility continues—I would feel differently.

If I thought we had really come down the road to the point that racial and class prejudice would not inevitably affect many decisions on which murderers shall live and which shall die—I would feel differently.

But none of these "if's" is true, in my view. Therefore, no matter how much I join in condemning brutal and often senseless acts—and how do you deter a "senseless act" Mr. President?—no matter how much I condemn them, I must also urge Americans to restrain the impulse for vengeance which can brutalize us all.

What do we know about capital punishment, Mr. President? Well, we know mistakes are made through human error and innocent men are condemned to die. There are documented instances of persons condemned and then pardoned at the last minute when it was shown that someone else actually committed the murder for which he was sentenced to die. It is not easy to document a case in America of someone clearly killed in error. Once dead, the victim loses his incentive and his ability to redress the record. So do his friends and family. But a documented case in England did lead to a posthumous pardon, for what good that was worth and to the abolition of capital punishment.

As an aside, if someone like you, Mr. President, or someone like me was sentenced to capital punishment and the sentence executed, there might be friends remaining or families of sufficient means to continue to pursue and establish the proposition that we were innocent; but the people who society elects to kill do not have that kind of family nor do they have those kinds of friends. So it is pretty tough to establish our error with regard to the fellow we kill by mistake once he is dead. We know that about capital punishment.

Second, we know that those sentenced to death have been overwhelmingly the poor, the minority member, or the unpopular. Rich, white Americans simply do not get condemned to death. It will be argued, I know, that the ordered operation of S. 1401 will eliminate the play of racial, or other invidious prejudice. It is true that the jury will no longer have complete discretion. But, in America, racial, and economic prejudices are tragically intertwined with anxiety over personal security, by both events and design. My colleagues will have to ask themselves whether they honestly believe that discriminatory imposition, in actual practice, would be eliminated under a bill where the prosecution recide charged and whether to stipulate

the existence of mitigating factors or seek a finding of aggravating factors? Would it be eliminated under a bill which still lets the jury decide elusive factual determinations regarding states of mind and motive?

Finally, the act of premeditated execution by the State cannot help but corrode our efforts to teach the sanctity of life. This Nation is supposed to stand for the proposition that all human life is to be cherished—no matter what a person's background, station, creed or color. That tenet has been strained and tested often in our history. It is strained whenever we take a life without clear justification. To do so—perhaps to execute innocent men, and always to force people to play God with the lives of their fellows, is to cheapen the value of all life. If the violent events of the past decade teach anything, it is that we can afford such debasement no longer.

In light of these considerations, I believe the burden should be on those who seek to execute other people. Surely they should be required to come forth with some significant demonstration that the death penalty is needed to protect human life when all else would fail.

But those of us who oppose capital punishment need not ask our opponents for conclusive proof—as they demand of us. We need only ask for any substantial evidence that the death penalty is necessary; none can be provided.

The single source of greatest confusion in debate over capital punishment is the framing of the question of deterrence.

For undeniably, the principal reason offered in support of the bill is that it is needed to deter potential murderers.

It is obvious that people fear death, perhaps most of all, and that death is an effective deterrent. But that is simply not the right question. The pertinent inquiry is whether capital punishment has a sufficiently greater deterrent effect than life imprisonment to justify its use. In other words are there a substantial number of murderers who would be deterred by capital punishment but would not be deterred by life imprisonment? The uniformity of all the statistical studies is discussed at length in the appendix to my separate views in the committee report. The results are all the same. There is no indication the death penalty affects the rate of criminal homicide, whether we compare contiguous States of similar economic and social condition, or whether we look at a single State before and after abolition or restoration of the death penalty.

In the absence of any solid evidence, the committee report relies heavily on so-called studies made by police officers interviewing captured criminals who allegedly said they do not carry guns for fear of being executed. But these statements are ambiguous. Do they exclude the possibility that the same persons would have been deterred from carrying guns or taking life by the threat of life imprisonment if that had been the highest penalty in the State? Moreover, many of these kinds of interviewees have told seasoned correctional officials, like Warden Duffy of San Quentin, that they gave such responses to police because they thought that was what they wanted to hear.

Mr. President, the subcommittee cites an interesting example, which some of my colleagues may remember. Shortly after the Furman case, there was a holdup in the metropolitan area. One man made a dramatic threat to throw a grenade at hostages. He supposedly said:

> There is no death penalty, what do I have to lose?

Pretty dramatic, but let us think about the end of the story. He never threw the grenade. Why not? Apparently he realized he had a lot to lose—something like 20 to 30 years rotting away in prison. He did not throw it. He was deterred.

The second main reason given to justify these official killings is that there is a modern sophisticated function for the age-old desire for retribution. Some argue that only by reserving the society's more extreme penalty for particularly heinous crimes can we show our extreme revulsion and condemnation. They argue that this reinforces internalized moral restraints against commiting murder.

I agree. But it does not follow that the most extreme penalty imposed must be death. If it were a life sentence, that would show our maximum condemnation, if that were the maximum punishment society concluded should be imposed.

These, then, are the reasons why I remain firmly convinced that we should abandon the effort to revive a Federal death penalty.

Nonetheless, I realize that some of my colleagues do support retaining a narrowly-drawn death penalty, and it is to those Senators which I particularly address this portion of my remarks. Even assuming that a well-drafted bill might be capable of imposing death only in appropriate circumstances, S. 1401 is not such a bill. It is likely to produce both unjust executions, in some cases, and jury acquittals of guilty murderers, in others. Moreover, it would weaken the ability of police to rescue hostages.

The administration has tried to straddle the constitutional problem raised in Furman. There, the Supreme Court found that the jury had too much discretion in imposing death. This was the focus of the concern for two Justices regarded by most observers as the swing votes in this decision.

Accordingly, the Justice Department bill tries to restrict the jury's discretion on the one hand, while avoiding the barbarity of an absolutely mandatory death penalty regardless of mitigating conditions on the other hand.

I suggest the bill does not achieve either of these goals. How would the bill work?

The bill specifies a list of mitigating factors and aggravating factors. The jury may consider whether any exist, but the jury does not have discretion to weigh the various factors it considers. If any mitigating factor is found, death is precluded. If no mitigating factors are found, and any one aggravating factor is found, death is automatic.

S. 1401 permits consideration of only five mitigating circumstances: the offender is under 18 years of age; his participation was peripheral; his capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the law is "significantly impaired;" he acted under unusual and substantial duress; or—where death actually results—the risk of death was not foreseeable.

Two groups of aggravating circumstances are enumerated.

In the case of "national security" crimes, they are that the defendant has been convicted of a similar capital crime; or knowingly created a grave risk of substantial danger to the national security; or knowingly created a grave risk of death to another person.

For other capital offenses, there must be a homicide and a finding that—

The homicide was committed in the course of committing treason, espionage, sabotage, skyjacking, kidnaping, arson, escape from custody; or

The homicide was committed in an especially "heinous, cruel or depraved manner;"

The homicide was committed for gain;

The victim was a President, Vice President, President-elect or Vice-President-elect, Supreme Court Justice, visiting head of state or high foreign official, Federal law enforcement officer—broadly defined—or Federal corrections officer, killed while performing his duties or because of his official status.

In short, the death penalty can be imposed for almost every Federal crime which now calls for the death penalty—a few have been eliminated—if any one of these aggravating factors is present. This is hardly a narrowly defined death penalty reserved for only one or two extreme classes of homicide.

Despite this rather complex and bulky system for determining who will die and who will live, S. 1401 also falls short of the flexibility needed to insure that appropriate mitigating circumstances might always be considered.

The committee states that—

> To preclude the consideration of any mitigating circumstances which might justify a lesser punishment in a particular case [would be] clearly unacceptable.

The bill's statement of mitigating factors is, on its face, fairly limited. There is little apparent room for a defendant to offer evidence of provocation, momentary passion or emotional disturbance, or a reasonable belief that his action was morally justified according to ordinary moral standards. There is some suggestion in the legislative history—specifically in former Attorney General Richardson's statement of the Justice Department position on the intent of their work product—that these factors could be considered under one of the other aggravating factors expressly listed in the statute.

In several earlier bills, some of these mitigating factors were spelled out more explicitly.

I would like to refer the manager of this bill, the senior Senator from Arkansas (Mr. McCLELLAN) to the correspondence which former Attorney General Richardson sent to the Senator from Massachusetts (Mr. KENNEDY) and myself on October 8, 1973. It appears at page 52 of the report in the appendix to my

separate views. In that letter, stating the Justice Department's position on its bill, Mr. Richardson discussed the issue of what factors could be considered in mitigation. We find that at pages 55, 56, and 57.

Mr. Richardson indicated that a variety of considerations, such as alcoholic or drug intoxication, extreme provocation, severe emotional stress, and belief that the offender's conduct was morally justified, "could be found by a jury to fall within the mitigating circumstances in S. 1401 relating to impairment of capacity to appreciate the wrongfulness of conduct. I would like to ask the distinguished chairman of our subcommittee if this is his understanding, too, of the way in which section 3562A(f)(2) would operate.

Mr. McCLELLAN. Mr. President, am I correct that the Senator is referring to the language on page 14 of the bill in subparagraph (2), subsection (f), which begins on line 8 and continues through line 11 of the same page of the printed bill?

Mr. HART. The Senator is correct. It is that language that my question was directed to.

Mr. McCLELLAN. And is the Senator referring to the response that is given by former Attorney General Richardson to this language, which appears on page 6 of his letter to the distinguished Senator from Michigan and the distinguished Senator from Massachusetts, the date of which is October 8, 1973? I will read the language that I think the Senator refers to from the former Attorney General's letter:

The language in subsection (f)(2) is not intended to connote an ongoing or chronic mental condition; it would allow the jury to find the presence of mitigating circumstance in an appropriate case where there was extreme provocation or other severe emotional stress at the time of the offense if that provacation or stress was sufficient, in the opinion of the jury, that the defendant's "capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law was significantly impaired".

Is that the language the Senator refers to?

Mr. HART. The Senator from Arkansas refers correctly to the language, the language in the bill itself which was part of my question. And the Senator is correct in his reference just made to the language in the letter from the former Attorney General to Senator KENNEDY and me. That appears on page 56 of the committee report.

Additionally, I had included in my question the language which is contained in the former Attorney General Richardson's answer which is three pages further down in the Richardson letter under the caption "Question 6" which appears on page 57 of the committee report, which is the first sentence of the answer and reads:

In appropriate circumstances, the quoted mitigating circumstance from S. 1 could be found by a jury to fall within the mitigating circumstance in S. 1401 relating to impairment of capacity to appreciate the wrongfulness of conduct.

Mr. McCLELLAN. Mr. President, from what the Senator read from the report, it seems to me to be the same quotation from the letter of the former Attorney General.

Mr. HART. I think the Senator from Arkansas read the language from the Richardson letter, the text of the Richardson letter having been repeated in the report. However, there is also a sentence in the Richardson letter which we find a couple of paragraphs beyond that portion of the Richardson letter from which I think the Senator from Arkansas read.

Mr. McCLELLAN. Yes; what I read from is also from his answer. The answer continues on over to the next page of the letter. Then we come to question 6. What I read was in the answer to question 5.

Mr. HART. Yes.

Mr. McCLELLAN. Mr. President, what I have already read is from his answer to question 5. The Senator now refers to the first sentence in his answer to question 6.

Mr. HART. The Senator is correct.

Mr. McCLELLAN. And that first sentence in his answer to question 6 reads:

In appropriate circumstances, the quoted mitigating circumstance from S. 1 could be found by a jury to fall within the mitigating circumstance in S. 1401 relating to impairment of capacity to appreciate the wrongfulness of conduct.

Is that the part that the Senator thinks is pertinent?

Mr. HART. I believe, Mr. President, that if this reflects the view of our distinguished chairman as to his understanding of this particular section of the act, it will help clarify our reservations.

Mr. McCLELLAN. Mr. President, I am sure that former Attorney General Richardson—whom we all respect for his ability and dedication to duty in the performance of his official functions—reviewed this most carefully. This is an opinion which he came to in his capacity as former Attorney General. I have no reason to doubt that he gave it the correct interpretation according to his best judgment.

I am not prepared to dispute the correctness of his interpretation. Of course, if the law is enacted, whatever we interpret here would not be binding other than as a court might look to this record in trying to get some knowledge of the history of the legislation as to what we intend.

I might say to the distinguished Senator that it appears to me that this is not trying to limit this mitigating fact as to the case where a man is mentally incompetent or has a chronic lack of capacity to conform his conduct to the law. The former Attorney General is relating it to conditions, as I understand it, that are present in the attendant circumstances that have an influence on the actions that take place at the time.

That is the way I interpret it, and I think that is what the Attorney General meant to say.

Mr. HART. Mr. President, I appreciate very much the clarification that we have just had from our able chairman, the manager of the bill.

Mr. McCLELLAN. I do not claim to be any expert in this field, but I am trying to state what I think the Attorney General meant, and what I think the language of the bill means and what was intended by it.

Mr. HART. I agree; this is the meaning given to it by the Attorney General and the meaning we understand.

Mr. McCLELLAN. At least that is the meaning I understand.

Mr. HART. Mr. President, I appreciate very much the help of our able chairman.

Mr. McCLELLAN. I think he would already have a defense under present law if he were mentally incompetent. The law already provides for that. Under my interpretation of the circumstances that could well be present, this factor would not necessarily require one to have a permanent mental affliction that deprived him of his capacity to reason, and so forth.

Mr. HART. I thank the Senator from Arkansas. I am almost embarrassed, now, to go on and say that even though he has clarified that for me, there remains a fundamental question of whether any enumeration can exhaust in advance the factors which may be relevant in a given case. In Chief Justice Burger's dissenting option in Furman, he emphasized the impossibility of trying to encapsulate in a set list or formula:

A/11 past efforts "to identify before the fact" the cases in which the penalty is to be imposed have been "uniformly unsuccessful". 408 U.S. at 401.

Finally there is a serious possibility under this bill that someone will be executed, because of a jury finding which is erroneous. There is no requirement that the aggravating factors be proved beyond a reasonable doubt. A mere preponderance of the evidence suffices. Do we really want to execute a man or woman because of a certain consideration if we are not darn sure that consideration exists?

Mr. President for these reasons, I hope that even those Senators who feel they would support a narrow, carefully drawn bill would oppose S. 1401.

I hope those colleagues as they review this measure will consider carefully the advice of a witness at the hearings who is in favor of capital punishment and is an expert draftsman in the capital punishment area. He concluded that S. 1401 would not accomplish its professed aims and suggested that the committee "go back to the drawing boards" to see if a better bill was not possible.

If I may, Mr. President, I shall furnish the name of that witness for the RECORD later; momentarily it escapes me.

Thus, whether one is clearly opposed to capital punishment, or is unsure whether he can support it, or even if one favors a narrowly circumscribed death penalty, S. 1401 is a bad bill and should be defeated.

The witness before the subcommittee who testified as I have just commented is Prof. L. Harold Levinson.

In conclusion, Mr. President, I ask unanimous consent to have printed in the RECORD at this point a communication addressed to me, dated March 8, 1974, from the Board of Church and Society of the United Methodist Church, signed by John P. Adams, Director of the

Department of Law, Justice, and Community Relations. I also ask unanimous consent to have printed in the RECORD an editorial entitled "The Too Final Penalty," published in the New York Times of Tuesday, March 5, 1974.

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

MARCH 8, 1974.

DEAR SENATOR HART: You and your staff will undoubtedly be giving close attention and careful consideration to S. 1401 in the near future. It is our understanding that this proposed legislation would provide for a mandatory death penalty for selected categories of crime under specific conditions.

The United Methodist Church, through its highest legislative body, has repeatedly voiced its opposition to capital punishment in any form or under any circumstance. In 1968, the General Conference of the church urged all states and the federal government to abolish capital punishment.

In 1972, in its most recent General Conference, the United Methodist Church stated in its Social Principles, "In the love of Christ who came to save those who are lost and vulnerable, we urge the creation of genuinely new systems of rehabilitation that will restore, preserve and nurture the humanity of the imprisoned. For the same reason, we oppose capital punishment and urge its elimination from all criminal codes."

We believe that the serious issue of capital punishment necessitates a deep moral consideration and ultimately requires our strong opposition. We ask you, therefore, to vote negatively on S. 1401 when it comes to the floor of the Senate.

Thank you for your consideration of our view.

Sincerely,

JOHN P. ADAMS,
Director, Department of Law, Justice and Community Relations.

[From the New York Times, Mar. 5, 1974]

THE TOO FINAL PENALTY

In approving the Administration's bill to restore the death penalty, the Senate Judiciary Committee has succumbed to President Nixon's appeal thus to attack crime "without pity." The Supreme Court argues, on the contrary, that the death penalty constitutes cruel and unusual punishment in violation of the Eighth Amendment.

In urging Congress to restore the death penalty in the case of certain Federal crimes, Mr. Nixon said: "Contrary to the views of some social theorists, I am convinced that the death penalty can be an effective deterrent against specific crimes." Testimony that contradicts Mr. Nixon, however, is far more impressive than his Presidential hunch. The National Commission on Reform of Federal Criminal Laws in 1971 recommended abolition of capital punishment. The Vatican revoked the death penalty in 1969. South Africa is virtually alone among Western industrial nations in having failed to eliminate the death penalty either by law or in practice.

When the House of Commons last year turned back the "hanging lobby's" effort to restore capital punishment, Roy Jenkins, a former Home Secretary, said: "The penalty is too final to be controlled by the frailty of human judgment." In the United States, the same scruples are illustrated by the fact that, though still permissible in many states, no execution has been carried out since 1967.

Severity of the penalty is less important as a deterrent than fear of arrest and conviction. At present, the probability of apprehension and trial is dangerously low. Effective action against crime depends on efficiency in the law-enforcement and judicial systems rather than on a return to official barbarism. Rebecca West, author of "The Meaning of Treason," has quoted a former Prime Minister in an assessment of capital punishment: "Nobody wants to be a hangman, even by the remote control." Congress would do well to consider that humane judgment before it joins Mr. Nixon in his simplistic and misleading search for law and order.

Mr. HUGHES. Mr. President, for the information of the Senate, I am about to suggest the absence of a quorum and to let it go live.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk called the roll, and the following Senators answered to their names:

[No. 65 Leg.]

Allen	Haskell	Mathias
Bayh	Helms	McClellan
Burdick	Hruska	Metzenbaum
Byrd, Robert C.	Huddleston	Montoya
Dole	Hughes	Talmadge
Griffin	Kennedy	
Hart	Magnuson	

The PRESIDING OFFICER. A quorum is not present.

Mr. ROBERT C. BYRD. Mr. President, I move that the Sergeant at Arms be directed to request the attendance of absent Senators.

The PRESIDING OFFICER (Mr. HELMS). The question is on agreeing to the motion of the Senator from West Virginia.

The motion was agreed to.

The PRESIDING OFFICER. The Sergeant at Arms will execute the order of the Senate.

After some delay, the following Senators entered the Chamber and answered to their names:

Abourezk	Ervin	Nunn
Aiken	Fannin	Packwood
Baker	Fong	Pearson
Bartlett	Gravel	Pell
Beall	Gurney	Percy
Bellmon	Hansen	Proxmire
Bennett	Hartke	Randolph
Bentsen	Hatfield	Ribicoff
Bible	Hathaway	Roth
Biden	Hollings	Schweiker
Brock	Humphrey	Scott, Hugh
Brooke	Inouye	Scott, William L.
Buckley	Jackson	Sparkman
Byrd, Harry F., Jr.	Javits	Stafford
Cannon	Johnston	Stennis
Case	Long	Stevens
Chiles	Mansfield	Stevenson
Church	McClure	Symington
Clark	McGee	Taft
Cook	McGovern	Tower
Cranston	McIntyre	Weicker
Curtis	Metcalf	Williams
Domenici	Mondale	Young
Eagleton	Moss	
Eastland	Muskie	
	Nelson	

Mr. ROBERT C. BYRD. I announce that the Senator from Arkansas (Mr. FULBRIGHT), the Senator from California (Mr. TUNNEY), and the Senator from Rhode Island (Mr. PASTORE) are necessarily absent.

Mr. GRIFFIN. I announce that the Senator from New Hampshire (Mr. COTTON) and the Senator from Colorado (Mr. DOMINICK) are necessarily absent.

The Senator from South Carolina (Mr. THURMOND) is absent to attend the funeral of a relative.

The Senator from Arizona (Mr. GOLDWATER) is absent on official business.

The PRESIDING OFFICER. A quorum is present.

CAPITAL PUNISHMENT

The Senate continued with the consideration of the bill (S. 1401) to establish a rational criteria for the mandatory imposition of the sentence of death, and for other purposes.

Mr. HARTKE. Mr. President, I am unalterably opposed to the bill now before us which establishes the death penalty for the commission of certain crimes.

Life is our most precious possession. It must be cherished, honored, and protected at all costs. God alone gives life; in His infinite wisdom, He determines the length of that life and the means of its end. No man must tread upon the Divine prerogative, be he a murderer lurking behind the shadows of a dark street or a public executioner hiding behind the cloak of law. No man has the right to make the conscious decision to take away the life of another.

As we approach a vote on this most important piece of legislation, I cannot forget God's teaching to love our fellow man—love him for his strengths and his faults, provide understanding and a helping hand in need—for life is too precious to be taken away by other men and death is too final, too irrevocable to be willed by man. Vengeance is within the province of the Lord; it should not be a substitute for justice.

Mr. JAVITS. Mr. President, will the Senator from Iowa yield?

Mr. HUGHES. I yield to the distinguished Senator from New York.

Mr. JAVITS. Mr. President, I was so moved by what the Senator from Indiana (Mr. HARTKE) said that I wish to express my deep thanks to him for that very humane sentiment that he has expressed.

Mr. President, I ask unanimous consent that Brian Conboy may have the privilege of the floor during the debate on this matter.

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

Mr. HUGHES. Mr. President, the question before us today is symbolic and overriding—whether it is morally right and socially defensible for the State, under our system of criminal justice, to destroy a human life for any crime.

The legislation before us would restore the death penalty that was ruled unconstitutional by the Supreme Court in 1972.

How is it that a nation that has not suffered the brutality of a public execution for 8 years is now deliberately considering going back to the hangman's noose, the electric chair, and the gas chamber?

Primarily, public support for the restitution of the death penalty, as reflected in some public opinion polls, is a reflex response to fear.

One of the great tragedies of our time is that law-abiding citizens of this great land are spellbound from day to day by the fear of crime and violence.

The situation calls for remedial action.

But what action?

Is the morbid trip back to the death penalty the right way to go to protect society from violence and to keep faith with our moral purpose as a people? Is ultimate violence the antidote for violence?

For me, the answer must be "No."

I cannot be brought to believe that the way to conquer crime in America is to revert to institutional killings in the name of justice.

It is true that I am one of those who, for deeply religious reasons, believes in the absolute sanctity of human life.

"Thou shalt not kill" is the shortest of the Ten Commandments, uncomplicated by qualification or exception. I recognize that there are other passages of Scripture that are cited to justify the death penalty.

To me, the Sixth Commandment is overriding.

It is as clear and awesomely commanding as the powerful thrust of chain lightning out of a dark summer sky.

But I oppose the restitution of capital punishment for good and sufficient reasons in addition to my basic religious conviction.

I oppose the death penalty because it demeans human society without protecting it. The weight of the evidence is that capital punishment does not deter serious crime. The weight of history is that judicial killing brutalizes the nations who practice it.

I oppose the death penalty because, as the Supreme Court has ruled, it is cruel and unusual punishment, in violation of the 8th and 14th amendments.

It is capricious and unjust in its application. It discriminates against the luckless, the poor, and the racial minorities.

As a former three-term Governor, I oppose the death penalty because it clogs and confuses the administration of justice.

Any qualified penologist will tell you that it is not the severity of the sentences that deters crime, but the swiftness and certainty of the punishment. The irrevocable nature of the death penalty inevitably results in long, costly trials and appeals.

Moreover, in the case of mandatory death sentences, the jury that deliberates guilt or innocence is burdened and slowed down by the realization that to convict is also to sentence to death.

I oppose the death penalty because it cannot undo or rectify any crime that was committed, however brutal, and because there is no road back if the convicted man is later proven innocent.

As Lafayette said:

I shall ask for the abolition of the penalty of death until I have the infallibility of human judgment demonstrated to me.

Finally, I oppose the death penalty because it is grossly destructive of human hopes for a society more amenable to peace and less dependent on violence for the solution of its problems.

I would like to set this great issue in its proper perspective.

The question of the death penalty is not just another matter relating to the administration of criminal justice in this country—not by any means.

It is not merely a legal matter for the lawyers and corrections officials.

It is the most profound of all moral judgments for the Nation.

It is argued that we are not going all of the way in surrendering to the ultimate violence in our justice system. The death penalty is to be restored for only a few selected crimes we are told.

But once we have regressed to the point of legalizing institutional killing again, we have slunk back over the continental divide—into the dark era of barbarism from which we were so recently delivered. History offers innumerable examples of how public executions coarsen and brutalize society.

One hundred men will decide here about the legalizing of public executions—the question of life or death of their fellow human beings.

There is no middle ground, no neutral zone.

The choice is either life or death.

If we say death, then, in my judgment, we have relinquished our responsibility for moral leadership at a time when it was never more desperately needed in our own troubled country and in a violence-prone world.

Consider the state of the world at the present time and our challenge for moral leadership.

The democracies of the Western World are floundering in a period of economic chaos, political drift, and moral dilemma.

Britain, France, Italy, Germany, Belgium, the Netherlands, Denmark, and others face far worse crises than we do in this country. Japan's triumphant economic march has fallen into difficult days.

More Vietnamese have been killed in the year since the cease-fire than our country lost in 8 years of war in Indochina. The peaceful Cambodians are devastated by tragic, continuing war. Chile is undergoing an era of harsh repression and political executions. The tense situation in the Mideast remains despite the miracles of Dr. Kissinger's shuttle diplomacy.

Iowa's Dr. Norman Borlaug, father of the green revolution, predicts that as many as 20 million people may die as the result of crop failures occurring in the coming year. In Spain, there is serious political dissent and we have seen the return of the hideous medieval use of the garrote for public executions. Even in China and the Soviet Union, there are serious rumblings of political dissent and economic problems.

Never was there a more opportune time for the United States, beset with its own problems, but still the leader of the free world, to assert its moral leadership for peaceful diplomacy and humanitarian policies.

Is our response to the call for moral leadership to be a regression to public hangings?

Mr. President, I have said that the death penalty demeans society without protecting it.

Obviously, there are statistics and opinions on both sides of the question of whether or not legalized public killing is a deterrent to serious crime.

I do not want to belabor the point, but I submit that the majority of the professionals in the penal field and most of the professional studies discredit the assumption that the death penalty is an effective deterrent.

President Nixon and others hold a differing view. "Contrary to the views of some social theorists," Mr. Nixon said in a recent radio message to the Nation, "I am convinced that the death penalty can be an effective deterrent against specific crimes."

I would point out that those who believe the death penalty has failed to deter include more than some social theorists. They include wardens, judges, criminal psychiatrists, lawyers, Governors, and other public officials who have had years of close experience with the administration of justice. Prestigious study groups, such as the National Commission on Reform of Federal Criminal Laws, in 1971 have recommended the abolition of the death penalty.

It should be made clear that we are not talking about capital punishment versus no punishment at all. We are not talking about being soft on crime here today.

I know of no responsible member of either political party who takes a permissive attitude on crime.

The question is what to do about it in terms of realistic, practical problem-solving.

The bill before us to reinstate the death penalty is, in my judgment, founded primarily on an appeal to the public fear of crime. It represents a long voyage into the night of the past—an incredible retreat to a barbaric mode of punishment that has long since been professionally discredited, so far as deterring criminal acts or correcting criminal tendencies are concerned.

In general, you do not strengthen a criminal justice system simply by increasing the harshness of penalties and by limiting the discretion of judges in imposing sentences.

This all goes into the face of professional judgment and world experience. Let me repeat that any qualified penologist will tell you that it is not the severity of the sentence that deters crime but the swiftness and certainty of the punishment.

For the good of all, it is the protection of society we must rationally seek in our criminal justice system, not public vengeance against those who commit crimes.

The call to restore the death penalty is, I believe, a simplistic and illusory way to sidestep the real problems of deterrence and corrections. It may satisfy our anger to take a life for a life, but what does it solve?

In a limited context, focusing our righteous outrage on a heinous crime perpetrated against an innocent victim, a case can be made for capital punishment that seems superficially logical. An eye for an eye, a life for a life.

But objectively, and in a larger context, what good has been accomplished for the victim, the perpetrator, and society itself?

George Bernard Shaw said:

Murder and capital punishment are not opposites that cancel one another, but similars that breed their kind.

In 1960, a New York Herald Tribune editorial stated:

Whenever the state takes life, it cheapens life. Capital punishment panders to man's basic instincts, cloaking retribution in the mantle of the law, coloring vengeance with respectability, setting a public example for private violence.

Arthur Koestler commented, in his "Reflections on Hanging":

Yet though easy to dismiss in reasoned argument on both moral and logical grounds, the desire for vengeance has deep, unconscious roots and is roused when we feel strong indignation or revulsion—whether the reasoning mind approves or not.

Deep inside every civilized being there lurks a tiny Stone Age man, dangling a club to rob and rape, and screaming an eye for an eye. But we would rather not have that little fur-clad figure dictate the law of the land.

Mr. President, the notions of retribution that have conditioned our system of crime and punishment since the Hammurabi Code are simply no longer justifiable in light of our present understanding of human behavior.

I deeply believe that violence solves nothing, but only breeds more violence. I believe our reverence for human life—even that of the lowliest and most depraved—must transcend our atavistic passions for revenge if the human family is not going to go back to the caves.

Mr. President, as Governor of Iowa for three terms, I can speak from personal experience that life imprisonment is a real and effective alternative to capital punishment.

Capital punishment was abolished in Iowa at my request by the Iowa Legislature in 1965. An analysis of crime index offense and murder rates in States with and without capital punishment in 1970 shows Iowa at 1.9—the fourth lowest rate in the Nation.

Prior to the Supreme Court's decision in Furman against Georgia, some 14 States had abolished capital punishment. The murder rate in 10 of those States in 1970 was far below the national rate of 7.8.

Mr. President, I ask unanimous consent that this analysis of all the States be printed at this point in the RECORD.

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

CRIME INDEX OFFENSE AND MURDER RATES IN STATES WITH AND WITHOUT CAPITAL PUNISHMENT, 1970 [1]

Jurisdiction	Maximum penalty for murder [2]	Total crime index offenses per 100,000 [3]	Murder and nonnegligent manslaughter per 100,000 [3]
Alabama	Electrocution	1,865.4	11.7
Alaska	Life imprisonment	2,690.5	12.2
Arizona	Lethal gas	3,445.2	9.5
Arkansas	Electrocution	1,603.8	10.1
California	Lethal gas	4,307.0	6.9
Colorado	do	3,662.2	6.2
Connecticut	Electrocution	2,574.9	3.5
Delaware	Hanging	2,716.1	6.9
Florida	Electrocution	3,599.7	12.7
Georgia	do	2,206.7	15.3
Hawaii	Life imprisonment	3,396.2	3.6
Idaho	Hanging	1,785.1	4.6
Illinois	Electrocution	2,347.1	9.6
Indiana	do	2,270.5	4.8
Iowa	Life imprisonment	1,435.3	1.9
Kansas	Hanging	2,143.8	4.8
Kentucky	Electrocution	1,924.5	11.1
Louisiana	do	2,404.7	11.7
Maine	Life imprisonment	1,141.6	1.5
Maryland	Lethal gas	3,347.0	9.2
Massachusetts	Electrocution	3,004.0	3.5
Michigan	Life imprisonment	3,659.0	8.9
Minnesota	do	2,103.4	2.0
Mississippi	Lethal gas	863.4	11.5
Missouri	do	2,765.0	10.7
Montana	Hanging	1,636.8	3.2
Nebraska	Electrocution	1,517.2	3.0
Nevada	Lethal gas	3,996.2	8.8
New Hampshire	Hanging	1,192.7	2.0
New Jersey	Electrocution	2,744.2	5.7
New Mexico	Life imprisonment [4]	2,865.5	9.4
New York	do [4]	3,922.1	7.9
North Carolina	Lethal gas	1,861.4	11.1
North Dakota	Life imprisonment	846.1	.5
Ohio	Electrocution	2,376.6	6.6
Oklahoma	do	1,950.9	5.9
Oregon	Life imprisonment	2,987.3	4.6
Pennsylvania	Electrocution	1,541.3	5.3
Rhode Island	Life imprisonment [4]	2,925.8	3.2
South Carolina	Electrocution	2,066.8	14.6
South Dakota	do	1,152.1	3.8
Tennessee	do	1,888.3	8.8
Texas	do	2,705.8	11.6
Utah	Shooting or hanging	2,372.8	3.4
Vermont	Life imprisonment [4]	1,269.1	1.3
Virginia	Electrocution	2,149.2	8.4
Washington	Hanging	3,156.6	3.5
West Virginia	Life imprisonment	958.7	6.2
Wisconsin	do	1,514.4	2.0
Wyoming	Lethal gas	1,745.1	5.7
U.S. Government	Death [5]		
Total U.S. rate		2,750.5	7.8

[1] "Crime index" offenses are those considered by the FBI to afford the best indication, when taken as a whole, of the degree of significant lawlessness in the community. They are divided into crimes of violence and crimes against property. The crimes of violence are murder and nonnegligent manslaughter, forcible rape, robbery, and aggravated assault. Crimes against property are burglary, larceny $50 and over, and auto theft.

[2] Except for special cases such as those listed below, all jurisdictions have abolished the mandatory death penalty for murder, leaving the decision between death or life imprisonment to the discretion of the jury or the court: Alabama—murder by a life term prisoner; Massachusetts—murder during the commission of rape; Ohio—killing a Federal or State chief of state; and Rhode Island—murder by a life term prisoner.

[3] Source: Federal Bureau of Investigation, "Uniform Crime Reports for the United States, 1970."

[4] The death penalty is retained for murder by the following States only for the special cases indicated: New Mexico—killing a police officer or prison guard acting in the line of duty, and second conviction for first degree murder (lethal gas); New York—killing a peace officer or prison employee acting in the line of duty, and murder committed by a prisoner under sentence of life imprisonment (electrocution); North Dakota—murder in the 1st degree committed by a prisoner already serving a sentence for murder in the 1st degree, and treason (hanging); Rhode Island—murder committed by a prisoner under sentence of life imprisonment (hanging); and Vermont—second conviction of murder, provided the 2 cases are not related, and 1st-degree murder of a police officer or prison guard who is on duty (electrocution).

[5] See the State in which the execution occurs; the U.S. Government does not maintain its own facilities for execution.

Mr. HUGHES. Mr. President, the dean of the New York Institute of Criminology, Donald E. Macnamara, has observed in this regard:

The record in abolition jurisdictions, some without the death penalty for more than one hundred years, both in the United States and abroad, in which imprisonment for indeterminate or stated terms has been substituted for the penalty of death, is a clear demonstration that alternative penalties are of equal or greater protective value to society than is capital punishment.

Mr. President, the report of the Judiciary Committee on the bill we are now considering states that:

It was necessary for the Committee to consider, in drafting a post-Furman statute, whether or not to retain the death penalty as one of society's available remedies against those who commit the most serious breaches of its laws. The Committee was faced with the basic issue of whether or not such a punishment is any longer appropriate to our society.

My reading of S. 1401 indicates that support for the proposed statute is based not so much on satisfying the constitutional requirements of Furman—which, incidentally, I do not believe it does—but, rather, on its conclusion that "capital punishment is indeed a valid and necessary social remedy against certain dangerous types of criminal offenders."

The report cites need for deterrence, need to incapacitate, need for retribution, and support of recent public opinion polls for its conclusions that "Society must do what is necessary to deter those who would break its laws and punish those who do so in an appropriate manner."

I have dealt with all of the points here cited except for the support of recent public opinion polls.

To convey my reaction to this, let me quote the statement of Adrien Duport, during the first parliamentary debate on the abolition of the death penalty in the French Constituent Assembly in 1791.

Duport cautioned:

It is not always by a servile obedience to the demand of public opinion that legislators pass the most useful laws for their countries.

Mr. President, I have been an elective official for a good number of years and fully recognize the need to be responsive to the will of the electorate.

But, again, let us put this issue in proper perspective.

Are we to make this historic life and death decision—in opposition to our Supreme Court and the trend of the civilized nations of the world—on the basis of the most recent public opinion polls?

If we are to be this responsive to the polls, then I would suggest that we Members of Congress should pack our bags and go home, for our rating in the most recent public opinion polls is lower than the proverbial snake's belly.

This, Mr. President, is a moral decision that will affect the lives of people in our country and throughout the world for generations to come.

Public opinion polls move up and move down in response to fears and crises, but

when a human life is blotted out, this is for eternity.

The executioner waits our decision.

In his concurring opinion in Furman, Mr. Justice Brennan based his judgment primarily on the thesis that the death penalty "does not comport with human dignity." Brennan pointed to the decision of the California Supreme Court in People against Anderson, that—

The process of carrying out a verdict of death is often so degrading and brutalizing to the human spirit as to constitute psychological torture.

Justice Brennan continues:

Death is today an unusually severe punishment, unusual in its pain, in its finality, and in its enormity. No other existing punishment is comparable to death in terms of physical and mental suffering. There is no method available that guarantees an immediate and painless death.

Mr. President, I am deeply grateful to my distinguished colleague and good friend, the senior Senator from Michigan, for including in his additional views to the report of the Judiciary Committee on S. 1401, a detailed description of exactly what manner of punishment we are being asked to impose on our fellow man.

No Member of this body should be spared the agonizing knowledge of the suffering he has been asked to sanction.

Listen to the words of men who have been face to face with the manner of death imposed by the State:

In his novel, "The Idiot," Fyodor Dostoevski, who actually faced a firing squad only to be reprieved at the last instant, described it thus:

The chief and the worst pain may not be in the bodily suffering but in one's knowing for certain that in an hour, and then in ten minutes, and then in half a minute, and now, at the very moment, the soul will leave the body and that one will cease to be a man and that that's bound to happen; the worst part of it is that it's certain. When you lay your head down under the knife and hear the knife slide over your head, that quarter of a second is the most terrible of all.

Albert Camus has also summarized the brutalizing psychological cruelty of capital punishment:

Execution is not simply death. It is just as different, in essence, from the privation of life as a concentration camp is from prison . . . it adds to death a rule, a public premeditation known to the future victim, an organization, in short, which is in itself a source of moral sufferings more terrible than death . . .

For there to be equivalence, the death penalty would have to punish a criminal who had warned his victim of the date on which he would inflict a horrible death on him and who, from that moment onward, had confined him at his mercy for months. Such a monster is not encountered in private life.

The classic form of execution, still used by several States prior to the Furman decision, was hanging. Warden Clinton Duffy of San Quentin, a frequent witness, describes the process of hanging:

The day before an execution the prisoner goes through a harrowing experience of being weighed, measured for length of drop to assure breaking of the neck, the size of the neck, body measurements, etc. When the trap springs he dangles at the end of the rope. There are times when the neck has not been broken and the prisoner strangles to death. His eyes pop almost out of his head, his tongue swells and protrudes from his mouth, his neck may be broken, and the rope many times takes large portions of skin and flesh from the side of the face that the noose is on. He urinates, he defecates, and droppings fall to the floor while witnesses look on, and at almost all executions one or more faint or have to be helped out of the witness room. The prisoner remains dangling from the end of the rope for from 8 to 14 minutes before the doctor, who has climbed up a small ladder and listens to his heart beat with a stethoscope, pronounces him dead. A prison guard stands at the feet of the hanged person and holds the body steady, because during the first few minutes there is usually considerable struggling in an effort to breathe.

The first major substitute for hanging was electrocution, the most widely used form of execution, before the 1972 Supreme Court decision. The prisoner's hair is cropped short, and a pants leg is slit. He or she is led—or dragged—into the death chamber, strapped securely in the chair, and electrodes are fastened to the leg and head. Then, as Warden Lawes of Sing Sing describes it:

As the switch is thrown into its sockets there is a sputtering drone, and the body leaps as if to break the strong leather straps that hold it. Sometimes a thin gray wisp of smoke pushes itself out from under the helmet that holds the head electrode, followed by the faint odor of burning flesh. The hands turn red, then white, and the cords of the neck stand out like steel bands. After what seems an age, but is, in fact, only two minutes, during which time the initial voltage of 2,000 to 2,200 and amperage of 7 to 12 are lowered and reapplied at various intervals, the switch is pulled and the body sags and relaxes, somewhat as a very tired man would do.

A third major method of execution used in the United States was the application of lethal gas. Warden Duffy, who has seen many gassings, reports that the prisoner is strapped in a chair, the chamber is sealed, and the cyanide gas eggs are dropped into sulfuric acid. When the gas reaches the prisoner, "At first there is extreme evidence of horror, pain, strangling. The eyes pop, they turn purple, they drool. It is a horrible sight. Witnesses faint. It finally is as though he has gone to sleep."

The last execution in the United States, the gassing of Luis Jose Monge in Colorado in June of 1967, produced this eyewitness account:

According to the official execution log, unconsciousness came more than five minutes after the cyanide splashed down into the sulphuric acid. And to those of us who watched, this five minute interlude seemed interminable. Even after unconsciousness is declared officially, the prisoner's body continues to fight for life. He coughs and groans. The lips make little pouting motions resembling the motions made by goldfish in his bowl. The head strains back and then slowly sinks down to the chest. And in Monge's case, the arms, although tightly bound to the chair, strained at the straps, and the hands clawed torturously as if the prisoner were struggling for air.

Mr. President, we are being asked to reinstate capital punishment because "society must do what it must to deter others, to incapacitate the offenders and to provide retribution." When this same argument was put to Caesar in ancient Rome, he cried out: "But, by the immortal gods! Why did you not add the recommendation that they first be scourged?"

Clarence Darrow put the question even more graphically:

But why not do a good job of it? If you want to get rid of killings by hanging people or electrocuting them because these are so terrible, why not make a punishment that is terrible? . . . Why not boil them in oil, as they used to do? Why not burn them at the stake? Why not sew them in a bag with serpents and throw them out to sea? . . . Why not break every bone in their body on the rack, as has often been done for such serious offenses as heresy, witchcraft and adultery?

There is no such thing as being half dead. Death inflicted by the State is not painless or instantaneous.

Our vote today is a signal to the world of the true regard we as a nation have for the value and dignity of human life everywhere.

In the larger context, what spiritual damage have we done to ourselves, our civilized society, and to the hope for peace and civil order within and among nations, if we backtrack to the ancient savagery of judicial murder in our system of criminal justice?

We live in a world that has made enormous technological and scientific advancements, but that is still being drawn, as in medieval times, to the vortex of the blood bath of violence.

We look around the world and we see an unending kaleidoscope of violence—assassinations, insurgencies, insurrections, coups, juntas, dictators, suppression, jailings and executions of political dissidents, homeless refugees by the millions, innocent civilian casualties, people condemned by violence to starvation, people in our own country suffering the violence of neglect and discrimination.

Is it not possible for us, as the inheritors from our Founding Fathers of a nation of high moral purpose, to rise above the failures and savagery of the past by asserting leadership along humanitarian lines?

I deeply believe that it is possible.

But I also believe that the restoration of public executions in our country runs counter to these potential initiatives of moral leadership.

It would be an admission of national failure, a regression to the barbarism of the past, a sign to the world that we, too, believe that the only solution to violence by individual citizens is violence by the state.

In the name of God, cannot we, in a time in our world such as today, in a position of moral leadership in that world, realize that inflicting death is a symbol of taking revenge, and that an execution, by whatever means used, is a heinous death?

Every witness has said that it has not been a deterrent to crime. Cannot we, at this point in our national life, look forward instead of looking back? Cannot we, after 8 years of no capital punishment in this country, look ahead and not look back, realize we can separate the guilty from the innocent, and that we can prevent these crimes, by other means than by simply destroying and killing in the name of the Government or the name of a State?

Surely, at a time when we face so

many breaches in our political structure, when we face so many problems as this country faces today, can we not hold high the lighted torch, proclaiming that we no longer believe in the taking of life? We have gone against every law and every precept that is Biblical. We are commanded to seek for peace on Earth, to go the second mile, to turn the other cheek, but our answer has been to build bigger engines of death and destruction.

What did the Master tell us when the woman taken in adultery was brought before Him, and it was a capital crime to be punished accordingly? He looked up and said, "Let him who is without sin cast the first stone."

Today is the time. There can be no alternative. It is life or death. It is not just a matter of a few simple crimes. It is not just a matter of applying it to remove someone from society. Certainly, with the technology we have and the ability we have, we can remove such persons from society without killing them.

For killing does brutalize us. After 10 long years of war, after savagery reaching all over the world and in our own political processes, after watching our own leaders struck down in violence, and noting the effects on television, do we now have to tell this country again that we are going to resort, in the name of the State, to killing, because there is no other way to proceed, because in our day and age and time there is no other way?

In the name of God, I pray there is another way, and I ask my colleagues to join me in rejecting death, in affirming life; in rejecting vengeance, in affirming redemption.

Who can deny that the death penalty is cruel and unusual punishment?

Has anyone ever described any execution, to say that by premeditation it is not cruel and unusual punishment? Let us stand behind the Constitution, the Supreme Court and the Sixth Commandment.

Many years ago, the poet, John Donne, wrote:

> No man is an island entire of itself, every man is a piece of the continent, a part of the main . . .
>
> Any man's death diminishes me, because I am involved in mankind, and therefore never send to know for whom the bell tolls, it tolls for thee.

We have seen humankind diminished enough by the ways of violence. Let our decision be not to return to the primitive darkness, but to move forward into the light of day.

For whom the bell tolls? It tolls for us.

Mr. President, the issue cannot be avoided today, tomorrow, or whenever this vote comes. It is a vote for life or a vote for death. A vote for life is a torch for a more humane and understanding way for humanity, a symbol to the world that people can see; but, in my opinion, a vote for death is a step backward into the primitive world of the past.

Mr. McCLELLAN. Mr. President, I am moved to make one observation. It is life or death. And the question is, shall we sacrifice the lives of future victims in order to spare the life of a murderer? Yes, there is life and death involved. He who demonstrates that he has no respect for life and is willing to set himself up as a judge and a god, to wantonly take the life of his fellow man, makes that decision, and makes it with sanity, when he carries out the act. If he does it once, he will do it again.

It is easy to describe the agony of death, either by hanging or in a gas chamber. It is also easy to describe the agony of a mother, 8½ months pregnant with child, begging strangers whom she has never seen, whom she does not know, who stand over her with a dagger to take her life and that of her unborn child, begging for her life.

Yes, you can describe horrors, but shall the murderer be permitted to live and have another opportunity to commit such a horrible crime, or shall we protect society and the next innocent victim against his dastardly deed?

Innocent people are entitled to live. He who commits the act condemns himself, and the law says that if he does it, that is his penalty.

Even the Bible, if I recall correctly, condemns to the eternal punishment. It is punishment that is sanctioned. We may want to forgive but we also want to protect the innocent. They must be protected, otherwise we do not have a civilization. A society that cannot protect its people from violent death, that refuses to take the precautions which are necessary, even if it does take the life of a murderer in order to protect the innocent, invites a repetition of the dastardly act by him who is so callous as to commit it in the first instance.

Mr. BIDEN. Mr. President, will the Senator from Arkansas yield me 2 minutes?

Mr. McCLELLAN. I do not have the floor. I yield the floor to whoever has it.

Mr. HASKELL. Mr. President, I am glad to yield to the Senator from Delaware.

Mr. BIDEN. Mr. President, I have just a few comments to make. I had no intention to speak today. I was delighted there was a live quorum otherwise I would not have had the opportunity to listen to the distinguished Senator from Iowa (Mr. HUGHES).

Since I am most likely to be voting with him, depending on amendments to the legislation, and after hearing his eloquent speech, I feel compelled to stand up and say why I shall be voting with him, lest I be given credit that he deserves.

I am not the man the Senator from Iowa is. The Senate will be a worse place as a consequence of his departure. There are few men whom I have met in my life who have the dignity and the conviction that he has.

I would like very much to be able to say that I am as much a Christian and as concerned as my fellow Senator from Iowa, but the reason I am going to vote with him is not that I am one who does not have that "little man" hiding in me, or one who does not feel that retribution under certain circumstances is warranted, but the horror the Senator describes could happen to an innocent person I also feel.

I do not vote today against the death penalty because I feel it is an immoral act for society to have such a penalty, as the Senator from Iowa so fervently believes, but because I am afraid it will be imposed on the wrong person, as has happened in the past.

It seems to me that if only one innocent person is spared the agony described, it is a little price for society to pay. Assuming that we in fact keep those persons incarcerated, there is always the opportunity to open up the case again and to have the innocent victim, in this case a person who is accused and convicted of a crime, eventually cleared.

From the bottom of my heart, I admire the Senator from Iowa as much as any man I ever met. It takes quite a man to be able to stand up and not only say what he said here today, but also to believe it as strongly as he does. In my short stay in the Senate so far, I shall be able to recount to my children that I was proud to have served in the Senate with the distinguished Senator from Iowa (Mr. HUGHES). I only wish I had the compassion, the conviction and the concern that he does.

But, quite bluntly, I just wanted to state the reasons why I am going to vote with the Senator. Perhaps I am one of those "little men," but I am afraid of what might happen if someone were innocent and they would have the horror of dangling at the end of a rope, or anticipating it. Those are the reasons, not wishing to bare my soul in public. I do not wish to serve any other purpose. I am not going to convince anyone to vote one way or the other. I only say this so that I will not be given any credit for being a better person than I really am, when I say to the Senator from Iowa that I compliment him on the stand he has taken here today. The Senate will be less of a place as a consequence of his leaving.

Thank you, Mr. President.

Mr. HUGHES. Mr. President, I want to thank the Senator from Delaware for speaking on my behalf. I would ask primarily that the issue not be confused. No one is defending murderers here today. All of us believe they must be separated from society by one means or another. The question is, What do we do when we make a mistake?

Our hearts go out in agony to all the bereaved, the injured, and the lost.

Regardless of what happens, "Vengeance is mine, sayeth the Lord."

Mr. HASKELL. Mr. President, I have an amendment at the desk that I should like to call up, but before I do so I should like to ask unanimous consent that the vote on the amendment take place when the bill is called up as the pending business tomorrow morning, if that is satisfactory to the floor manager of the bill.

Mr. McCLELLAN. Mr. President, while reserving the right to object, I should like to hear the Senators' discussion this afternoon and then have a brief opportunity to reply tomorrow before the bill is voted on. The amendment was not printed and I did not know about it until a few minutes ago. I would like not to set the time to vote the minute we convene tomorrow, but after we have convened certainly it will not take long. I

have no objection to the amendment being voted on tomorrow, but I do not want to set a definite time.

Mr. HASKELL. Mr. President, let me modify my unanimous-consent request to ask unanimous consent that the vote take place tomorrow after the distinguished Senator from Arkansas (Mr. McCLELLAN) has had an opportunity to make such remarks as he desires.

Mr. HART. Mr. President, I should like to make inquiry of the Senator from Colorado and the Senator from Arkansas, is it fair to say that, as of now, we have not agreed on a time certain for a vote on the amendment?

The PRESIDING OFFICER (Mr. HELMS). The Senator is correct.

Mr. McCLELLAN. That would be my understanding. Other Senators might want to speak to it. I am not trying to preclude anyone from speaking, of course, but the Senator from Colorado just acquainted us with his amendment a few moments ago, and I did not want to vote at a time certain tomorrow, to be determined by exhausting any comments I wished to make.

The PRESIDING OFFICER. Does the Senator from Colorado withdraw his unanimous-consent request or modify it?

Mr. HASKELL. I believe I have done so, but let me remodify it, after reviewing the comments the Senator from Michigan just made.

Mr. McCLELLAN. I should like to make the suggestion that the Senator ask permission to offer his amendment and that it not be voted on until tomorrow, without setting a time or making any reference to time, but that it be subject to being called up for a vote and discussion at any time.

Mr. HASKELL. It would be helpful, I say to the Senator from Arkansas, if we could discuss it now, and the Senator can discuss it, or any other Senator, but I want to make certain that we could take it up as the first amendment to be presented tomorrow.

Mr. McCLELLAN. But be voted on as the first amendment, without setting any time. Let it be the amendment that would be voted on first tomorrow.

The PRESIDING OFFICER. The Chair would advise that when the Senate returns tomorrow to the unfinished business under the request the amendment of the Senator from Colorado would automatically be the pending question unless an amendment is offered to it in the interim and not acted on.

Mr. McCLELLAN. That will be the pending question?

The PRESIDING OFFICER. That is correct.

Mr. McCLELLAN. But the vote will not be fixed at this time?

The PRESIDING OFFICER. That is correct.

Mr. HASKELL. Mr. President, I might ask for the yeas and nays on the amendment now.

The PRESIDING OFFICER. The amendment has not yet been presented.

Mr. HASKELL. Mr. President, I ask that the amendment, which is now at the desk, be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

On page 15, line 3, delete "shall" and insert "may".

On page 16, line 2, delete "shall" and insert "may".

Mr. HASKELL. Mr. President, the reason I propose this amendment is that I feel vesting in a court the right to impose the death penalty is a necessary——

The PRESIDING OFFICER. The Chair dislikes to interrupt the Senator from Colorado, but we have a unanimous-consent request pending and we should at least——

Mr. HRUSKA. Mr. President, reserving the right to object, what is the request?

The PRESIDING OFFICER. The unanimous-consent request is that the vote on the amendment of the Senator from Colorado (Mr. HASKELL) be put off until tomorrow.

Mr. HRUSKA. Is the amendment the pending business?

The PRESIDING OFFICER. It is pending.

Mr. HRUSKA. Mr. President, does that mean that if we conclude the debate on this amendment, no other amendments can be offered for the vote of the Senate until after the disposition of that amendment?

The PRESIDING OFFICER. That is correct, except for an amendment to the pending amendment. After the Senator from Arkansas speaks tomorrow, this amendment would be voted on.

Mr. HRUSKA. Mr. President, if we are going to have a pending amendment, and if the debate is completed on it and there is nothing further to say before we have any further business, I would say it is a delaying tactic that we should not suffer.

Mr. HASKELL. Mr. President, the reason I made the unanimous-consent request to vote on it tomorrow is not to delay, not to prevent anything from coming in between, but merely so that I can express my opinion and position now. The distinguished Senator from Arkansas can be heard. The amendment can be printed in the RECORD. It can be read, hopefully by Members of the Senate, who will then have a better idea of what they are voting on. So far as I am concerned, intervening matters this afternoon can certainly take place. I would not intend to stop that at all.

Mr. HRUSKA. Except that it would require unanimous consent. The Senator, worthy as he is and distinguished as he is, has 99 colleagues. Some other Senators might raise objection, and we would be stymied. We have some amendments on which we are ready to proceed.

Mr. HASKELL. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. HASKELL. Would it not be possible for me to state my position on the amendment, then for anyone else who wished to state his position to do so, and then lay it aside and take up any other amendments the distinguished Senator from Nebraska might wish, and then tomorrow, when we reconvene, have my amendment the pending business?

The PRESIDING OFFICER. Yes; except that it would require unanimous consent to take up any other amendment except an amendment to this amendment.

Mr. HRUSKA. Mr. President, I am not going to object. I say that it is a very unusual procedure and puts the Senate in a false position. Time is somewhat of the essence, unless we are not going to go on vacation next week. Perhaps we can forgo our recess and continue the discussion. I shall not object, but I shall note that it is a rather unusual way of doing business.

The PRESIDING OFFICER. The Chair suggests that the Senator from Colorado consider requesting unanimous consent that action on his amendment be deferred until tomorrow, and that other amendments could be called up for action today.

Mr. HASKELL. Certainly. In other words, Mr. President, all I want is to have my amendment be discussed, be voted on tomorrow. So far as today is concerned, any other amendments can be taken up and voted on in the interim. Is that the Chair's suggestion?

The PRESIDING OFFICER. Yes; that is the Chair's suggestion.

Mr. McCLELLAN. Mr. President, reserving the right to object, my understanding is that this amendment becomes and is now the pending business.

The PRESIDING OFFICER. That is correct.

Mr. McCLELLAN. After discussion of it, if any other Senator wishes to offer an amendment, by the unanimous-consent request now proposed, this amendment would automatically be set aside temporarily so that the other amendment could be considered, and we would not have to make another unanimous-consent request.

The PRESIDING OFFICER. That is correct.

Mr. McCLELLAN. That is included in this request.

The PRESIDING OFFICER. That is correct.

Mr. McCLELLAN. After the discussion of this amendment, any other Senator can offer an amendment and have it acted on in the interim.

The PRESIDING OFFICER. That is correct.

Is there objection to the unanimous-consent request?

Mr. HART. Mr. President, reserving the right to object, to make it clear, the Senator from Massachusetts and I have two amendments. I have had an opportunity to discuss those two amendments very briefly with the Senator from Arkansas. I have not been able to reach Senator KENNEDY. Hence, I am not in a position to make a formal request. But I inquire particularly of the Senator from Nebraska. So far as those two amendments are concerned, I would anticipate that we could act on them tomorrow. It would be my preference that we not act on either of them tonight.

I would not want my silence to be construed as an offering of our amendments tonight. That was one of the reasons I rose.

The PRESIDING OFFICER (Mr. HELMS). Is there objection? The Chair hears none, and it is so ordered.

The Senator from Colorado is recognized.

Mr. HASKELL. The bill before us proceeds to affirm the decision of Furman against the United States of America. I personally feel that under certain circumstances, and for deterrent purposes, the courts should have the capacity to impose the death penalty. I think, however, that to provide a legislative mandate which says that a court must impose the death penalty leads to some very bad results. For this reason, I have substituted "may" for "shall" and have made the imposition of the penalty a prerogative of the court. The amendment provides that the court "may" impose rather than that the court "shall" impose.

S. 1401, page 14, subsection (f), provides some very excellent criteria to determine when the death penalty cannot under any circumstances be imposed. On pages 15 and 16, however, circumstances are set forth under which the death penalty must be imposed.

I am going to give what is, I realize, a "way out" illustration, but still an illustration as to why we cannot deal with this subject mechanically. I refer to line 14 on page 16. That line provides the court with directed authority to impose the death penalty for "Destruction of Government Property by Explosives."

The bill reads that if an individual destroys Government property by explosives and death results, the death penalty must be imposed by the court.

To take a perfectly absurd situation, suppose someone destroyed a picnic table in a public park, and death resulted. Under the language of this statute, the court must impose the death sentence if there had been a prior conviction. I am sure there are other examples I could give, but this is why I think the word "shall," should be changed to "may" in order to give the court discretion. Such discretion is extremely necessary to the viability of the act.

I should like to ask the distinguished Senator from Arkansas, the manager of the bill, to consider during the evening whether he would not be able to accept my amendment tomorrow.

Mr. McCLELLAN. I respond to the distinguished Senator from Colorado by saying that I would not be able to accept it at this time. My recollection is, and I am so persuaded, that that is one of the problems that was before the Supreme Court in Furman. Under the amendment, the judge would be given unguided discretion to impose the death penalty or not on the same set of facts. The purpose of the bill is to establish criteria, with each case to be measured by the criteria.

I wonder—and I say this sincerely to the Senator—if it would not destroy the whole potency of the bill. I do not think he wants to do that. Maybe he opposes the legislation.

Mr. HASKELL. No, I do not.

Mr. McCLELLAN. The point I make is that I want to use some care in agreeing to amendments or discussing amendments. That is why I am perfectly willing to let the amendment go over until tomorrow for a vote.

Mr. HASKELL. I would point out that the Furman decision is really a difficult one to understand what the Court did decide, because there are so many different opinions.

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

Mr. HASKELL. I yield.

Mr. NUNN. I wish to ask the Senator about the example he gave about explosives, and someone being killed by an explosive set off on a picnic table.

First of all, there would have to be a conviction of murder; and if there was such a determination, there would have to be a separate determination of either aggravating circumstances or mitigating circumstances.

Am I correct in that?

Mr. McCLELLAN. The Senator is correct. Then, we go to the mitigating circumstances and aggravating circumstances to determine whether a death penalty should be imposed.

Mr. NUNN. Under the example the Senator from Colorado gave, it would be difficult for me to conceive there being a conviction for murder in the first place by the very definition of murder. If there had been no intent to kill anyone as a result of the explosive under the picnic table, then the conviction for murder can be set aside because there was no malice of forethought.

I ask the Senator if he is presuming that the murder definition would still stand and after the conviction of murder whether there were mitigating circumstances.

Mr. HASKELL. As I read the bill, the mere death resulting from destruction of Government property was sufficient so that the court would have to impose the death penalty. If I have read the bill incorrectly, I would be happy to be corrected.

Mr. NUNN. Perhaps one of the committee members could clarify that, but as I read the bill the circumstances the Senator referred to will be appropriate but I think there would first of all have to be an adjudication of guilt for murder before we would get to the question of how the circumstances took place and if there is no intent to kill they would never get to the point of determining that question. I would think that voluntary manslaughter would be an offense for that example.

Mr. HASKELL. I think the Senator from Georgia has pointed something out that is very worthwhile. I will be glad to look at the bill this evening with that in mind to see whether his interpretation, at least in my opinion, is correct. But in any event, it seems the human element of discretion must be in the bill. But the Senator brought up a very good point and I will look at it tonight.

Mr. President, I yield the floor. I have nothing further at this time.

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

Mr. HASKELL. I certainly will.

Mr. HRUSKA. It is my understanding that on page 14 of the bill, in line 3, the Senator proposes to change the word "shall" to "may."

Mr. HASKELL. No. It is on page 15, line 3, and on page 16, line 2.

Mr. HRUSKA. Yes. May I read from the report of the committee *on page 6*, the language of Mr. Justice White who objected to the present laws and the situation as it now exits. The report reads as follows:

> Mr. Justice White objected specifically to—
> The recurring practice of delegating the sentencing authority to the jury and the fact that a jury in its own discretion and without violating its trust or any statutory policy may refuse to impose the death penalty no matter what the circumstances of the crime.

That is the basis on which Justice White felt the present penalty to be unconstitutional.

Going to the bottom of the page in the ninth line from the bottom we read what the Chief Justice said on that proposition:

> The decisive grievance of the opinions—not translated into Eighth Amendment terms—is that the present system of discretionary sentencing in capital cases has failed to produce even-handed justice; the problem is not that too few have been sentenced to die, but that the selection process has followed no rational pattern.

My concern with the Senator's proposed amendment is that we get right into that area of no rational pattern and that it would be fatally unconstitutional for that reason. There would be no even-handed justice. One jury under very heinous circumstances would say, "No, we will not punish him, in our discretion." For a like-heinous offense that jury or another jury might say, "Yes, we shall." There we fall into areas of objection, in the opinion of the Supreme Court.

Mr. HASKELL. First, my amendment does not affect the jury finding in any way. The distinguished Senator read Mr. Justice White's opinion, which refers to the jury finding. Second, with my amendment there are standards in the bill which will not permit the death penalty; there are standards in the bill which will permit the penalty. The distinguished Senator was a chief sponsor of S. 1, the Revised Criminal Code, which was introduced after the Furman decision. S. 1 has a death penalty, which just sets up standards and these standards are even less structured than the standards in this bill. The standards in this bill are far more structured than those set forth in S. 1.

My amendment keeps the standards. It merely provides that in imposing the death penalty, assuming a standard has been reached, the judge has discretion whether to do so or not. He cannot impose the death penalty unless a standard is met.

Furthermore, on page 14 of the distinguished Senator's bill there are circumstances under which he would have absolutely no discretion to impose the death penalty whatever.

So I submit to the Senator that the standards are there and meet the con-

stitutional thrust of the Supreme Court decision.

Mr. HRUSKA. Except the Supreme Court did not think so.

Mr. HASKELL. Then I would have to say the Supreme Court would not think S. 1 would be constitutional.

I say to the distinguished Senator from Nebraska it is awfully hard to know what the Supreme Court said. But my reading was that the Chief Justice said if some standards are set up to be followed, then the constitutional test is met. But frankly I think we will have to have another decision by the Supreme Court to determine the final outcome of the controversy.

Mr. HRUSKA. First, it is with the sentencing that Justice White found fault; it is not the jury verdict; it is the sentencing. On page 16 we are dealing with sentences.

Mr. HASKELL. After the jury has made a definitive finding.

Mr. HRUSKA. In either case. In the opinion as well as here it is the imposition of the sentence which is discretionary and if it is discretionary it is fatally defective under the Constitution.

Mr. HASKELL. This is a different reading than the Supreme Court decision.

Mr. HRUSKA. Well, I thought I would call the Senator's attention to that. I shall be glad to study it overnight. I hope the Senator will do likewise.

Mr. HASKELL. I certainly will.

Mr. NUNN. Mr. President, will the Senator yield for an observation?

Mr. HASKELL. I yield.

Mr. NUNN. Pursuant to the previous colloquy relating to the hypothetical example, as I read page 15, section (h), of the bill, it states that—

> If the defendant is found guilty of or pleads guilty to murder or any other offense for which the death penalty is available because death resulted and if no mitigating factor set forth in subsection (f) is present . . .

And then it goes on to say that if any of these special circumstances are found, there shall be a death penalty.

That is the provision, I believe, that relates to prisoners in custody or transportation of explosives in interstate commerce or destruction of Government property by explosives.

I believe the Senator would have to look at the definition of "murder" because that adjudication would have had to have taken place, meaning that there would have had to be some malice, certainly as a part of the death or the murder, before we could ever arrive at the point whether one of the aggravating circumstances was the transportation of explosives.

Mr. HASKELL. I would agree with the Senator from Georgia, who pointed this out to me. Then we would have to find out whether it was murder in the first degree or murder in the second degree or what type of offense we were dealing with under law, and then to impose the death penalty there would have to be one of the factors contained on page 15.

Mr. NUNN. To get a definition under the Federal code I think probably would be a pretty good answer to that.

Mr. HUGHES. Mr. President, I would like to bring up a point that crosses my mind. The Senator from Iowa knows this is an attempt to structure the law so that it affects punishment which may be rendered by a court or by a jury, but as I understand the Constitution and the process of executive clemency, having been a Governor when executive clemency appeals were made to me as Governor, I understand executive clemency is available even if this bill becomes the law of the land.

What I would like to point out to this body is that the very decision they are trying to reach could be nullified by the election of a particular President, because if the Senator from Iowa were elected President, there would be no executions in this land during that term, and if another man were elected under certain conditions, every man brought forward would be executed just as certainly.

So the final applicability of the law would be determined on the basis of executive clemency in respect to the question of execution. This itself shows the fallacy of the application of the argument of the equal protection of the law. I think Members of this body should bear that in mind in determining that this is not infallible, regardless of what we do.

Mr. NUNN. Mr. President, I would first like to join the Senator from Delaware (Mr. BIDEN) in his laudatory comments about the Senator from Iowa. I was not here when the Senator from Iowa made his presentation, and I wish I had been here, because I have the greatest respect for him as a person and as a U.S. Senator. I do not come to the same conclusion he does on this legislation, but I have total respect for his sincerity and judgment in coming to that conclusion.

I would like to commend the Senator from Arkansas (Mr. MCCLELLAN), the Senator from Nebraska (Mr. HRUSKA), and the other Senators who worked so hard on this legislation.

I would also have to admit that there is never going to be any perfect legislation in this difficult area, but I feel there is one part of this particular legislation that perhaps will not be discussed very much that I think is very, very important, and that is the portion that really, in effect, says any appeal on the question of a death sentence to the court of appeals shall have priority over all other appeals.

I believe when we are talking about capital punishment or the death penalty, we really have to distinguish as to whether we are talking about punishment as such or we really have to distinguish as to whether we are talking about deterrence. I happen to be one of those who can understand most of the arguments being made against capital punishment. At the same time, I have to conclude that our civilization has not reached the point of sophistication where we can really afford to be without it, so I am in favor of this legislation.

Nevertheless, I think all of us would have to search our souls as to whether we favor this legislation if we felt the delay in the adjudication of the final judgment in capital cases is going to continue as it has in the past.

I would submit that if it takes 7 or 8 years from the time a jury or judge pronounces sentence on most of the capital cases for the appellate process to work its course, then, in effect, we do not have a deterrent for punishment. I do not think we can justify capital punishment as punishment unless we are going to deter others from committing other similar horrible crimes.

So I commend the Senator from Arkansas, the Senator from Nebraska, and the other Senators who worked on this bill for putting in this accelerated appeal process which, hopefully, will enable us to begin to reach the point in capital cases, and perhaps later in other cases, where there is some connection between the crime and the punishment, not only in the minds of the defendants who have committed the crimes, but in letting the public observe that process. When it takes 7 or 8 years for the final capital punishment to be meted out, most of the persons observing the process cannot even remember what the crime was that the man is being punished for.

So I think, unless we can accelerate the judicial process, unless we can think of other ways to make sure there is a connection between the crime and the punishment, then indeed we cannot justify this or any other capital punishment law. So I do feel that all of us perhaps have no more important task than to find this way and other ways to speed up the process. I read, not many months ago, that in England it takes something like one-fourth of the time from the time of conviction until the time of final adjudication.

So, then, in these cases, we have indeed lost the deterrent power of our criminal law system, and I hope this body can deal with this question, not only in capital cases, but in other cases, so we can begin to restore, not only in capital cases but all other cases, the deterrent power of the criminal system. I do submit to this body that we do not have that deterrent power now. I believe, as one Senator, this is one of the reasons why we have so many horrible crimes in this Nation.

Mr. President, I have a more complete statement which I now wish to make.

Mr. President, I wish to commend the distinguished Senator from Arkansas (Mr. MCCLELLAN) and the other members of the Judiciary Committee for their efforts in reporting S. 1401 which establishes rational criteria for the mandatory imposition of the death sentence.

I am personally convinced that the death penalty can be an effective deterrent against certain specific crimes. However, after the 1972 decision of *Furman v. Georgia*, 408 U.S. 238 (1972), it appears that death penalty provisions in existing Federal laws have been invalidated. This court opinion, decided by a 5 to 4 vote, held that it was a violation of the 8th and 14th amendments to allow a judge or jury unbridled discretion to impose the death sentence. Only two of the nine Justices argued that the

death sentence is absolutely prohibited by the Constitution.

S. 1401 is intended to meet the constitutional requirements set forth by the Supreme Court by providing reasonable and definite standards for imposing a capital sentence.

First, the trial court would hold a hearing to determine a defendant's guilt or innocence. A defendant who is convicted of murder, treason, espionage, and certain other serious crimes causing death, such as kidnaping and skyjacking, would then be given a separate sentencing hearing.

The sentencing proceeding would determine whether mitigating or aggravating circumstances exist. If the court finds that one or more aggravating factors are present, and that there are no mitigating circumstances, then it is mandatory that the death sentence be imposed. However, if any mitigating circumstances exist, the death penalty may not be imposed despite the existence of aggravating circumstances.

Mitigating factors include: The defendants' being under 18 years of age at the time of the crime; significant impairment of mental capacity; unusual and substantial duress; relatively minor participation by the defendant in the crime; and the defendant's being unable to reasonably foresee that his conduct would cause or create a grave risk of death to any person.

The bill clearly specifies aggravating factors. When the defendant has been convicted of murder, these factors include that the homicide occurred during an attempt to escape from custody; or to obtain or deliver classified defense information to aid a foreign government; or while transporting explosives in interstate commerce; or the destruction of Government property or property in interstate commerce by explosives; or relating to treason, aircraft piracy or kidnaping. It would also be considered an aggravating factor if: The defendant had been previously convicted of an offense resulting in the death of a person and for which a sentence of life imprisonment or death was authorized by statute; or if he had been previously convicted of one or more felonies involving the infliction of serious bodily harm; or if he knowingly created a grave risk of death to another person in addition to the victim; or if he committed the offense in an especially heinous, cruel, or depraved manner; or if he were paid or paid another to commit the offense; or if the victim is the President or Vice President, a Supreme Court Justice, a foreign chief of state or official, or a Federal law-enforcement official engaged in performing his official duties.

In addition, there are specific aggravating circumstances set forth in the bill relating to convictions for treason and other national security crimes.

This legislation also provided that a defendant may appeal his death sentence to the Federal Court of Appeals and that his appeal shall have priority over all other appeals.

It should be remembered that in the wake of the Furman case at least 15 States have enacted new State laws designed to overcome the Court's objections to earlier laws allowing capital punishment. Nine of these fifteen, including the State of Georgia, have adopted a two-part trial procedure whereby a first proceeding determines the guilt or innocence of the accused and a second proceeding determines the sentence to be imposed.

There is good reason for these States' actions, and for the passage of the pending bill by the Congress. Our peaceful citizens must be protected from violent and heinous crimes. We are all aware of the wave of kidnapings which have been reported in the national press in recent weeks, and it is a rare day that one does not read of a serious crime in the daily newspaper. Few Americans can feel completely safe from being the victim of a violent crime. Indeed, one of the most distinguished and respected Members of this body was brutally attacked and nearly lost his life at his own home.

Recent statistics from the Federal Bureau of Investigation show that the crime rate has increased at a rate of 57 percent on a national scale since 1967. Violent crimes, such as murder, forcible rape, aggravated assault, and robbery, have increased 67 percent on a national scale since 1967. In my own State of Georgia, the latest figures show a crime rate per 100,000 inhabitants of 2,468.9, which includes 377.6 in the violent crime area. The city of Atlanta shows a crime rate per 100,000 inhabitants of 4,024.5, including 553.9 of the violent nature. In 1973 the city of Atlanta experienced an 83-percent increase in the incidence of rape over 1972. The city incurred a 35-percent increase in robbery over the same period; a 24-percent increase in assault. In 1964, there were 106 homicides in Atlanta; in 1973, this number had grown to 263. With the exception of homicide, of which there were four less cases in January 1974, the incidence of violent crimes in Atlanta has shown an increase as compared to January 1973.

While I agree with those who argue that capital punishment should not be imposed lightly, I strongly believe that our citizens will be far less often the victims of serious crimes due to the deterrent value of the death penalty if we pass the present bill.

I wish that the day had arrived when it would no longer be necessary to employ capital punishment. Unfortunately, this time has not come and thousands of Americans are still the innocent victims of brutal and unnecessary lawlessness. In supporting and cosponsoring S. 1401, I do so with the belief that many of tomorrow's potential victims will be spared from violence and perhaps death because the latent criminal is effectively dissuaded from his otherwise violent and dangerous conduct since he is aware of the clear likelihood that he may receive the death sentence when apprehended. To have this deterrent effect, however, our judicial system, aided by any necessary legislation, must see that justice is done quickly. In the past, our criminal justice system has frequently become backlogged and a felon's punishment has been far removed from his trial and sentencing.

The criminal must be tried and sentenced, and the sentence must be carried out in a relatively short period of time. I am not advocating that a criminal defendant receive a summary trial. What I am supporting is a just and speedy trial followed by the swift execution of the death sentence if this is imposed by the court. Deterrence has little effect if the convicted capital felon lingers in prison for 7 or 8 years before the sentence is carried out. The person who commits a capital crime, as well as the public at large, must be able to readily associate the unlawful actions with the punishment if the capital sentence is to have a substantial deterrent value. I believe that the provisions in S. 1401 relating to an expedited appeal procedure from the death sentence will be a significant improvement in insuring that justice is done swiftly.

While much more must be done to expedite the criminal process, particularly in capital cases, at least this is a beginning.

Mr. HASKELL. Mr. President, I believe I omitted to ask for the yeas and nays on my amendment. May I ask for them now?

The PRESIDING OFFICER. There is not a sufficient second.

The yeas and nays were not ordered.

Mr. HRUSKA. Mr. President, I send an amendment to the desk and ask for its immediate consideration, and I ask unanimous consent to set aside the pending question for a long enough time to achieve that purpose.

The PRESIDING OFFICER. Without objection, the amendment will be stated.

The assistant legislative clerk read the amendment, as follows:

On Page 22, add a new section 17.

"SEC. 17. The provision of Sections 3562A and 3742 of this title shall not apply to prosecution under the Uniform Code of Military Justice (10 U.S.C. 801).

Mr. HRUSKA. Mr. President, the amendment is offered to clarify a potential ambiguity which is presented by the language of the bill.

I may say in advance that I discussed this amendment with the chairman of our subcommittee, who will, in due time, speak his judgment upon it.

There has arisen the question of the impact of S. 1401 on the Uniform Code of Military Justice. It was clearly the intent of the Committee on the Judiciary to leave the Military Code undisturbed. This amendment is intended to clarify that intent.

Under the Uniform Code of Military Justice the President generally is empowerd to prescribe regulations setting forth the penalty levels to be utilized in prosecutions under the Code.

With respect to any crimes where the death penalty is to be an available sanction, however, specific legislative authorization is required. There are currently about 10 such provisions in the Code of Military Justice, which authorize the imposition of the sentence of death. Any questions with respect to the death penalty in the military context deserve separate consideration and are best left to another day, and perhaps another method, and another fashion.

This approach has a long tradition in Federal law and has not met with any resistance from congressional quarters.

It would, therefore, not be desirable to have the instant measure carry any potential for disturbing this current scheme of things.

Mr. President, it is for that reason that I have offerd the amendment.

Mr. President, I have cleared this amendment with the chairman of the subcommittee. I yield to him at this time.

Mr. McCLELLAN. Mr. President, I ask the Senator from Nebraska again if this is what could be termed a clarifying amendment to make certain to establish that this bill is not intended to interfere with, repeal, modify, or in any way to change the existing military justice law.

Mr. HRUSKA. The Senator is correct.

Mr. McCLELLAN. That is the purpose of this amendment, to make that very clear in this legislation.

Mr. HRUSKA. The Senator is correct.

Mr. McCLELLAN. I have no objection to the amendment. I think that it should be accepted.

Mr. KENNEDY. 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. KENNEDY. 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. KENNEDY. Mr. President, I ask the Senator from Nebraska, the sponsor of the amendment, if I correctly understand that this amendment would have absolutely no impact on the Uniform Code of Military Justice. Is that correct?

Mr. HRUSKA. The Senator is correct.

Mr. KENNEDY. That is the only purpose?

Mr. HRUSKA. That is the only purpose of the amendment It reflects the historical pattern that has been established in considering military law proceedings separate from the criminal law to which all citizens are subject.

Mr. KENNEDY. Mr. President, I appreciate the explanation of the Senator from Nebraska.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Nebraska (putting the question).

The amendment was agreed to.

Mr. HRUSKA. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. McCLELLAN. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HRUSKA. Mr. President, I ask unanimous consent that there be printed at this point in the RECORD an article from the Philadelphia Inquirer under date of March 12, 1974. The article is entitled "Death Penalty Passes." It is written by William Ecenbarger, for the Inquirer, Harrisburg bureau. It pertains to an act of the Commonwealth of Pennsylvania and illustrates another instance where the people believe that the death penalty should be reinstated.

I make this request, Mr. President, at the instance of the leader for the majority.

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

DEATH PENALTY PASSES

(By William Ecenbarger)

HARRISBURG.—The Senate gave final legislative approval Monday to a bill restoring the death penalty in Pennsylvania, but Gov. Milton J. Shapp was undecided on whether to sign it into law.

The measure, approved without debate on a 44–44 vote, prescribes capital punishment for nine specific types of intentional murder. Persons convicted of these crimes would be executed unless they could prove that certain "mitigating circumstances" had existed.

Ricrard Doran, special assistant to the governor, said Shapp wanted to study the legislation thoroughly before deciding whether to sign it.

A veto by Shapp would make capital punishment an issue in this year's gubernatorial campaign. Drew Lewis, his probable Republican opponent, has supported the bill.

Moreover, there appears to be sufficient support to override a Shapp veto.

There has been no death penalty in Pennsylvania since June 1972, when the U.S. Supreme Court struck down most state capital-punishment laws because, it said, they had been unfairly administered. There were 27 Pennsylvanians under the death sentence at that time, none of whom could be executed under the new law.

Under House Bill 1060, murder would be punishable by death if:

The victim was a fireman, policeman or public servant killed while performing his duties.

The murder was a contract killing.

The victim was being held hostage by the defendant for ransom or reward or as a shield.

The killing was connected with the hijacking of an aircraft.

The victim was killed to prevent him from testifying against a defendant.

The killing was committed in the course of another felony.

The defendant knowingly created a risk of death to another in the course of killing the victim.

The murder was by torture.

The defendant was under life sentence when he committed the crime.

Among the mitigating circumstances that could warrant reduction of the penalty to life imprisonment would be youth or lack of maturity of the defendant, consent to or participation in the killing by the victim, and the defendant acting under duress.

The PRESIDING OFFICER. What is the will of the Senate?

Mr. KENNEDY. 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. KENNEDY. 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. KENNEDY. Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will be in order.

Mr. KENNEDY. I ask unanimous consent that Mr. Henderson and Mr. Bates be accorded the privilege of the floor.

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

Mr. KENNEDY. Mr. President, I rise in opposition to S. 1401, the death penalty bill. The death penalty is incomparably the harshest punishment known to our law.

The issue over the death penalty cannot be resolved by noting that capital punishment was accepted at the time that the eighth amendment was drafted. The framers deliberately chose broad language in order that, as the Supreme Court has held, the scope of the prohibition could develop with the growth of civilized principles of penology, and "draw its meaning from the evolving standards of decency that mark the progress of a maturing society."

My views on the death penalty have not changed since I recommended clemency in the Sirhan case in 1969. As I stated then:

"My brother, [Robert Kennedy], was a man of love and sentiment and compassion. He would not have wanted his death to be a cause for the taking of another life. You may recall his pleas when he learned of the death of Martin Luther King. He said that "what we need in the United States is not division; what we need in the United States is not hatred; what we need in the United States is not violence or lawlessness, but love and wisdom and compassion towards one another."

Not only is the death penalty wrong in principle, in my view, but its imposition has resulted in the execution of a disproportionate number of poor people and minority members, a situation which I believe to be untenable and unavoidable as long as the death penalty remains in existence. Even under S. 1401, I believe the danger exists that a jury would make a different interpretation of what facts constitute a mitigating or an aggravating factor when a rich white person was involved than when a poor black person was the defendant.

In June of 1972, the Supreme Court decided the case of Furman against Georgia. The Court decided the case by a 5-to-4 vote and each of the nine Justices wrote a separate opinion. In the majority only Justice Brennan and Marshall thought the death penalty per se cruel and unusual punishment. Justice Douglas found the death penalty discriminatory and therefore violative of the 14th amendment's guarantee of "equal protection of the laws." The opinions considered to be the swing votes in the case and therefore controlling, were those of Justices Stewart and White who held that the death penalty statutes before them were unconstitutional because they were applied in an arbitrary and infrequent manner.

Since Furman, it has been the last opinions which have led to what I believe to be unreasonable "mandatory" State death penalty statutes which impose the death penalty automatically for certain offenses. As an example, North Carolina law, after Furman, mandated the death penalty for certain crimes, even where no death or grave bodily injury resulted. Under that statute, a person was recently convicted in a case involving no death or grave bodily injury. Upon conviction, under the statute, he

automatically received the death penalty and he now sits on death row awaiting execution.

It is under circumstances such as these that the results of statutes enacted with little regard to narrowing the possibility of error in view of the finality of the death penalty, can be most clearly seen.

In my opinion, such mandatory death penalty statutes constitute cruel and unusual punishment in violation of the eighth amendment. However, bills such as S. 1401, which provide for discretion in determining what facts constitute mitigating and aggravating factors, also raise serious constitutional questions. The provisions in S. 1401 may be in violation of those opinions in Furman against Georgia which forbid such discretion in imposing the death penalty. Though I oppose the institution of the death penalty in principle and believe that S. 1401 presents serious constitutional questions, in view of the sentiment for restoration of the death penalty which I perceive among my colleagues, and on the possibility that S. 1401 will be declared constitutional, I am offering these amendments in the hope of diminishing the possibility of error in imposing the death penalty and in the hope of saving the lives of individuals held as hostages in the commission of kidnapings and skyjackings. For those who feel as I do, I urge you to vote in favor of my amendments.

For those of you who are not opposed to the death penalty in principle, I also urge you to vote in favor of my amendments, both to save the lives of hostages and to narrow what I believe to be an over-broad bill in order to avoid the possibility of imposing an irrevocable punishment on an innocent person.

Mr. HELMS. Mr. President, the Senator from Massachusetts (Mr. KENNEDY) just referred to a matter in North Carolina which he indicated was an injustice. Would he care to state the details regarding the person who is now on death row?

Mr. KENNEDY. Mr. President, I will be glad to do so after I have made my formal statement.

Mr. President, the amendments I have submitted are the following:

First. An amendment to require that the aggravating factors enumerated in sections (g) and (h) of the bill be proved beyond a reasonable doubt rather than by a preponderance of the evidence as the bill provides.

Second. An amendment that would provide for a directive that the words used in section (f) to describe the mitigating factors be "liberally construed."

I believe that both of these amendments will serve to diminish the possibility of error thereby reducing the likelihood that an innocent person would be executed.

Mr. President, my final amendment would provide for an additional mitigating factor which, subject to the consent of the Attorney General, would preclude imposition of the death penalty if, after killing one or more individuals, the defendant released the remaining hostages being held by him. This provision would allow law enforcement officials, in appropriate cases, to offer a guarantee to the defendant that he would not get the death penalty if he released his hostages. At a time when we are confronted almost daily with kidnapings, skyjackings, and other crimes involving hostages, I believe that this amendment would provide law enforcement officials with an indispensable tool with which to save lives.

It seems to me that this would provide an additional degree of flexibility to the law enforcement officials. It would be completely discretionary and could be used as they felt would be in the best interests in each case in obtaining the freedom of and preserving the lives of the individuals affected.

I would like to point out that I have submitted these amendments on behalf of Senator HART and myself.

Regardless of Senators' position on S. 1401, I urge Senators to vote for my amendments in the interest of diminishing error in the imposition of so final a measure as the death penalty and in the interest of saving the lives of hostages.

Mr. President, I also take this opportunity to send to the desk an amendment on behalf of myself and the distinguished Senator from New York (Mr. JAVITS) dealing with the banning of cheap handguns, requiring the registration of all handguns, and establishing a nationwide system to license all handgun owners.

The PRESIDING OFFICER. Without objection, the amendment will be printed in the RECORD.

The amendment is as follows:

AMENDMENT No. 1020

On page 11, before line 1, insert the following:

"TITLE I—AMENDMENTS TO TITLE 18, UNITED STATES CODE, RELATING TO THE MANDATORY IMPOSITION OF THE SENTENCE OF DEATH"

On page 11, line 1, strike out the words "That chapter" and insert in lieu thereof the following:

"Section 1. Chapter".

On page 22, after the matter following line 3 add the following new titles:

"TITLE II—REGULATION OF HANDGUNS

"Sec. 201. (a) Titles II, III, IV, and V of this Act may be cited as the 'Personal Safety Handguns Act of 1974'.

"(b) Title 18, United States Code, is amended by inserting after chapter 44 the following new chapters:

"'Chapter 44A.—FIREARM LICENSING

"'Sec.
"'931. Definitions.
"'932. Registration.
"'933. Sales of firearms and ammunition.
"'934. Penalties.
"'935. Disposition of handguns to Secretary.
"'936. Rules and regulations; periods of amnesty.
"'937. Disclosure of information.
"'938. Assistance to Secretary.

"'§ 931. Definitions

"'As used in this chapter—

"'(2) The term "handgun" means any weapon designed or redesigned to be fired while held in one hand; having a barrel less than ten inches in length and designed or redesigned or made or remade to use the energy of an explosive to expel a projectile or projectiles through smooth or rifled bore.

"'(2) The term "Secretary" means the Secretary of the Treasury.

"'(3) The term "licensed dealer" means any importer, manufacturer, or dealer licensed under the provisions of chapter 44 of this title.

"'(4) The term "ammunition" means ammunition or cartridge cases, primers, bullets, or propellant powder designed for use in any handgun.

"'(5) The term "sell" means give, bequeath, or otherwise transfer ownership.

"'(6) The term "possess" means asserting ownership or having custody and control not subject to termination by another or after a fixed period of time.

"'§ 932. Registration.

"'(a) It is unlawful for a person knowingly to possess a handgun not registered in accordance with the provisions of this section. This subsection shall not apply with respect to—

"'(1) a handgun, previously not registered, if such a handgun is held by a certified dealer for purposes of sale; *Provided*, That records of such handguns are kept as may be required by the Secretary;

"'(2) a handgun possessed by a person on the effective date of this chapter and continuously by such person thereafter for a period not to exceed one hundred and eighty days;

"'(3) a handgun, previously not registered possessed by (A) the United States or any department or agency thereof, or (B) any State or political subdivision thereof.

"'(b)(1) A certified dealer who sells a handgun to a person in whose possession the handgun must be registered shall require from the purchaser a completed application for registering the handgun and shall file the application with the Secretary at the time of sale.

"'(2) When a person other than a certified dealer sells a handgun, the purchaser shall file an application for its registration with the Secretary prior to receipt of the handgun;

"'(3) A person who possesses a handgun on the effective date of this chapter shall, unless he sooner sells the handgun, file an application for registration of the handgun with the Secretary within one hundred and eighty days.

"'(c) An application for registration of a handgun shall be in a form to be prescribed by the Secretary, which shall include at least the following:

"'(1) the name, address, date, and place of birth, photograph and social security or taxpayer identification number of the applicant;

"'(2) the name of the manufacturer, the caliber or gage, the model and the type, and the serial number of the handgun; and

"'(3) the date, the place, and the name and address of the person from whom the handgun was obtained, the number of such person's certificate of registration of such handgun, if any, and, if such person is a licensed dealer, his license number.

"'(d) An application for registration of a handgun shall be in duplicate. The original application shall be signed by the applicant and filed with the Secretary, either in person or by certified mail, return receipt requested, in such place as the Secretary by regulation may provide. The duplicate shall be retained by the applicant as temporary evidence of registration. The Secretary, after receipt of a duly filed completed application for registration, shall send to the applicant a numbered registration certificate identifying such person as the registered owner of such handgun.

"'(c) The certified record of a handgun shall expire upon any change of the name of the registered owner or residence unless the Secretary is notified within thirty days of such change.

"'(f) It is unlawful for a person to carry a handgun required to be registered by this chapter without having a registration certificate, or, if such certificate has not been received, temporary evidence of registration, or to refuse to exhibit such certificate or temporary evidence upon demand of a law enforcement officer.

"'§ 933. Sales of handguns and ammunition

"'(a) A registrant of a handgun who sells the handgun, shall, within five days of the sale, return to the Secretary his registration certificate, noting on it the name and residence address of the transferee, and the date of delivery.

"'(b) Whoever acquires a handgun required to be registered by this chapter shall require the seller to exhibit a registration certificate and shall note the number of the certificate on his application for registration.

"'(c) A licensed dealer shall not take or receive a handgun by way of pledge or pawn without also taking and retaining during the term of such pledge or pawn the registration certificate.

"'If such pledge or pawn is not redeemed the dealer shall return the registration certificate to the Secretary and record the handgun in his own name.

"'(d) The executor or administrator of an estate containing a registered handgun shall promptly notify the Secretary of the death of the registered owner and shall, at the time of any transfer of the handgun, return the certificate of registration to the Secretary as provided in subsection (c) of this section. The executor or administrator of an estate containing an unrecorded handgun shall promptly record the handgun without penalty for any prior failure to record it.

"'(e) Whoever possesses a handgun shall within ten days notify the Secretary of a loss, theft, or destruction of the handgun and, after such notice, of any recovery.

"'(f) A licensed dealer shall not sell ammunition to a person for use in a handgun required to be registered without requiring the purchaser to exhibit a certificate of registration or temporary evidence of registration of a handgun which uses such ammunition, and noting the certificate number or date of the temporary evidence of registration on the records required to be maintained by the dealer pursuant to section 923(g) of this title.

"'§ 934. Penalties

"'(a) Whoever violates a provision of section 932 or section 933 shall be punished by imprisonment not to exceed five years, or by a fine not to exceed $5,000, or both.

"'(b) Whoever knowingly falsifies any information required to be filed with the Secretary pursuant to this chapter, or forges or alters any certificate of registration or temporary evidence of registration, shall be punished by imprisonment not to exceed five years or a fine not to exceed $10,000 or both.

"'(c) Except as provided in subsection (b), no information or evidence obtained from an application or certificate of registration required to be submitted or retained by a natural person in order to comply with any provision of this chapter, or regulations issued by the Secretary, shall be used as evidence against that person in a criminal proceeding with respect to a violation of law occurring prior to or concurrently with the filing of the application for registration containing the information or evidence.

"'§ 935. Deposition of handguns to Secretary

"'(a) The Secretary is authorized to pay reasonable value for handguns voluntarily relinquished to him.

"'(b) A person who lawfully possessed a handgun prior to the operative effect of any provision of this chapter, and who becomes ineligible to possess such handgun by virtue of such provision, shall receive reasonable compensation for the handgun upon its surrender to the Secretary.

"'§ 936. Rules and regulations; periods of amnesty

"'The Secretary may prescribe such rules and regulations as he deems reasonably necessary to carry out the provisions of this chapter, including reasonable requirements for the marking of handguns that do not have serial numbers, and may declare periods of amnesty for the registration of handguns.

"'§ 937. Disclosure of information

"'Information contained on any certificate of registration or application therefore shall not be disclosed except to the National Crime Information Center established by the Federal Bureau of Investigation, and to law enforcement officers requiring such information in pursuit of their official duties.

"'§ 938. Assistance to the Secretary

"'When requested by the Secretary, Federal departments and agencies shall assist the Secretary in the administration of the chapter.'

"TITLE III—LICENSING

"SEC. 301. Chapter 44 of title 18, United States Code, is amended by inserting after section 923 the following new section:

"'§ 923A. State permit systems; Federal handguns licensing

"'(a) The Secretary shall determine which States or political subdivisions of States have enacted or adopted adequate permit systems for the possession of handguns and shall publish in the Federal Register the names of such States and political subdivisions.

"'(b) An adequate permit system shall include provisions for:

"'(1) identification of the permit holder appearing on the permit including name, address, age, signature, and photograph;

"'(2) restrictions on issuance of a permit to a person who is under indictment or who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year, or who is a fugitive from justice;

"'(3) restrictions on issuance of a permit to a person who, by reason of age, mental condition, alcoholism, drug addiction or previous violations of handguns laws cannot be relied upon to possess or use handguns safely and responsibly;

"'(4) means of investigation of applicants for permits to determine their eligibility under subparagraphs (2) and (3), including filing with the issuing agency a complete set of fingerprints and a recent photograph of the applicant; and

"'(5) prohibition of possessions of handguns or ammunition by any person who has not been issued such a permit.

"'(c) It shall be unlawful for any person to sell or otherwise transfer any handgun or ammunition to any person (other than a licensed importer, licensed manufacturer, or licensed dealer) unless:

"'(1) the sale or transfer is not prohibited by any other provision of this chapter; and

"'(2) the purchaser or transferee exhibits a valid permit issued to him by a State or political subdivision having an adequate permit system, or the purchaser or transferee exhibits a valid Federal gun license issued in accordance with subsections (d) and (e) of this section.

"'(d) A licensed dealer shall issue a Federal gun license to a person upon presentation of—

"'(1) a valid official document issued by the person's State or political subdivision, showing his name, current address, age, signature, and photograph.

"'(2) a statement, in a form to be prescribed by the Secretary and dated within six months and signed by the chief law enforcement officer (or his delegate) of the locality of residence of the person, that to the best of that officer's knowledge that person is not under indictment, has not been convicted in any court of a crime punishable by imprisonment for a term exceeding one year, is not a fugitive from justice, and is not otherwise prohibited by any provision of Federal, State, or local law from possessing handgun and ammunition;

"'(3) a statement in a form to be prescribed by the Secretary, dated within six months and signed by a licensed physician, that in his professional opinion such person is mentally and physically capable of possessing and using a handgun safely and responsibly;

"'(4) a statement signed by the person in a form to be prescribed by the Secretary, that he may lawfully possess handguns and ammunitions under the laws of the United States and of the State and political subdivision of his residence;

"'(5) a complete set of such person's fingerprints certified to by a Federal, State, or local law enforcement officer, and a photograph reasonably identifying the person.

"'(e) Federal gun licenses shall be issued in such form as the Secretary may prescribe, and shall be valid for a period not to exceed three years. A dealer shall maintain a record of all licenses issued by him as part of the records required to be maintained by section 923(G) of this chapter, and shall forward to the Secretary the documents described in subparagraphs (d)(2)–(d)(5).

"'(f) Any person denied a Federal gun license under subsection (d) may apply directly to the Secretary for the issuance of a Federal gun license.

"'(g) Unless otherwise prohibited by this chapter, a licensed dealer may ship a handgun or ammunition to a person only if the dealer confirms that the purchaser has been issued a valid permit pursuant to an adequate State permit system, a Federal gun license, or a Federal dealer's license, and notes the number of such permit or license in the records required to be kept by section 923 of this chapter.

"'(h) No person may possess a handgun or ammunition without a valid State or local permit, if he is resident of a State or locality having an adequate permit system, or a Federal gun license.

"'(i) Determinations of adequate permit systems and denials by the Secretary of Federal gun licenses shall not be subject to the provisions of chapter 5, title 5, United States Code, but actions of the Secretary shall be reviewable de novo pursuant to chapter 7, title 5, United States Code, in an action instituted by any person, State or political subdivision adversely affected.'

"(b) The analysis of chapter 44 of title 18, United States Code, is amended by inserting immediately after item 923 the following:

"'923A. State permit systems; Federal handgun licenses.'.

"TITLE IV—HAND HELD HANDGUNS

"SEC. 401. Section 922 of title 18, United States Code, is amended by adding at the end thereof the following subsection:

"'(n)(1) It shall be unlawful for any person to import, manufacture, sell, buy, transfer, receive, or transport any hand held handgun which the Secretary determines to be unsuitable for such lawful purposes as law enforcement, military and protective uses, hunting, and sport shooting, based upon standards established by him.

"'(2) The Secretary may, consistent with public safety and necessity, exempt from the operation of paragraph (1) of this subsection such importation, manufacture, sale, purchase, transfer, receipt, or transportation of handguns by importers, manufacturers, or dealers licensed under this chapter.

"'Such exemptions may take into consideration not only the needs of police officers and security guards, sportsmen, target shooters, and handgun collectors but also, small businesses in high crime areas and others who can demonstrate a special need for self-protection.

"'(3) As used in this subsection, the term "handgun" means any weapon designed or redesigned and intended to be fired while held in one hand; having a barrel less than ten inches in length and designed, redesigned or made or remade to use the energy of an explosive to expel a projectile or projectiles through a smooth or rifled bore."

"TITLE V—GENERAL PROVISIONS

"SEC. 501. If the provisions of any part of titles II, III, or IV of this Act or any amendments made thereby or the application thereof to any person or circumstances be held invalid, the provisions of the other part and their application to other persons or circumstances shall not be affected thereby.

"SEC. 502. No provision of titles II, III, or IV of this Act shall be construed as indicating an intent on the part of the Congress to occupy the field in which such provisions operate to the exclusion of the law of a State or possession or political subdivision thereof, on the same subject matter, or to relieve any person of any obligation imposed by any law of any State, possession, or political subdivision thereof.

"SEC. 503. The provisions of titles II, III, and IV of this Act shall become effective ninety days after the date of its enactment."

Mr. KENNEDY. At an appropriate time, I intend to call the amendment up for a vote.

The first provision of the proposal requires the registration of all civilian owned handguns.

The second provision of the amendment directs the Secretary of the Treasury to establish a nationwide system to license all gun owners.

And the third provision bans the domestic output of cheap handguns.

With this amendment we shall produce substantial progress toward the realization of a standardized, nationwide system to control the widespread abuse of cheap handguns. The provisions in this amendment authorize the Secretary of the Treasury to establish controls on handguns that will greatly reduce the number of names on the annual list of 24,000 gun deaths—a list that grows longer each year.

Legislative history makes it clear that neither the Senate nor the House need more hearings on gun control.

I do not think any subject which Congress considers has had more study than the gun control legislation.

I have served on the Judiciary Committee since I came to the U.S. Senate, and at that time, in the early 1960's, we had Attorneys General of the United States to appear before the committee—Attorneys General Kennedy, Katzenbach, and Clark—who testified about the importance of gun control legislation.

All we have had in the period of the last 5 years is silence by the administration. Any time we have had an Attorney General appear before the Judiciary Committee on the question of gun control, he says, "Don't talk to us about it. Talk to Treasury about it."

This is against the background of at least four Presidential Commissions that were established in the early, middle, and late 1960's, which were charged with the requirement to recommend to Congress and to the American people the most effective means to do something about crime and violence in this country. They recommended uniformly that we have strong gun control legislation.

We find in the 1967 Crime Commission report the suggestion that what we need is to give the States a reasonable period of time in which to act. A number of the members of the Crime Commission felt that we should not usurp the function of the States. We have been waiting from 1967, 1968, all the way up to 1974, and we have not found action taken by the several States. So we are going to give the opportunity to the Members of the Senate to speak on this issue, which has such significant impact on the lives, the well-being, the safety, and the security of the American people.

We hear the arguments with regard to the death penalty, that by passing the death penalty we will be sending a message to the criminals that they had better behave or they will suffer death. I say that if we are really interested in doing something about crime, let us do something that has been recommended by Presidential Commissions made up of law enforcement personnel, criminologists, other legal experts, and distinguished citizens. These Commissions have all been balanced in terms of partisanship. They recommended that we take strong steps to control the abuse of guns. Let us send a message as well to the criminals.

We are going to hear debate on the floor of the Senate that we cannot really impose a licensing and registration system upon people who have handguns; that we do not want to impose this type of restriction on those individuals. Yet, we recognize in our society that if we are going to drive a vehicle, we have to register it; that if we are going to drive an automobile, we have to be licensed, and we accept that. That is not too big a burden. Yet, somehow this body has refused to come to grips with the issue of controlling handguns. We say it is too much of a burden on people who use handguns. We cannot find any of the experts who will present testimony—at least, I have not heard any, as a member of the Juvenile Delinquency Subcommittee, and I have attended those hearings for many hours—that those handguns can be used for anything other than shooting people.

We are not talking about target pistols. We are talking about handguns that are used for shooting people, and that is what we are going to have a chance to vote on. My amendment gives this Senate a chance to vote on the vital issue of controlling handguns.

We can already hear the arguments being made that here is a proposition on which we have not had sufficient hearings. The time for hearings has passed. It is now time for the Congress to act. During my 12 years in the Senate, the judiciary committee in this body has held 43 days of public hearings; committee members have convened in 12 days of executive session; and committee records bulge with thousands of pages of testimony from 186 witnesses.

During hearings in 1968 distinguished witnesses clearly made the case for registering guns and licensing gun owners. At least five Commissions appointed by the President have recommended the enactment of Federal firearms, licensing, and registration systems. Thus, the amendment I am offering today does not present any newly constructed proposals. It does not confront the Senate with ideas or plans that have yet to be studied or investigated. Today I am presenting the Senate with a renewed opportunity to establish its commitment to end the unbridled assault of gun violence in America. I am offering to the Senate an amendment that requires no extensive explanation to understand its purpose. For, if ever there was a legislative proposal offered to Senators that was readily understood—banning handguns and requiring the registration and licensing of existing handguns is such a proposal.

Of the 24,000 people who are killed by guns in 1 year, the statistics are clear that 11,000 are murdered, 10,000 use guns to commit suicide, and 3,000 die because of gun accidents. If we are effectively able to ban those guns, we will be able to save those lives. Yet, we will hear that we will not be able to keep the gun out of the hands of the criminal, and therefore other citizens ought to be able to hold them. If we are able to ban them right away, we will save those lives every year, let alone so many others.

Under this amendment, registration information on all handguns will be referred by local registration offices to the National Crime Information Center maintained by the Federal Bureau of Investigation. In this way, enforcement officers throughout the country can trace the ownership of any handgun.

A person who carries a handgun must have with him a certificate of registration, which he must exhibit upon the demand of any law-enforcement officer.

A violation of the registration provision is punishable by imprisonment for up to 5 years, a fine of up to $5,000, or both. Any purposeful falsification or forgery of registration information is punishable by by imprisonment for up to 5 years, or a fine of up to $10,000 or both.

President Johnson said if it makes sense to register automobiles, boats, bicycles, and dogs, why then do we not register the guns in our Nation's homes?

Handgun registration will tell us how many handguns there are, where they are, and in whose hands they are held. I am convinced that it makes no sense for handguns to remain as free floating in our society as flashlights or ballpoint ink pens. Any restriction imposed by firearms registration that prevents even one gun killing fully justifies the development and maintenance of a handgun registration system.

My proposal for legislation to enact restraints against the misuse of handguns authorizes the Secretary of the Treasury to establish periods of amnesty for all handgun owners to voluntarily turn in any weapons they wish to give up, and to receive reasonable compensa-

tion for the surrender of such weapons. Authorities know that handgun owners want to safely remove firearms from homes or places where they may be stolen or where accidents may occur.

After the city of San Francisco enacted a gun licensing statute in 1968, at least 1,500 guns of every description were voluntarily turned in to the San Francisco police department. City officials confirmed the public commitment to the elimination of gun violence by forging the metal from these guns into a 9-foot statute of St. Francis of Assissi.

The Second provision of my amendment requires every handgun owner to obtain a license before he may be entrusted with a gun.

Under the provisions of my amendment, if a State does not adopt a firearms permit system that meets minimum specified standards, Federal licensing will become effective until the State adopts an adequate permit system. No person, whether a licensed dealer or a private individual, may sell handguns or ammunition to an individual who does not have either an adequate State permit or a Federal hand gun license. In addition, no one may possess a handgun or ammunition unless he has either an adequate State permit or a Federal gun license. To qualify as having an adequate permit system, a State must restrict the issuance of permits applied for by convicted felons, fugitives from justice, mental defectives, alcoholics, juveniles, and drug addicts, and must adequately investigate applicants prior to the issuance of permits.

In States that do not enact an adequate permit system, Federal gun licenses, valid for up to 3 years, will be issued by federally licensed dealers upon receipt—from both the chief law enforcement officer of an applicant's locality and a licensed physician—or information bearing upon his eligibility for a Federal handgun license.

The purpose of the third provision of my amendment—banning the domestic output of cheap hand-held firearms—is to get at the heart of the problem of those guns used in crime. The handgun's role in crime is disproportionate to its number in comparison with long guns, in the commission of homicide, aggravated assault, and armed robbery.

Over 50 percent of the 19,000 homicides in 1973 were committed with handguns. Virtually every robbery involving a firearm takes place with a handgun. The percentage of violent crimes in which handguns are used is increasing. At least 73 percent of the weapons used in police murders were handguns.

Mr. President, the statistics issued by the Commissioner of Public Safety in our State of Massachusetts, and we have strong gun legislation in Massachusetts, go back 3 years and they show that 84 percent of the guns used in crimes of violence in Massachusetts were obtained and purchased outside the State.

So even if a State is willing to have effective legislation, if bordering States refuse to take this into account, it is easy to circumvent the purpose of the legislation in any given State.

Obviously it is necessary to have a nationwide program that has some basic and fundamental means for considering and dealing with the problem. If the States want to provide stricter penalties, that would be permitted under the legislation.

From the working papers of the National Commission on Reform of Federal Criminal Laws, Prof. Franklin Zimring explains why it is vital that we have a nationwide system for the control of hand-held firearms.

In Massachusetts, where restrictive handgun licensing has been in effect for many years, a study showed that 87 percent of the firearms confiscated as a result of use in crime came from other States, and similar studies by the task force on firearms of the Eisenhower Commission show a similar pattern to be true in New York City, with restrictive handgun licensing, and Detroit, Michigan, with a permissive handgun licensing system and a geographic vulnerability to the inflow of weapons from Toledo, Ohio.

Based on an exhaustive examination of patterns of firearms crime, the Brown Commission recommended "a ban on the production and possession of the trafficking in handguns . . ."

A majority of the members of that Commission know that State control of hand-held firearms is ineffective because of different policies and leakage between the States. Only a comprehensive and uniform system of controls of hand-held firearms will aid in suppressing the crimes of violence caused by these weapons.

In its report to President Nixon last year, the National Advisory Commission on Criminal Standards and Goals recommended that by January 1, 1983, each State take the following action: the private possession of handguns should be prohibited for all persons other than law enforcement and military personnel.

Manufacture and sale of handguns should be terminated. Existing handguns should be acquired by States. Handguns held by private citizens as collector's items should be modified and rendered inoperative.

The bill I have offered to control handguns is a substantial first step in achieving the goals described by the President's Advisory Commission on Criminal Standards.

Let us begin now to provide effective legislation to curb the tragedies caused by too many handguns in our society.

I might mention that each of the highly regarded panels calls for restraint on handguns which have caused the devastating killing that has been inflicted on the American public each year. They are the National Commission on Criminal Standards and Goals; the Commission on Crime in the District of Columbia; the Katzenbach Commission on Law Enforcement and the Administration of Justice; the Eisenhower Commission on the Causes and Prevention of Violence; the Kerner Commission on Civil Disorders; and the Brown Commission on Reform of Federal Criminal Laws.

Mr. HELMS. Mr. President, before the distinguished Senator from Massachusetts leaves the floor, would he mind repeating his statement concerning my State, as contained in his transcript, or describe to me what were the implications of his statement?

Mr. KENNEDY. The situation I intend to refer to—and I ask unanimous consent that excerpts from the article be printed in the RECORD, in response to the Senator.

There being no objection, the materials are ordered to be printed in the RECORD, as follows:

RAPE CONVICTION STIRS PROTEST—WASHINGTON BLACK IS SENTENCED TO DEATH IN NORTH CAROLINA

(By Linda Newton Jones)

Last August, while visiting his mother in Tarboro, N.C., Jesse Lee Walston, a 23-year-old driver for the Hecht Company, took a midnight ride with two companions.

Just outside of Tarboro, they offered a ride to a woman they saw walking along the road and, by all accounts, the men had sexual relations with her.

After Walston returned to Washington, he heard from his mother that the Tarboro police wanted him for rape. He talked the matter over with his brother—should he return to Tarboro? His brother advised him to go back to North Carolina and try to square things, and he did.

That was Aug. 12. Since then, Walston and his two companions—all of whom are black—have been tried and convicted for the rape of the woman—who is white—and have been sentenced to die in a North Carolina gas chamber. . . .

Since the sentencing of the men Dec. 9 under North Carolina's reinstituted capital punishment statute, there have been a series of protests in North Carolina by civil rights activists who claim the convictions were racially motivated.

And the NAACP Legal Defense Fund, which opposes capital punishment and feels it is imposed on the black and the poor more than anyone else, has entered the case.

"They weren't convicted on evidence," said Leroy Walston, shaking his head. "They could have had Perry Mason himself and it wasn't going to turn out any different."

How it will all turn out ultimately is yet to be seen. The men were to have been put to death Jan. 10, but a stay of execution has been granted pending an appeal.

And while family members wait, they recall a Jesse Lee Walston who did not seem to them to be the type to be sitting on death row.

Walston, who like his two companions had no previous police record, has lived in Washington since his graduation from high school in Tarboro in 1969. He was married 2½ years ago, is the father of two children and lives in Northeast D.C.

"Deborah (his wife) got Jesse to go to church, and he's singing in the choir and everything," said Leroy Walston.

Walston's wife could not be reached for comment, but according to Leroy Walston, she's "behind him all the way."

Leroy recalled his advice to his brother to return to Tarboro and his brother's conviction that he had committed no crime.

"He went down there because he is innocent," said Leroy. "He didn't know he was going to get this thing thrown at him." . . .

The conviction of the three men put them on North Carolina's death row with 19 other persons. Of the 22, 15 are black and one is an American Indian. According to the North Carolina Department of Corrections, five are on death row for rape, 13 for first-degree murder, two for rape and murder and two for first degree burglary.

There are 22 other prisoners under death sentences in seven other states, according to a report, and 29 of the 44 inmates on death rows in the U.S. are black.

The NAACP Legal Defense fund is looking into about half of the cases across the country, including the Tarboro rape case.

A defense fund lawyer familiar with the case said that though nearly half of the

9,425 Tarboro residents are black, only one black sat on the jury that heard the rape case.

"Most of the blacks on the jury panel were rejected by the prosecutor because of their views on the case and capital punishment," said David Kendall, an NAACP Legal Defense Fund attorney in New York. Defense fund lawyers are assisting Hopkins in the appeal of the three men.

"I'm incredibly impressed by their courage," Kendall said of his new clients. "They all testified in their own defense, and each of them refused plea-bargaining." The three men given a chance to plead guilty to a lesser offense for which they would have been eligible for parole after serving 3 years of a 15-year sentence.

"We're against capital punishment, period, but mainly in the way that it's handled," Kendall said. "One of the main things that's wrong with it is that it is placed on blacks and poor whites more than others."

The North Carolina law, one of the strongest capital punishment laws written since the U.S. Supreme Court struck down such statutes in 1972, makes death a mandatory penalty for anyone convicted of first-degree murder, rape, arson or first-degree burglary —entering a residence after dark, when with the intent to commit a felony.

On June 29, 1972, the Supreme Court, by a 5-to-4 margin, ruled that the death penalty as written and administered in the cases before it constituted cruel and unusual punishment. The court did not say it was unconstitutional to execute felons but that all state laws, as written, were unconstitutional because they were so haphazardly imposed.

The justices who were in the majority could not agree on all points of the ruling so each wrote separate opinions. Crucial rulings were given by Justices Byron White and Potter Stewart who ruled that it was unconstitutional to sentence some defendants to death while allowing others, convicted of almost identical crimes, to live.

Thus the North Carolina Supreme Court decided that the state's capital punishment law would satisfy the ruling of the higher court if death were made a mandatory sentence for certain crimes. So Walston, Hines and Brown were sentenced to death because, according to Holdford, "the jury had no choice other than guilty or not guilty, and the judge had no choice other than death."

Twenty-two other states have reinstituted the death penalty since the high court's ruling.

The conviction of Walston and his two companions has brought the whole question of capital punishment home to Tarboro, N.C., a growing area for tobacco, peanuts, corn and cotton located in Edgecombe County about 70 miles from the state capital in Raleigh.

Marches and rallies were staged in Tarboro and Raleigh soon after the convictions. The protests were initiated by a coalition of church and civil rights groups headed by Leon White, director of the Carolina and Virginia Commission on Racial Justice.

"If it (the protests) hadn't started, then we would've becoming a hanging state," said the Rev. W. W. Finlator, pastor of the Pullen Memorial Baptist Church in Raleigh and one of the leaders of the coalition.

"It so happens that in North Carolina everyone who is waiting (on death row) is poor or black or illiterate and disadvantaged," said Mr. Finlator. "People who have money or influence never get the death penalty here."

But Prosecuting Attorney Holdford said he doubts the men will ever be executed.

"The governor will just commute the sentence to life imprisonment, and they'll only serve 10 years anyway," said Holdford.

Fred Morrison, legal adviser to Gov. James E. Holshouser Jr., said the governor has not taken a stand on capital punishment because no case has been appealed to his office. Morrison noted that while Holshouser was a member of the North Carolina state legislature he voted for the repeal of capital punishment whenever the question reached the floor.

The first decision on the constitutionality of the state's new law is expected soon from the state's Supreme Court.

Prosecutor Holdford characterized the protests as the acts of civil rights groups who only protest when a black man is "sent away for a crime against whites . . . These civil rights groups go from one district to another starting trouble whenever a white is involved," he said.

Mr. HELMS. The Senator is talking or reading so fast, I cannot understand him.

Mr. KENNEDY. I am reading from an article. If the Senator cannot hear me, he is welcome to come closer.

Let me read:

The conviction of the three men put them on North Carolina's death row with 19 other persons. Of the 22, 15 are black and one is an American Indian. According to the North Carolina Department of Corrections, five are on death row for rape, 13 for first-degree murder, two for rape and murder and two for first-degree burglary.

There are 22 other prisoners under death sentences in seven other states, according to a report, and 29 of the 44 inmates on death rows in the U.S. are black.

The NAACP Legal Defense fund is looking into about half of the cases across the country, including the Tarboro rape case.

A defense fund lawyer familiar with the case said that though nearly half of the 9,425 Tarboro residents are black, only one black sat on the jury that heard the rape case.

"Most of the blacks on the jury panel were rejected by the prosecutor because of their views on the case and capital punishment," said David Kendall, an NAACP Legal Defense Fund attorney in New York. Defense fund lawyers are assisting Hopkins in the appeal of the three men.

"I'm incredibly impressed by their courage," Kendall said of his new clients. "They all testified in their own defense, and each of them refused plea-bargaining." The three men were given a chance to plead guilty to a lesser offense for which they would have been eligible for parole after serving 3 years of a 15-year sentence.

"We're against capital punishment period, but mainly in the way that it's handled," Kendall said. "One of the main things things that's wrong with it is that it is placed on blacks."

Mr. HELMS. Is the Senator——

Mr. KENNEDY. I will not be much longer.

Mr. HELMS. Mr. President, who has the floor?

The PRESIDING OFFICER. The Senator from Massachusetts had the floor.

Mr. HELMS. I beg the Chair's pardon. The Senator from Massachusetts yielded the floor, and I gained the floor in my own right.

Mr. KENNEDY. Mr. President, I think the Senator from North Carolina is correct.

The PRESIDING OFFICER. The Chair stands corrected.

Mr. HELMS. I thank the Chair.

Mr. KENNEDY. It is not that much further. Then I will be glad to respond.

Mr. HELMS. If the Senator is going to put the item in the RECORD——

Mr. KENNEDY. The materials to which I am returning will be put in the RECORD.

Mr. HELMS. Mr. President, I will not yield further at this point. I want to ask the Senator, if he will tell me, what he is reading from.

Mr. KENNEDY. I am reading from the Washington Post of January 14, 1974, by Linda Newton Jones.

Mr. HELMS. I am not surprised. Does the Senator have any documents from the judicial system of North Carolina? Has he any other information with respect to this case, or did he take the word of the Washington Post?

Mr. KENNEDY. I am presently reading from the Washington Post article. If the Senator from North Carolina has any judicial document or any statement that shows to the contrary, I would welcome that and would be glad to be corrected. Does the Senator from North Carolina have any such material?

Mr. HELMS. Mr. President, who has the floor?

The PRESIDING OFFICER. The Senator from North Carolina has the floor.

Mr. HELMS. I thank the Chair.

Mr. KENNEDY. Will the Senator from North Carolina answer this question?

Mr. HELMS. Mr. President, may we have order?

The PRESIDING OFFICER. The Senator from North Carolina has the floor, but the Senator from North Carolina has no right to interrogate the Senator, or vice versa, unless the Senator yields for a question.

Mr. HELMS. I am not trying to interrogate the distinguished Senator. I just want to know the basis for his charge against my State and its judicial system. I will say to the distinguished Senator from Massachusetts that it is certainly my intent to get the official judicial record and put it in the RECORD alongside of the Washington Post report.

Mr. KENNEDY. Mr. President, in no sense whatever am I making a charge against the Senator's State or against its judicial system. What I am using is an example of the serious problems that arise in situations involving a mandatory death sentence, where the judicial system has no choice.

The PRESIDING OFFICER. Does the Senator yield?

Mr. HELMS. I will yield briefly to the Senator from Massachusetts.

Mr. KENNEDY. I will let the Senator from North Carolina continue and wait to get the floor in my own right.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. Mr. President, I will simply comment that the distinguished Senator from Massachusetts made the flat statement which seemed to me to be derogatory to my State and its judicial system. I would hope that any Senator, when discussing another State, would have more valid evidence to support such a statement than a clipping from the Washington Post, or any other newspaper for that matter, and I sincerely regret the implications by the Senator. I bear no malice or hard feelings, but I do believe, in making such a statement, that he should have secured some official

documents from the court records. I do not apologize for the judicial system of my State. It is a fine judicial system, and I think it is at least equal to that of the State of Massachusetts. Any inference or any implication that the judicial system of the State of North Carolina would willfully permit a man to go to death row and stay there without justification is a charge that I am surprised to hear in this Chamber, particularly when based on evidence no more substantial than a clipping from the Washington Post.

With that, Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I have put the materials in the RECORD, and I welcome, of course, the suggestions or comments the Senator from North Carolina has made. I also have a high respect for the people of North Carolina and for the fine judicial system of the State. The point that was being raised by the Senator from Massachusetts was in reference only to the issue of the mandatory death sentence. In the case I cited, we have a crime where there was no serious bodily harm. Yet an individual is on death row, under mandatory sentence of death.

We are voting in the Senate on a Federal law. I am using an example—it is an example from North Carolina, but it might be from another State—of what happens when there is a mandatory requirement for the death penalty. The point is used to illustrate that under a law with a mandatory death requirement, an individual, on whose jury only one member of his race was sitting, could be executed under that law, even though his crime did not involve death and did not even involve serious bodily harm. This is the impact of the mandatory death sentence.

The question is whether we are going to have this kind of statute at the Federal level. The point I was illustrating is what can happen when such a statute is applied. There are a number of States that have a mandatory requirement. This was a practical example.

Mr. President, I have no other remarks to make at this time. I yield the floor.

Mr. HATHAWAY. Mr. President, I want to associate myself with the remarks of the Senators from Massachusetts, Iowa, and Michigan, and others who have risen in opposition to this legislation.

Mr. President, there are both philosophical and practical reasons to oppose S. 1401.

The unmistakable trend of history is toward the abolition of capital punishment. Once widely used, it is today widely abolished in law and even more widely abandoned in practice. The last execution in the United States occurred in 1967—5 years before the Supreme Court struck down existing capital punishment statutes in *Furman* v. *Georgia*, 408 U.S. 238 (1972), and the number of annual executions had been dropping steadily for years before pending Supreme Court action halted the death penalty for the present.

There are several good reasons for the timely demise of the death penalty. Contrary to the weight of uninformed opinion, the evidence of experience—and of studies of capital punishment—in the United States and elsewhere shows that it does not deter violent crime. It does not save the lives of innocent victims. It serves no social purpose that cannot be as well or better served by prison sentences, and by efforts to understand the causes of violent crimes and eradicate them from our society. Its barbarity degrades our claim to moral progress. Its example, as Clarence Darrow noted 50 years ago, only teaches our people that human life is not considered sacred by the State that takes it.

There is no empirical evidence that the death penalty discourages homicides in general, or even the killing of police officers in particular. Studies have shown no significant difference between the rate of police homicides in cities and States where capital punishment is retained and those where it has been abolished.

There is no evidence that abolishing the death penalty increases the rate of violent killings. In Delaware, where the death penalty was abolished and then restored in the 1960's, the homicide rate was lower during the period of abolition than before or after.

But there is evidence that in the United States, capital punishment has traditionally been reserved for the poor, for racial minorities, for the mentally defective, for those without education, friends or families—in short, for society's outcasts. The rich—who can afford skilled lawyers and protracted litigation—do not die in the electric chair. Women are far less frequently condemned to death than men. Whites are proportionally a much smaller percentage than blacks of the inhabitants of death row.

The Supreme Court in Furman against Georgia took note of the racial and economic discrimination evident on death row under the statutes it struck down. At that time, some 53 percent of those awaiting sentences of death were black. Since then, 71 new death sentences have been pronounced in States which have passed new capital punishment statutes designed to make death mandatory for certain offenses. Twenty-nine of those newly sentenced to die are white. One is an American Indian. And 41, or 57 percent, are black.

The continued predominance of blacks among those selected to suffer capital punishment indicates that it is not easy to remove racial prejudice from the criminal justice system. The bias may be traced to prosecutorial discretion in determining charges, to jury discretion exercised through failure to convict or conviction on lesser included offenses, or other administrative factors. But its persistence should warn us to go slow—to be careful lest we authorize mandatory death penalties on the grounds that our procedures are neutral—only to find that the results are once again discriminatory and unconstitutional.

Indeed, Chief Justice Burger, dissenting in Furman, nonetheless urged legislatures to grasp the opportunity for thoughtful reassessment of the death penalty's effects on law enforcement—on the victims of violent crime, on society as a whole, and on the criminals. We should not pass such legislation hastily without gathering further informed opinion and using it to form reasoned judgments.

It is ironic at a time when violent kidnapings fill the headlines that we should be asked to pass a bill which by its terms can only result in the murder of innocent victims of kidnapings and hijackings. S. 1401 does nothing to protect these victims. Instead it encourages wholesale killing by criminals whose own lives are already forfeit under the bill's provisions, regardless of whether they kill their hostages or set them free.

In addition, S. 1401 poses a substantial risk of unjust executions. The five mitigating factors which would prevent capital punishment—youth, duress, mental incapacity, peripheral participation, or, where death results, the fact that risk of death was not foreseeable—are exclusive of any others. Yet it is easy to imagine defendants who would not quite meet the mitigating standards of S. 1401 and yet ought not, by any civilized standard, be put to death—the emotionally immature, the borderline mentally retarded, those psychologically dominated—but not physically coerced—by another, first offenders misled by companions and too inexperienced in the ways of crime to foresee the risk of death.

Indeed, with the exception of the age qualification—under 18—the mitigating factors are so worded as to invite jury discretion and thereby produce the same random, discriminatory, and unjust pattern of executions that the Supreme Court has said constitutes cruel and unusual punishment in violation of the eighth amendment. As Chief Justice Burger's dissenting opinion in Furman against Georgia emphasized:

> The factors which determine whether the sentence of death is the appropriate penalty in particular cases are too complex to be compressed within the limits of a simple formula. 408 U.S. at 401.

Similarly, S. 1401 invites jury nullification. Jurors sitting to determine guilt may vote for acquittal, because of their lack of control over the penalty and their belief that a defendant, though guilty, does not deserve to die.

Recent descriptions of capital punishment as it is practiced in the United States have destroyed the comforting assumption that modern methods of killing are somehow more humane than the rack and the thumbscrew.

Witnesses of electrocutions and hangings have described the agonized final struggle for life, often lasting for several minutes. As Warden Lewis Lawes of Sing Sing said:

> The body leaps as if to break the strong leather starps that hold it. Sometimes a thin gray wisp of smoke pushes itself out from under the helmet that holds the head electrode, followed by the faint odour of burning flesh . . . the cords of the neck stand out like steel bands.

Prison wardens like Lawes and Clinton Duffy of San Quentin, have led the fight against the death penalty partly because they have seen it inflicted, and know that all of us are ultimately the victims of its barbarity. One wonders how many juries would sentence a man to death—and how many legislators would vote for capital punishment—if they were re-

quired to watch or take part in the execution.

Defending the perpetrators of one of the most vicious murders in our history 50 years ago, Clarence Darrow assigned capital punishment to the cruel past. He could not know that one of the lives he saved would later be dedicated to helping others, as a subject for medical experiments, as a hospital worker, and as an organizer of prison education and rehabilitation. Darrow said:

I am pleading for the future. I am pleading for a time when hatred and cruelty will not control the hearts of men, when we can learn by reason and judgment and understanding and faith that all life is worth saving, and that mercy is the highest attribute of man.

I ask all Members of the Senate to legislate for that future, to work against and vote against S. 1401, and to defeat any attempt to restore the death penalty for Federal crimes.

Mr. HELMS. Mr. President, what we are talking about here today, I believe, is deterrent to crime. I want briefly to discuss another aspect which I think, while ancillary to the issue at hand, is also equally important.

Mr. President, as Senators are aware, the daughter of Mr. Randolph Hearst has been kidnaped and is currently being held for ransom. By the terms of the ransom, Mr. Hearst has given away more than $2 million worth of food.

Everyone sympathizes with Mr. Hearst, and we understand his wish to exhaust every possibility in his efforts to procure the return of his daughter. Nonetheless, his actions, aimed solely at saving his daughter, will not prevent further abductions of this nature and may, in fact, encourage them.

I am deeply concerned that this kidnaping could serve as a prototype for a rash of similar crimes. The Senate can, and in my view, should vote to increase the punishment for this crime. However, there is additional action that could be taken which would serve as an effective deterrent to future incidents similar to the Hearst kidnaping. This action would substantially remove the motivation for such crimes.

Title 18, section 1202 of the United States Code entitled "Ransom Money" provides as follows:

Whoever receives, possesses, or disposes of any money or other property, or any portion thereof, which has at any time been delivered as ransom or reward in connection with a violation of section 1201 of this title (kidnaping), knowing the same to be money or property which has been at any time delivered as such ransom or reward, shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

I have this day sent a letter to the Attorney General inquiring as to whether he considers this criminal statute applicable to those who accepted the food distributed by Mr. Hearst knowing it to be ransom property. If the Attorney General considers this statute applicable to these people, I have asked him to advise me as to what action he plans to take with regard to enforcing it.

It appears obvious that if the law is applied as the statute seems to have been intended, then the so-called poor persons designated to receive the food would be actively prohibited from accepting it. It is patently obvious that this food distribution scheme does not have as its main purpose the feeding of the needy. No test of "need" was applied to the recipients. It is a radical political demand intended to wage propaganda warfare against the social system of our country. At the same time, it imposes a terrible financial penalty against a law-abiding family, not to speak of the emotional and physical risks involved. Those who accept food that is paid out in ransom are degrading themselves and this Nation. It appears to me that they are also breaking the law and should be prosecuted.

Application of the statute I have cited would make such extortion demands impracticable and would make future attempts less likely. Our sympathies go out for the Hearst family, and I am sure that the greatest comfort in their suffering would be the realization that every possibility in the effort to deter future tragedies is being pursued.

Mr. President, I ask unanimous consent that a copy of the aforementioned letter to the Attorney General be printed in the RECORD at the conclusion of my remarks.

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

MARCH 12, 1974.

Hon. WILLIAM B. SAXBE,
The Attorney General,
Washington, D.C.

DEAR BILL: As I am certain you are well aware, the daughter of Mr. Randolph Hearst is currently being held for ransom. The terms of the ransom provide that large amounts of food be given by Mr. Hearst to certain persons. Reportedly, more than two million dollars worth of food has been distributed to date.

I am deeply concerned about the possibility of this tragic kidnaping serving as a protoype for a rash of similar crimes across the country. However, it appears that there are certain criminal sanctions available which, to my knowledge, have not been enforced in this case. It would seem that if this criminal statute were applicable to the Hearst case, and if it were enforced, it would serve as an effective deterrent to future incidents of this nature.

18 U.S.C.A. § 1202, Ransom money, provides as follows:

"Whoever receives, possesses, or disposes of any money or other property, or any portion thereof, which has at any time been delivered as ransom or reward in connection with a violation of section 1201 of this title (kidnaping), knowing the same to be money or property which has been at any time delivered as such ransom or reward, shall be fined not more than $10,000 or imprisoned not more than ten years, or both."

I would appreciate your considering the above statute and advising me as to whether, in your estimation, it is applicable to those who have knowingly accepted the food distributed by Mr. Hearst. If you consider the statute to be applicable, I would also appreciate your advising me as to what action you plan to take with regard to enforcing it.

Thank you for your attention to this matter.

Sincerely,

JESSE.

Mr. HELMS. Mr. President, I yield the floor.

MESSAGE FROM THE HOUSE— ENROLLED BILL SIGNED

A message from the House of Representatives by Mr. Hackney, one of its reading clerks, announced that the Speaker had affixed his signature to the enrolled bill (H.R. 6119) for the relief of Arturo Robles.

ORDER FOR CONSIDERATION OF CERTAIN BILLS NEXT WEEK

Mr. MANSFIELD. Mr. President, earlier today, the Senate gave unanimous consent to a schedule which was laid down to begin on Tuesday next, March 19, at which time the pending business would have been the campaign finance bill.

In view of the circumstances which have developed since, and with the concurrence of the Republican leadership, I ask unanimous consent that at the conclusion of the disposition of the pending bill, that S. 1541, a bill to provide for the reform of congressional procedures with respect to the enactment of fiscal measures; to provide ceilings on Federal expenditures and the national debt, and so forth, be laid before the Senate and made the pending business.

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

Mr. MANSFIELD. Mr. President, I ask unanimous consent that, following the disposition of S. 1541, the Senate proceed to the consideration of S. 354, the so-called no-fault insurance bill, provided it is ready and the reports are available.

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

Mr. MANSFIELD. Mr. President, if the reports are available and the bill is ready for discussion, I ask unanimous consent that that in turn be followed by S. 3044, a bill to amend the Federal Election Campaign Act of 1971, and so forth.

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

Mr. MANSFIELD. Mr. President, I would ask that the Senate give the leadership a little flexibility so that if difficulties occur which we cannot foresee at this time, we may be able to shift the bills around in a fashion which will keep the Senate busy facing up to its responsibilities.

ORDER FOR ADJOURNMENT UNTIL 10 A.M. TOMORROW

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

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

ORDER FOR RECOGNITION OF SENATORS HARRY F. BYRD, JR., BUCKLEY, AND ROBERT C. BYRD TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on tomorrow, after the two leaders or their des-

ignees have been recognized, the following Senators be recognized each for 15 minutes and in the order stated: Senators HARRY F. BYRD, JR., BUCKLEY, and ROBERT C. BYRD.

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

ORDER FOR CONSIDERATION OF CAPITAL PUNISHMENT BILL, S. 1401, TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that at the conclusion of the aforementioned orders, the Senate resume the consideration of S. 1401.

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

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, the Senate will convene at the hour of 10 a.m. tomorrow.

After the two leaders or their designees have been recognized under the standing order, the following Senators will be recognized, each for not to exceed 15 minutes and in the order stated: Senators HARRY F. BYRD, JR., BUCKLEY, and ROBERT C. BYRD.

At the conclusion of the aforementioned orders, the Senate will resume the consideration of S. 1401, the mandatory death penalty bill. Yea-and-nay votes are expected on tomorrow.

Mr. President, what is the pending question before the Senate?

The PRESIDING OFFICER. The pending question is the amendment of the Senator from Colorado to S. 1401.

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

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. HARRY F. BYRD, JR. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

ADJOURNMENT TO 10 A.M. TOMORROW

Mr. HARRY F. BYRD, JR. Mr. President, I move in accordance with the previous order of the Senate that the Senate stand in adjournment until the hour of 10 a.m., tomorrow.

The motion was agreed to; and at 5:49 p.m., the Senate adjourned until tomorrow, Wednesday, March 13, 1974, at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate March 12, 1974:

DEPARTMENT OF JUSTICE

John T. Pierpont, Jr., of Missouri, to be U.S. marshal for the western district of Missouri for the term of 4 years. (Reappointment.)

John L. Buck, of Pennsylvania, to be U.S. marshal for the middle district of Pennsylvania for the term of 4 years. (Reappointment.)

EXTENSIONS OF REMARKS

JAMES E. WELLS, OF DETROIT, TESTIFIES AGAINST FORCED BUSING

HON. ROBERT J. HUBER

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 12, 1974

Mr. HUBER. Mr. Speaker, in February, I had the privilege of testifying before the Senate Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary relative to constitutional amendments to prohibit forced busing of schoolchildren. James Wells, of Detroit, also testified during those hearings and made a very good statement on behalf of Liberty Lobby on this topic:

FORCED BUSING OF SCHOOLCHILDREN

Mr. Chairman and Members of the Committee: I am James E. Wells, an attorney from Detroit, Mich. I have represented Neighborhood Academies, Pontiac, Mich., the so-called freedom-of-choice schools. I am also a special consultant for Liberty Lobby, and appreciate this opportunity to present the views of Liberty Lobby's 20,000-member Board of Policy, and also to appear on behalf of the approximately quarter million readers of its monthly legislative report, Liberty Letter.

The Pontiac School District was vitally affected by a school busing decision in 1971. Enrollment in the public school district dropped dramatically that year, while private school enrollment increased substantially. The white population began to move from within the school boundaries to other districts. NAACP predicted that within five years, the city of Pontiac would revert to a substantially segregated school system by reason of "white flight." Enrollment in the Neighborhood Academies totaled 400 at the height of the busing dispute in Pontiac, and by the fall of 1972, the enrollment had diminished to 10. This fact was reflected in a survey of the children in the Pontiac Neighborhood Academies. It indicated that 73% of the enrollees had moved with their families or had been transferred by their families to other school districts, often in other states.

The busing situation in Pontiac (and many other communities) has been further complicated by gasoline shortages. The Board of Education required an additional 106 buses to transport students for racial integration within the district. These buses use more than 1,500 gallons of gasoline daily. When stored gas supplies fell short recently, the school buses were filled at local service stations with consequent line-ups, delays, and frustrations to the schools and citizens in the area. Thus, in thousands of school districts, there is some basis, in fact, for the popular opinion that conservation of desperately needed gasoline has not been allowed to interfere with the socially-orientated goals of the Nation's social planners. It is further noteworthy that on Jan. 6, 1974, the Director of Transportation of the Pontiac School District announced that supplies of gasoline to the schools were exhausted, and that the school buses would be filled by local filling stations in competition with the public, since the school would pay the prevailing retail gas price.

S. 1737, to amend the Civil Rights Act of 1964, tends to answer the questions raised by the U.S. Supreme Court in *Swann v. Charlotte-Mecklenburg—Board of Education.* There was some confusion on the part of the Court as to whether the plain language of the proviso in Sec. 2000c(b) and 2000c–6 said what it meant, or meant what it said. Congress there said:

"Desegregation means the assignment of students to public schools and within such schools without regard to their race, color, religion, or national origin, but 'desegregation' shall not mean the assignment of students to public schools in order to overcome racial imbalance. . . . Nothing herein shall empower any official or court of the United States to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another or one school district to another in order to achieve such racial balance, or otherwise enlarge the existing power of the court to insure compliance with constitutional standards."

This bill should clarify the matter for the Court. It will be recalled that the Court interpreted the legislative history of the Act to indicate "that Congress was concerned that the Act might be read as creating a right of action under the 14th Amendment in the situation of so-called defacto-segregation. . . ." The legislative history of this bill, together with its reference in S. 1737 to the Court's jurisdiction, should leave no room for doubt of the bill's intent. Nevertheless, discussion on this point is necessary in the history of S. 1737, since the Court previously has questioned whether the Civil Rights Act did "withdraw from courts historic equitable remedial powers."

The Supreme Court, in reviewing cases involving the Emergency Price Control Act of 1942, announced the following doctrine "unless a statute in so many words, or by a necessary and inescapable inference, restricts the scope of equity that jurisdiction is to be recognized and applied." This doctrine was based upon a dictum casually written in an 1836 opinion, *Brown v. Swann,* 10 Peters 497, 503. The extension of this doctrine of doubtful origin into school busing has been disastrous. School busing has become punitive in character, since its benefits have been considered negligible or non-existent by educational authorities. The 1836 opinion also stated that "equity will be converted by the section into an assistant for the enforcement of a penalty; which has never been its province." In order that our traditional check and balance system shall not be discarded by judicial misunderstanding, this amendment to the Civil Rights Act of 1964 (S. 1737) seems appropriate.

This bill should further remedy not only the wastage of gasoline in the transportation of students to achieve social policy by judicial decree, but may well prevent further resegregation of existing desegregated districts by eliminating the need felt by some parents to remove from the community. Those who have taken the view that they will not conserve the fuel in this critical time, when school buses are running, may alter their views upon passage of this bill.

It seems clear to me that national policy in a time of crisis must override far-reaching social planning schemes where reinforced by judicial edict based upon judicial "misunderstanding."

It is the combined judgment of Liberty Lobby and the vast majority of citizens as shown in all polls that busing of school children to create a racial balance has proved to be a punitive act against the best education